Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Addition of New Grade Standards for American Upland Cotton on Trial Basis

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is adding two new standards to the official cotton standards of the United States for the grade of American Upland cotton on a trial basis. The new standards will be a Strict Good Ordinary Spotted physical standard and a Strict Good Ordinary Light Spotted descriptive standard. These standards will more accurately describe a portion of cotton now classified as Below Grade.

In addition, references to the size of the boxes used to display standards samples will be deleted from the regulations. The twelve-sample box will be discontinued and the six-sample box used exclusively to represent the physical standards. The six-sample box is less expensive and more convenient to prepare and handle than the twelve-sample box and its use will not adversely affect the classification of cotton.

EFFECTIVE DATE: August 16, 1984.

FOR FURTHER INFORMATION CONTACT: Harvin R. Smith, Chief, Standards and Testing Branch, Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. (202/447-2167)

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order. No new costs or additional requirements are being imposed on the industry or others.

William T. Manley, Deputy Administrator, AMS, has certified that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Because the changes will affect less than 1 percent of the annual U.S. cotton crop, this final rule will not have the requisite significant economic impact. Further, the changes do not impose any additional duties upon users of the service. Background: Pursuant to the authority contained in the United States Cotton Standards Act (7 U.S.C. 51), the Secretary of Agriculture has established the official cotton standards of the United States for the grades of American Upland cotton. These stantards are used for the classification of American Upland cotton and provide a basis for the determination of value for commercial purposes.

The existing official cotton standards for the grades of American Upland cotton are listed and described in the regulations at 7 CFR 28.402–28.475. Fourteen are physical standards represented by practical forms, and 26 are descriptive standards for which practical forms are not made. Six of the descriptive standards describe the poorest quality cotton and taken together make up the Below Grade classification (7 CFR 28.475).

The volume of cotton designated Below Grade in the United States each year averages less than one percent of the crop submitted for classification. Over the past six years the amount of cotton classified as Below Grade has ranged from 1. 4 to 1.9 percent of the crop. In 1982, 1.2 percent or approximately 139,000 bales fell into the Below Grade category. It is estimated that approximately two-thirds or roughly 93,000 bales would have been described as Strict Good Ordinary Spotted or Strict Good Ordinary Light Spotted if these grades had been in effect.

While the proportion of the national cotton crop falling into the Below Grade category has been low over the years, certain cotton producing areas have had relatively large percentages from time to time. Among them were the Abilene territory with 6 percent Below Grade cotton in 1980; the Corpus Christi territory with 20 percent in 1981; and the Phoenix territory with 9 percent in 1982.

Cotton producer organizations have urged the establishment of two new grade standards for a number of years. The addition of a physical standard for Strict Good Ordinary Spotted cotton and a Strict Good Ordinary Light Spotted cotton descriptive standard on trial basis is intended to provide a more accurate description of certain cotton which is currently classified as Below Grade. Cotton classified in one of the trial grade standards has been found to have better spinning characteristics than Below Grade cotton. AMS conducted processing tests on 330 low grade and Below Grade spinning lots in 1978 and 1980. This cotton was tested for a number of fiber and yarn qualities. The tests showed a wide range of qualities in the cotton now classified as Below Grade. More significantly, the results of the processing test indicate that cotton which will fall within the new standards will have spinning potential equal to the Good Ordinary grade and better than the Low Middling Tinged grade.

Based upon the above, the new standards were proposed. As discussed below, the standards will be adopted on a trial basis. The trial period will include at least two crop seasons so as to develop meaningful additional data.

New Standards

Below Grade cotton contains a broad range of cotton qualities and the higher quality Below Grade cotton can be identified with a more accurate and meaningful classification. The new trial grades are intended to provide a better basis for determining the commercial value of such cotton and to contribute to the overall efficiency of the cotton marketing system.

When these new standards are put into effect on a trial basis they will be used in USDA's classification programs. This will permit the Agency and all other interested parties in the cotton industry to gather more extensive information as to the quantity, quality, and value of the cotton classed in these grades. During the trial period for the new grade standards, further studies will be conducted on the fiber qualities and spinning potential of cotton falling within the new grades. In addition, the classification and trading of cotton on the basis of the trial standards will

provide concrete data and price information needed to determine the commercial value of such cotton. All of this additional information together with the information used to develop the proposal can be used to determine whether to continue these two grade standards on a permanent basis.

Standards Boxes: The Agency will discontinue production of the 12-sample box to represent the physical standards for grade. The six-sample box will become the only size produced for the practical forms of the cotton standards. This applies to the standards for American Upland cotton and for American Pima cotton.

The present 12-sample standards box contains six color positions each of which is represented by two identical samples. The six-sample box contains only one sample for each of the six color positions.

The six-sample boxes have been produced and used since the mid 1950s and are much less expensive to prepare, store, and ship and have proven to be more convenient to use in day-to-day classing operations. Adoption of a six-sample box as the only size for representing the standards will not affect the classification of cotton in any manner and will greatly improve the efficiency of standards preparation and distribution. Furthermore, sales figures compiled from 1976 thru 1983 indicate that the smaller box is widely accepted and used by both domestic and foreign users.

Comments

Proposed rulemaking was published on pages 19721–19722 of the **Federal Register** of May 2, 1983, and invited comments for 60 days ending July 1, 1983. Minor errors in the proposal were corrected in a document published on page 32027 of the **Federal Register** of July 13, 1983, and comments on the corrected proposed rule were invited for 10 more days, ending July 25, 1983.

The proposed standards changes were also presented to cotton industry representatives at the triennial Universal Standards Conference in Memphis, Tennessee, June 7–8, 1983. Twenty-eight delegates from 14 foreign cotton merchants' or spinners' associations attended the conference in addition to representatives from all segments of the U.S. cotton industry affected by changes in the standards. Representing the shippers and exchanges were 17 members of the American Cotton Shippers Association and nine others from seven cotton exchanges. The American Textile Manufacturers Institute was represented by 19 delegates from the textile industry, and 45 delegates from American cotton producer and ginner organizations were present.

AMS solicited comments and answered questions on each of the proposed changes in the standards. Each group of delegates was given an opportunity to examine the supporting data and to caucus in order to discuss their position.

In regard to the proposal to make the six-sample box the only size to represent the physical standards and to discontinue production of the 12-sample box, all of the delegations favored the adoption of this proposal. One written comment was also received by AMS regarding this proposal and it supported the six-sample boxes.

The domestic cotton industry was divided on the proposal to establish two new standards. Cotton producer and ginner representatives spoke in support of the proposal contending that producers would be able to sell cotton within the proposed grades for a higher price than Below grade cotton. Shipper and exchange representatives announced that they were opposed to the introduction of the proposed standards contending that the trading of such low quality cotton would not be facilitated by the proposed standards and that the present descriptive standards were adequate. Manufacturer representatives also opposed the new standards on the same basis.

The foreign cotton associations took a neutral stance and announced that while they were not opposed to the introduction of the proposed standards, they saw no reason to have them.

None of the delegations at the conference offered any additional evidence, studies, or data to support their respective positions. Alternative suggestions were not offered and no new information was revealed.

Written comments supporting the adoption of the proposed standards were received from: Amcot, Inc.; the South Texas Cotton and Grain Association, Inc.; the Texas Association of Cotton Producer Organizations; the Plains Ginners' Association; the American Farm Bureau Federation; the Texas Independent Ginners Association; Calcot, Ltd.; the Arizona Farm Bureau Federation; the Plains Cotton Co-op Association; the Southern Cotton Ginners Association; the Delta Council; and the Arkansas Farm Bureau Federation.

Written comments with objections to the proposed standards were received from the American Cotton Shippers Association and the American Textile Manufacturers Institute, Inc. which reiterated concerns expressed at the Universal Standards Conference.

Conclusion

After carefully evaluating all comments received and all other relevant factors, it has been decided that the two proposed standards will be adopted on a trial basis. Consequently, this final rule requires that the definition of Below Grade cotton also be revised on a trial basis. Presently the two lowest spotted cotton grade standards are Low Middling Light Spotted and Low Middling Spotted. All spotted cotton lower in grade than these two standards is not defined as Below Grade cotton. This final rule establishes the two trial grade standards of Strict Good Ordinary Light Spotted and Strict Good Ordinary Spotted which will become the two lowest spotted cotton grade standards. Spotted cotton lower in grade than the new standards will be by definition, Below Grade cotton.

The Agency is deleting from the regulations any reference to the size of standards boxes representing the official standards of the United States for the grades of American Upland cotton and of American Pima cotton. Therefore, § 28.105 is amended as well as the fee schedule in § 28.123 to delete references to the 12-sample box and its applicable fee, effective (one year from the date of publication).

This final rule does not differ from the proposed rule as corrected, except for the addition of the word tentative to the new standards and an appropriate change in the effective date. The fees for the six-sample boxes and other fees contained in § 28.123 are presently under study and may be revised in the future.

According to the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*), changes in the standards cannot become effective less than one year after publication of a final rule establishing the changes (7 U.S.C. 56). The six-sample box and the new trial grade standards will become effective August 16, 1984.

List of Subjects in 7 CFR Part 28

Cotton, Samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

Accordingly, Subpart A and C, Part 28, of Chapter 1, Title 7 of the Code of Federal Regulations are amended as shown. The Table of Contents is amended accordingly.

PART 28—[AMENDED]

1. The authority citation for Part 28, Subparts A and C reads as follows:

Subpart A:

Authority: Sec. 10, 42 Stat. 1519; 7 U.S.C. 61, unless otherwise noted.

Subpart C:

Authority: Sections 28.402 to 28.481 issued under Sec. 10, 42 Stat. 1519; 7 U.S.C. 61. Interpret or apply Sec 6, 42 Stat. 1518, Stat. 1519, 7 U.S.C. 61. Interpret or apply Sec. 6, 42 Stat. 1518, as amended, 7 U.S.C. 56.

2. 7 CFR Part 28 is amended by adding new §§ 28.425 and 28.435 to Subpart C to read as follows:

§ 28.425 Strict Good Ordinary Light Spotted. (Tentative).

Strict Good Ordinary Light Spotted is American Upland cotton which in leaf and preparation is Strict Good Ordinary, but which in spot or color, or both, is between Strict Good Ordinary and Strict Good Ordinary Spotted.

§ 28.435 Strict Good Ordinary Spotted. (Tentative).

Strict Good Ordinary Spotted is American Upland cotton which its color, leaf, and preparation is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Good Ordinary Spotted (Tentative), effective [August 16, 1984]."

3. Section 28.475 of Subpart C is revised to read as follows:

§ 28.475 Below grade cotton. (Tentative).

Below grade cotton is American Upland cotton which is lower in grade than Good Ordinary, or Strict Good Ordinary Light Spotted, or Strict Good Ordinary Spotted, or Low Middling Tinged, or Middling Yellow Stained, or Strict Low Middling Gray. In cotton classification, the official designation for such cotton is Below Grade. The term Below Good Ordinary, or Below Strict Good Ordinary Light Spotted, or Below Strict Good Ordinary Spotted, or Below Low Middling Tinged, or Below Middling Yellow Stained, or Below Strict Low Middling Gray and other additional explanatory terms considered necessary to describe adequately the condition of the cotton may be entered on classification memorandums or certificates.

4. Paragraph (b)(1) of § 28.105 in Subpart A is revised to read as follows:

§ 28.105 Practical forms of cotton standards.

* * * * *

(b) * * *

(1) That no practical form of any of the cotton standards for the grade of American Upland cotton shall be considered or used as representing such standards after the date of its cancellation in accordance with this section or in any event after the expiration of 12 months following the date of its certification: Provided, That sets of practical forms stored, protected, and preserved in accordance with certain agreements for the adoption of universal standards may be used for such periods as may be prescribed in such agreements.

* * * * *

5. Section 28.123 of Subpart A is revised to read as follows:

§ 28.123 Costs of practical forms of cotton standards.

The cost of practical forms of the cotton standards of the United States shall be as follows:

	Dollars each box	
	Domestic shipments f.o.b. Memphis, Tenn.	Shipments delivered outside the continental United States
Grade Standards		
American Upland	80.00	105.00
American Pima	110.00	135.00
Standards for Length of Staple		
American Upland (prepared in one pound rolls for each length)	11.00	14.00
American Pima (prepared in one pound rolls for each length)	12.00	15.00

Dated: August 11, 1983.

Vern F. Highley,

Administrator, Agricultural Marketing Service.

[FR Doc. 83-22401 Filed 8-15-83; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 231

Arrival-Departure Manifests and Lists; Supporting Documents

Correction

In FR Doc. 83-21484 appearing on page 36093 in the issue of Tuesday, August 9, 1983, make the following correction.

In the first column, the fifth line of **"SUPPLEMENTARY INFORMATION"** should read " 'aircraft or vessel,' replacing 'aircraft'".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Docket No. R-0455]

Bank Holding Companies and Change in Bank Control; Regulation Y; Nonbanking Activity; Discount Securities Brokerage and Securities Credit Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: On January 7, 1983, the Board approved the application of BankAmerica Corporation to acquire Charles Schwab & Co., which engages in retail discount securities brokerage, securities credit lending, and certain incidental activities. In its order approving the application, the Board found that Schwab's brokerage and securities credit activities were closely related to banking for purposes of section 4(c)(8) of the Bank Holding Company Act ("BHC Act").

On February 22, 1983, the Board published for comment a proposal to add the activities engaged in by Schwab to the list in Regulation Y of nonbanking activities generally permissible for bank holding companies under section 4(c)(8) of the BHC Act. Approximately 73 comments were received in response to the Board's proposed rulemaking. Except for one comment, all of the comments supported adoption of the proposal. Some of the comments suggested additional revisions to the proposal. After considering all the comments, the Board has adopted the proposed rule, with minor revisions.

EFFECTIVE DATE: September 9, 1983.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Assistant General Counsel, 202/452-3750, or Richard M. Whiting, Senior Attorney, 202/452-3779, Legal Division, Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: Section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. 1843(c)(8) ("BHC Act"), states that bank holding companies may engage in those activities the Board has "determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8). In determining whether the performance of nonbanking activities is

"closely related" to banking, the Board has generally taken into consideration the guidelines stated by the Court in *National Courier* v. *Board of Governors of the Federal Reserve System*, 516 F. 2d 1229 (D.C. Cir. 1975): (1) Banks generally have in fact provided the proposed services; (2) banks generally provide services that are operationally or functionally so similar to the proposed service as to equip them particularly well to provide the proposed services; (3) banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form.

The Board's decision approving the acquisition by BankAmerica Corporation of Charles Schwab & Co., a discount securities broker, was preceded by a formal administrative hearing in which the Securities Industry Association ("SIA") and the Department of Justice participated.[1] Additionally, approximately 100 comments, most of which were favorable to the proposal, were filed with the Board. In its order approving the BankAmerica application, the Board noted that banks in fact have generally provided securities brokerage to some extent, and, in providing such brokerage services, have become particularly well equipped to perform the proposed securities brokerage activities. Moreover, the Board determined that, given the similarity between margin lending activities currently engaged in by banks and the proposed margin lending activities engaged in by Schwab, the proposed margin lending activities also are closely related to banking within the meaning of section 4(c)(8) of the BHC Act. The Board made similar findings in connection with its approval of the application of United Jersey Banks to acquire a discount broker.[2]

The Securities Industry Association requested judicial review of the Board's order approving the BankAmerica application. On July 15, 1983, the United States Court of Appeals for the Second Circuit denied SIA's petition and upheld the Board's order.[3] In particular, the Court discussed and supported the Board's conclusion that the proposed activities are "closely related" to banking. Additionally, the Court found that the proposed activities are not prohibited by the provisions of the Glass-Steagall Act, which generally separate commercial from investment banking.[4]

On February 22, 1983, the Board published for comment a proposal to add securities brokerage and margin lending to the list of nonbanking activities generally permissible for bank holding companies pursuant to section 4(c)(8) of the BHC Act. (48 FR 7746 (February 24, 1983)). A total of 73 comments, including those of all 12 Federal Reserve Banks, were received. Of these, 72 commenters generally favored adoption of the proposal and concluded that the proposed activities are "closely related" to banking and consistent with the Glass-Steagall Act. Many commenters specifically referenced the record and Board findings in the BankAmerica/Schwab matter. Other commenters noted that trust departments of banks have engaged in securities brokerage activities for some time, that banks and other financial institutions commonly provide securities brokerage services, and otherwise concluded that the proposed activities are permissible.

Lawfulness of the Proposal. The SIA was the only commenter opposing the proposal, reasserting objections it previously made in the BankAmerica/Schwab matter that the proposed activities violate the Glass-Steagall Act and the BHC Act. As described above, however, these arguments have been rejected by an administrative law judge, the Board, and the United States Court of Appeals for the Second Circuit. The remaining comments overwhelmingly supported the finding that the proposed activities are permissible. Accordingly, the Board finds that adoption of the proposed regulation would not contravene applicable law.

The SIA also states that in light of alleged undue risks to the bank holding company and the uncertainty created by the SIA's judicial challenge to the BankAmerica/Schwab order, the Board should proceed on a case-by-case basis rather than by promulgating the proposed regulation. However, the Board's issuance of a regulation adding a particular activity to the list of permissible nonbanking activities in Regulation Y means the proposed activity meets the first or "closely related to banking" test of section 4(c)(8). Bank holding companies wishing to engage in that activity must also comply with the "public benefits" test of the statute, which the Board applies on a case-by-case basis. The SIA's objections thus do not warrant a decision not to adopt the proposed regulation.

Incidental Activities. In its BankAmerica/Schwab decision, the Board found that a number of services offered by Schwab in connection with carrying accounts of its brokerage customers were permissible incidental activities. A number of commenters on the proposal recommended an express listing of such incidental activities, either in the regulation or in a separate interpretation.

In order to clarify that services incidental to brokerage services are permissible, the proposed rule has been modified to list permissible incidental services. In general, the list includes the permissible incidental services identified by the Board in the BankAmerica/Schwab decision: *i.e.*, custodial services, furnishing individual retirement accounts and cash management services. Cash management services are intended to include customer account-related functions such as paying interest on net free balances awaiting investment, providing arrangements under which free credit balances are automatically invested in money market mutual funds, and establishing arrangements under which access to such balances is provided by debit card or checking accounts.

The list of incidental activities in the regulation as adopted is not intended to be exhaustive. The Board believes that in order to compete effectively with other discount broker's, bank holding companies should have the flexibility to provide a full range of customer account and custodial services, provided such services meet the test for permissible incidental activities under section 4(c)(8). Whether certain types of services not listed in the regulation are permissible will be determined in individual instances.

Provision of Investment Advice. A number of commenters also supported eliminating the provision in the proposed regulation stating that permissible brokerage services may not include investment advice or research services. These commenters note that under § 225.4(a)(5)(ii) of Regulation Y, bank holding companies may furnish to any person investment advice concerning the purchase or sale of securities.

The Board has determined that elimination of this prohibition would not be appropriate at this time. The proposed rule was intended merely to incorporate into the regulation the Board's decision on the BankAmerica/Schwab application, which involved the acquisition of a discount securities broker that does not provide investment

[1] 69 Federal Reserve Bulletin 105 (1983).

[2] *United Jersey Banks/Richard Blackman & Co.*, 69 Federal Reserve Bulletin 565 (1983).

[3] *Securities Industry Assn.* v. *Board of Governors*, No. 83-4019 (2d Cir.).

[4] 12 U.S.C. 24 Seventh, 377, 378.

advice. The proposal did not contemplate the authorization of significant other securities related activities since no record has been developed within which to assess the implications of providing securities brokerage and investment advice services together.

In this regard, the Board notes that the investment advisory services currently permitted pursuant to Regulation Y typically are furnished to sophisticated customers with substantial amounts of funds to invest. These services thus lack the high volume, retail orientation of many brokerage firms, whose investment advice tends to reach a wider segment of the public. More importantly, the investment advisory customers of banking organizations usually pay an explicit fee for investment advice, so that the adviser does not look to commissions for executing transactions as compensation for the advisory services, as full-line brokers typically do. Accordingly, in light of the narrow purpose of the proposed amendment the Board does not believe that it is appropriate at this time to remove the restriction in this proposal against providing investment advice.[5]

Modification of Restriction against Underwriting. In its comments on the proposed rule, the Antitrust Division of the Department of Justice, while supporting the proposal, recommends that the prohibition against underwriting in the proposed rule be modified to permit underwriting as a risk-free principal. The Department states that some legitimate activities of brokers may be considered underwriting and thus impermissible to holding company affiliates under the proposal.

In its *Schwab* decision, the Board found that Schwab's riskless principal transactions with respect to municipal securities appear to be consistent with permissible brokerage activities.[6] However, to adopt the Department's recommendations would appear to contemplate a significantly higher level of activity not within the Board's original proposal. Accordingly, the Board does not believe it appropriate to adopt the Department's recommendation.

Margin Credit Activities. Several commenters questioned whether under the proposal a bank or nonbank affiliate of the securities broker could extend credit for the purchase or carrying of securities to customers of that broker. The amendment contemplates that a bank holding company's or its nonbank subsidiary performing the permitted securities activities would be required to register as a broker/dealer with the Securities and Exchange Commission and that its margin credit activities would therefore be subject to the Board's Regulation T, which governs securities credit by broker/dealers (12 CFR Part 220). Regulation T, in turn, permits a broker to arrange credit for its customers but only upon the same terms and conditions upon which the broker itself could extend or maintain credit under Regulation T. A securities broker could, therefore, subject to the foregoing limitations, arrange for any bank to extend credit for the broker's customers under Regulation U, or any nonbank lender to extend credit to the broker's customers under Regulation G. However, the bank or nonbank lender may not extend any credit that the broker itself could not extend. The principal effect of this "arranging" provision is that the bank or nonbank lender may not extend credit to the broker's customers to purchase any securities on an unsecured basis, or to use any collateral other than securities traded on a national securities exchange or listed on the Board's List of OTC Stocks.

The rule also contemplates that the securities credit lending, as in the case of Schwab, would be carried out in connection with permissible brokerage services and credit would be extended only to brokerage customers. Thus, the proposed regulation would permit securities credit lending only on the condition that such lending be conducted in compliance with Regulation T. However, securities credit activities conducted independently of brokerage services might (although not within the scope of this proposal) also be closely related to banking under section 4(c)(8). Accordingly, while the Board's rule contemplates that securities credit lending would be conducted in accordance with Regulation T, this action is not intended to foreclose further consideration of other applications to conduct securities credit activities under other margin regulations.

Definition of "securities". One commenter asked that the term "securities" be defined in order to avoid ambiguity about the scope of permissible brokerage services and suggested the definition of "security" in the Securities Act of 1933 as an appropriate definition. The Board is aware, however, that, at least in questionable cases, whether a particular instrument is a security for purposes of the federal securities laws often poses difficult questions turning on the facts of each particular case and hence must be resolved on a case-by-case basis.[7] In addition, the Board believes that bank holding companies should have the flexibility to compete with nonbank-affiliated brokers and should thus be free, in individual cases, to execute orders to purchase or sell financial instruments that may not constitute securities for purposes of the federal securities law if nonbank-affiliated brokers execute orders for such instruments. Accordingly, in the Board's view, questions concerning whether particular types of interests may be bought or sold as agent for a customer under the amendment to Regulation Y are best resolved in the context of a particular case.[8]

Technical Modifications. The Board has considered various comments requesting technical modifications in the language of the proposal and believes that the proposal should be modified in certain respects. As suggested by several comments, deletion of the word "certain," which modifies "securities brokerage services," is warranted since the limitations implied by the word "certain" are made explicit elsewhere in the amendment and that word, therefore, is redundant. In addition, to avoid any ambiguity about the agency status of the permitted securities transactions, the restriction in the regulation against conducting securities underwriting is extended to include dealing in securities.

Applications Procedures. Several commenters, including three Federal Reserve Banks, request that all bank holding companies seeking to engage in permissible securities brokerage activities be required, regardless of the method by which the activities would be

[5] One commenter sought additional guidance with respect to what type of incidental activities fall within the prohibition against provision of investment advice. In the Board's view, these questions are best resolved in the context of particular circumstances.

[6] 69 Federal Reserve Bulletin (1983) at 116 n. 55. Similarly, "inadvertent principal" transactions, in which a broker holds securities for its own account as a result of a mistake in executing a customer's order, are not prohibited under the amendment's bar against conducting an underwriting business. *Id.*

[7] *See Marine Bank* v. *Weaver*, 455 U.S. 551, 560 n. 11 (1982). In defining "security" under the federal securities laws, "each transaction must be analyzed and evaluated on the basis of the content of the instrument in question, the purposes intended to be served, and the factual setting as a whole."

[8] The definition of securities in the Securities Act is employed in defining portfolio investment advice in § 225.4(a)(5)(ii) n. 1 of Regulation Y. The purpose of this definition is to prevent bank holding companies from becoming involved in speculative investment enterprises under the guise of providing investment advice. This danger does not appear to be present in connection with discount brokerage, the scope of which seems relatively well-defined in the industry.

initiated, to follow the application procedures applicable to the acquisition of a going concern. 12 CFR 225.4(b)(2). One Reserve Bank further states that applications to engage in these activities should not be approved by the Reserve Banks pursuant to delegated authority.

The Board believes that imposition of a general rule to govern all applications to engage in brokerage services would be undesirable and unduly burdensome. The implications of bank holding company provision of securities brokerage were examined in detail at a contested formal administrative hearing in connection with the BankAmerica/Schwab application and the Board determined that none of the objections raised against the proposal justified disapproval of the application. The majority of the Reserve Banks have not requested that special procedures be adopted for brokerage applications in all cases. The Reserve Banks have the authority to require necessary supplemental information in considering particular applications to offer brokerage services, including applications to commence such activities *de novo*. The Reserve Banks also may decline to exercise their delegated authority in cases that raise significant policy issues. The Board believes that the potential for conflicts of interest, which several comments cited as a reason for not permitting delegation of approval authority can best be considered under this procedure on a case-by-case basis.

Accordingly, with the revisions described above, the Board has adopted the proposal as a final rule. The Board has determined that securities brokerage and margin lending are "closely related" to banking, consistent with the Glass-Steagall Act, and, therefore, should be added to the list in Regulation Y of nonbanking activities that are generally permissible for bank holding companies.

For the purposes of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. Indeed, this rule should facilitate the application process for any company wishing to engage in the activity.

List of Subjects in 12 CFR Part 225

Banks, banking, Holding companies, Securities, Reporting and recordkeeping requirements.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

This action is taken pursuant to the Board's authority under sections 4(c)(8) and 5(b) of the Bank Holding Company Act, 12 U.S.C. 1843(c)(8) and 1844(b). In order to implement this rule, 12 CFR 225.4 is amended by adding paragraph (a)(15) to read as follows:

§ 225.4 Nonbanking activities.

(a) * * *

(15) providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T (12 CFR Part 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, *provided* that the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing or investment advice or research services.

* * * * *

By order of the Board of Governors of the Federal Reserve System, effective August 10, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-22303 Filed 8-15-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 300

[Docket No. RM82-6-000; Order No. 323]

Confirmation and Approval of the Rates of the Bonneville Power Administration

Issued: August 9, 1983.

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Final rule and a request for comments.

SUMMARY: The Federal Energy Regulatory Commission is adopting an interim rule as final to establish procedures for the interim and final approval of rates submitted by the Bonneville Power Administration under section 7 of the Pacific Northwest Electric Power Planning and Conservation Act.

Specifically, Part 300 of its rules will provide general procedures, filing requirements and standards for Commission rate review with respect to rate schedules submitted by the Bonneville Power Administration for confirmation and approval. This document also adds new sections that were not previously published in the interim rule. Written public comments are requested on various aspects of the final rule.

DATES: This rule is effective October 17, 1983.

Comments must be submitted on or before September 15, 1983.

ADDRESS: All comments must be mailed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, D.C. 20426.

All comments must reference Docket No. RM82-6.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Malloy, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Energy Regulatory Commission (Commission) is issuing a final rule revising an interim rule which established procedures for the approval of interim rates submitted by the Bonneville Power Administration (BPA) under section 7 of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act or Act).[1] In addition to establishing procedures for interim approval, the Commission is also establishing procedures for the final confirmation and approval of these rates.

The Northwest Power Act establishes a rate scheme in which responsibility for determining the rates that BPA will charge for power is shared by the BPA Administrator and the Commission. The Administrator establishes rates for sales to various customers after extensive procedures detailed in the Act.[2] The Administrator files these rates with the Commission, which must confirm and approve these rates before they become effective. The Act authorizes the Commission to approve the rates submitted by the Administrator on an interim basis.

The Act differentiates between procedures and the standards of review for reviewing rates for nonfirm power sold outside the region but within the United States (non-regional rates) and rates for all other power sold by BPA (regional rates). For example, the Act states that an opportunity for an "additional hearing" "shall be afforded" by the Commission for non-regional rates. However, the Act is not express

[1] 16 U.S.C. 839-839h (Supp. IV 1980).

[2] Section 7(i)(1)-(5), 16 U.S.C. 839e(i)(1)-(5) (Supp. IV 1980).

as to whether such hearing on non-regional rates should be held before or after the Commission reviews the rates on an interim basis.

On December 4, 1981, the Commission issued an interim rule governing interim approval of BPA rates. 46 FR 60,813 (1981). The rule detailed the procedures for filing an interim rate, the information that must be file, which includes support for the proposed revenue level, six schedules, and standards to be used by the Commission in reviewing the request for interim rate approval. The Commission received seven comments, all of which have been considered during preparation of this final rule.

II. Discussion

A. The Final Rule

With respect to BPA filings under the Northwest Power Act, the Commission is adopting as a final rule the major aspects of the interim rule. Subpart A of the rule establishes the applicability of the Part and various definitions in both the Northwest Power Act and the regulations. Subpart B contains the filing requirements. These filing requirements include the contents of the Administrator's Record of Decision, the administrative record, various statements, and analyses of the filed data. Subpart C establishes the procedures that the Commission adopts for both interim and final confirmation and approval, including public participation requirements, the standards of review, and the range of action open to the Commission when reviewing the rates.

The interim rule provided the filing requirements and the Commission's procedures for granting approval of rates on an interim basis. However, in addition to dealing with interim rate approval, the final rule in § 300.21 also sets forth the procedures that will be used by the Commission to approve BPA's rates on a final basis. These new procedures establish the structure and timing for final Commission action, although the requirements for filing and various rights of participants were already contained in the interim rule.

B. Comments and Special Issues

Two general aspects of the interim rule received extensive comment. First, various commenters propose modifications to the general process for Commission review of a request for approval of interim rates. Second, extensive comment is directed at the interim rule's refund provisions.

1. *Review Process for Approval of Interim Rates.* The interim rule established simple procedures and a limited standard of review for Commission consideration in granting interim approval of rates filed by BPA. Under the interim rule, BPA was required to file its revised rates with the Commission ninety days prior to their proposed effective date. Although not entirely clear in the interim rule, the Commission would then publish notice of the filing and usually allow fifteen days for interested persons to comment on the request for interim approval. If the filing did not fully comply with the Commission's regulations, the interim rule allowed the Director of the Commission's Office of Electric Power Regulation (OEPR) to notify BPA of the non-compliance and to allow thirty days to cure it prior to Commission action on the request for interim approval. After considering these comments and its staff's analysis of the filing, the Commission could grant the request, reject the application if the filing is patently deficient or fails to comply with the relevant provisions of the Northwest Power Act, or deny the request for interim acceptance but review the application for final approval.

The interim rule contained limited procedural prerequisites for acting on the request for interim approval of the rates. Under the interim rule, there was no differentiation between regional rates and non-regional rates with respect to the procedures or standards of review for interim rate approval. Section 7(k) of the Northwest Power Act nevertheless affords an opportunity for a hearing on non-regional rates, but does not specify whether these proceedings should be conducted prior to or after the Commission's decision granting interim approval. In the interim rule, the Commission stated that it would hold any hearings pursuant to section 7(k) after it reviewed the rates for interim approval.[3]

Various commenters disagree as to whether this procedural scheme was more or less restrictive than that contemplated by the Act. Under the interim rule, BPA was required to file its rates ninety days prior to the proposed effective date. BPA comments that the Act anticipates even more limited review than that envisioned by the interim rule and that BPA should be required to file its rates only "4 or 5 days" before they become effective. BPA does not believe that the Commission should ever reject BPA's request for interim acceptance of rates, even when an application is "patently deficient", if the deficiency is cured within a certain time period.

The Commission is reducing to sixty days the amount of time BPA must allow between filing its rates and their effective date. The Commission believes that it can satisfy its statutory review obligations within this time period, although any less time would make the Commission's review perfunctory and would eliminate notice of the filing and an opportunity for interested persons to comment on the filing. Because it is reducing this time period, however, the Commission can no longer give BPA an opportunity to cure deficiencies prior to deciding whether to grant interim approval to BPA's rates. Accordingly, under the final rule, the filing will either be rejected because it is patently deficient or accepted subject to the condition that BPA cure any non-compliance after the rate becomes effective. Despite the shortened period of review, the Commission will retain the practice of publishing a notice of filing in the **Federal Register** and giving interested parties an opportunity for written comment on the request for interim approval.

Other commenters take issue with the proposed extent and format of Commission review. The California Energy Commission (CEC) takes issue with the limited review scheme of the interim rule as it related to non-regional rates. The CEC argued that non-regional rates cannot be approved by the Commission on an interim basis without first giving the non-regional customers an opportunity for a hearing. The CEC relies on section 7(k) of the Northwest Power Act and its legislative history. Section 7(k) states in part that non-regional "rates * * * shall become effective after review" by the Commission, after opportunity for hearing. CEC asserts that "effective" includes effective on an "interim basis".

CEC buttresses its statutory arguments by indicating that non-regional customers will suffer irreparable harm if no hearing is afforded prior to interim approval of the rate. CEC asserts that BPA's non-regional rates have a "price leadership" effect on the rates that other utilities charge California and other non-regional customers for surplus power. In other words, if BPA's non-regional rate is too high, other utilities can charge up to that rate without fearing that they will lose the market to BPA. While the Commission may order BPA to make

[3] *See* section 7(k), 16 U.S.C. 839e(k)(Supp. IV 1980). The Commission relied on the legislative history that states that "interim approval [should] be granted quickly" as a means to resolve this ambiguity in favor of holding any section 7(k) hearings after the grant of interim approval. 46 FR 60,813, 60,815 (1981), *citing* 126 Cong. Rec. H9854 (daily ed. September 29, 1980) (remarks of Rep. Swift).

refunds if the BPA interim rate is found to be too high, the CEC argues that the Commission could not order refunds of other rates charged by these other utilities.

The Commission believes, as it did when promulgating the interim rule, that Congress did not intend that the Commission hold the hearing delineated in section 7(k) of the Act prior to the grant of interim approval. Both the legislative history and public policy considerations support the Commission's authority to grant interim approval for non-regional service established under section 7(k) in the same manner as all other BPA rates. The legislative history of the Act states that:

> the new rate provisions of the Act are different from past rates of BPA and must be implemented very rapidly on a timetable that the Act will set forth. The bill now provided FERC reasonable options to assure that BPA rates can become effective on a timely basis * * *. What matters, given the need for new rates and for BPA to meet its repayment obligations, is that interim approval be granted quickly.[4]

Congress did not differentiate among rates for various services when it stated this desire for the Commission to act expeditiously in granting interim rate approval.

BPA's revenues from both regional and non-regional service contribute to retirement of BPA's repayment obligations. One of the Commission's objectives in affording interim approval for all BPA rates is to minimize any adverse effects to BPA that could result from precluding interim approval for rates for non-regional service. Without interim approval of all its rates, BPA may not be able to bridge immediate revenue deficiencies. Denial of such approval might create serious cash flow problems for BPA. Second, the absence of interim rate approval authority for non-regional service could result in disassociated BPA rates that are not "synchronized" with respect to the period during which such rates would be effective. This lack of synchronization of rates may produce difficulties for both the Administrator's calculation and the Commission's review of the cost evaluation.

In addition, the Commission believes that interim approval of rate schedules for non-regional service by BPA will produce minimal financial burden on all BPA customers. All customers will be protected by the express condition that interim rates will only be approved subject to refund with interest. Any revenues collected by BPA in excess of the rate level finally confirmed and approved would be required by the rule to be returned to BPA's customers.

Regarding the "price leadership" problem raised by CEC, the Commission notes that any utility regulated by the Commission would have to file a change in rates with this Commission prior to "following" BPA's price. The Commission would, of course, review this rate change under its Federal Power Act (FPA) authority, with all the protections attached thereto. The rate could be suspended, collected subject to refund, and would have to meet the "just and reasonable" standard of the Federal Power Act. If rates that are not subject to the Commission's rate review jurisdiction "follow" BPA's "lead", the situation is admittedly different. However, Congress has not provided a way to avoid the kinds of impacts that concern CEC without seriously diminishing the Commission's interim approval authority and contravening Congress' objective of obtaining swift Commission action, which would be the inevitable results of holding a section 7(K) hearing prior to granting interim approval. The issues to be resolved at such a hearing are precisely the issues that have to be resolved in order to confirm and approve the rates on a final basis. It is unlikely that Congress intended that interim rate approval, even for non-regional rates, serve this function. Accordingly, this final rule does not require that a hearing be held prior to approval of rates on an interim basis.

2. *Refund and Interest Rate.* The interim rule required that any rate approved on an interim basis be subject to refund with interest, if the rate finally approved is lower than the interim rate.[5] The interim rule conditioned the grant of interim rate approval upon a commitment by BPA to refund with interest any portion of the interim rate increase finally determined to be excessive. The interim rule also established the rate of interest charged to BPA by the U.S. Treasury as the appropriate interest rate, unless the Commission orders otherwise.

All commenters who discuss this issue support the Commission's authority to order BPA's rates into effect on an interim basis subject to refund with interest. A number of comments suggest specific modifications to both the method of providing refunds established under the interim rule and the interest rate.

BPA requests that the Commission make it clear that the net energy billing method of making refunds should occur over a period not to exceed the period over which the excessive rate was collected. Such a provision, BPA asserts, would ensure that the tremendous impact that refunds might have on BPA would be spread over a reasonable amount of time. The Commission generally agrees with BPA's suggestion, but notes that interest on these amounts would be accrued over the period beginning with the collection of the excessive amounts. Any refunds made beyond thirty days after the date of the Commission's refund order would also accrue interest with the final refund payment. The final rule does not leave the refund procedures entirely to BPA's discretion; however, the Commission will allow BPA maximum flexibility to make refunds in a way that minimizes its cash flow or financial management needs.

There is considerable disagreement among commenters as to the proper interest rate to be charged on refunds. The interim rule establishes the rate of interest charged to BPA by the U.S. Treasury as the presumptively proper interest rate. BPA agrees with this interest provision, but suggests that the Commission should reserve sufficient flexibility to determine an alternative rate of interest where appropriate. Another commenter contends that the proper interest rate should be the interest rate for "new BPA borrowings". A third group of commenters suggests that the Commission should establish an interest rate which will reflect the cost of borrowing to BPA's customers. Under a fourth alternative, the Commission would adopt the same interest rate for BPA that it has adopted for refunds under the Federal Power Act (FPA); that is, the prime interest rate.

The Commission is adopting in its final rule the same interest rate that was adopted in the interim rule. The Commission continues to believe that BPA's position relative to the nation's financial markets is dissimilar to that of public utilities regulated under the FPA. BPA obtains its financing directly from the U.S. Treasury, rather than from traditional capital markets. The interest rate adopted for refunds under the FPA, which reflects the cost of capital governed by private borrowing, would therefore be inappropriate for refunds by BPA. Accordingly, the final rule utilizes the interest rate that would be charged to BPA by the U.S. Treasury during the period of over-collection. The

[4] 126 Cong. Rec. H. 9854 (daily ed. September 29, 1980) (Remarks of Rep. Swift).

[5] The Commission noted in its proposal that the authority to order a refund was not expressly granted to the Commission in the Northwest Power Act, although the legislative history supported Commission refund authority for BPA rates. 46 FR 60,813, 60,815 (1981).

Commission notes, however, that under certain circumstances other rates may better reflect BPA's cost of money, and therefore the final rule also allows the Commission to establish another form of interest.

III. Summary of the Final Rule and Revisions from the Interim Rule

A. Subpart A—General Provisions.

1. *Section 300.1—Applicability and Definitions.* Subpart A contains the general provisions of the rule. Section 300.1(a) establishes the applicability of the new Part 300 to rate schedules of BPA. This section also establishes that the Commission's rules of practice and procedure apply to BPA proceedings before the Commission. A reference to Part 385, which contains the rules of practice, has been added to make clear that this reference relates to procedural regulations and not the general filing requirements under the FPA. Although BPA proceedings should generally be subject to the same procedural requirements applicable to other kinds of rate cases, the final rule renders the Commission's ex parte communications rule (Rule 2201) inapplicable to BPA proceedings, except as provided in individual cases. This acknowledges the difficulty of applying the ex parte restrictions used in public utility rate cases to the rate cases of a fellow federal agency. Notwithstanding this change from the interim rule, the Commission will ensure the fairness of its on-the-record proceedings consistent with the case law and applicable statutes dealing with ex parte communications.[4] The approach adopted reflects only a preference for fashioning appropriate procedural requirements in each case if there exist uncertainties about which restrictions are appropriate generically.

Section 300.1(b) contains several important definitions, most of which derive from the interim rule. There are some changes, however. The definition of "cost evaluation period" in the interim rule has been changed in the final rule to "rate test period" so that the term more accurately reflects its function. The term "interest group" in the interim rule is no longer defined because it has been integrated into a description of the contents of Statement C in § 300.11(a)(3). The definition of "proposed rate approval period" has been amended by limiting the period to five years.

[4] For a discussion of some of the Commission's views of the requirements relating to ex parte communications, *see, Supplemental Opinion Explaining Denial of MEUA Motion,* 23 FERC ¶61,064 (1983).

2. *Section 300.2—Staff Guidance.* Section 300.2 allows BPA to seek guidance from Commission staff prior to submitting an application for confirmation and approval of a rate schedule.

B. Subpart B—Filing Requirements

Subpart B of the final rule lists the documents required to be filed by the Administrator in any application for confirmation and approval of rates. These filing requirements apply to both interim and final rate approval.

There are three categories of documents required to be filed where the Administrator seeks confirmation and approval of rates: a description of general rate schedule information, supporting cost and revenue data, and a description of analytical approaches to the data.

1. *Section 300.10—Application for Confirmation and Approval.* Section 300.10 contains the general filing requirements. The same filing is used for both interim and final approval of BPA's rates. Paragraph (a)(1) delineates the contents of a filing, including a letter of request for approval (paragraph (b)), a notice of filing suitable for publication in the **Federal Register** (paragraph (c)), the rate schedules (paragraph (d)), a statement of revenue and related costs (paragraph (e)), and the Administrator's Record of Decision and supporting documents (paragraph (f)).

Section 300.10(a)(2) of the interim rule allows the incorporation by reference of information that has previously been submitted to the Commission in substantially the same form.

Section 300.10(a)(3) covers the time period for filing rates. It was located in § 300.20(a) in the interim rule. This section requires the Administrator to tender a request for approval of a rate not later than sixty days prior to the requested effective date.

The final rule eliminates two paragraphs from the interim rule. The first related to sending BPA notice of any deficiencies in the filing and giving BPA thirty days to cure these deficiencies. The Commission is shortening the filing period from ninety to sixty days to minimize the time before the filed rates may become effective consistent with Commission review obligations. Shortening this period seriously diminishes any opportunity to cure deficiencies prior to the grant of interim approval, and the opportunity to cure at that stage of the proceeding is therefore eliminated. The second paragraph, relating to public participation, has been relocated in § 300.20(a).

Paragraph (b) governs any BPA letter requesting rate approval. This letter must specify the period for which approval is requested. Because of rapidly changing conditions and escalating costs, recent filings have been on an annual basis. Past practice of this Commission and its predecessor has been to approve rates for periods which do not exceed five years. Although the Commission will continue this practice, the Administrator has the responsibility to review costs and revenues annually and to develop and file new rates if existing rates are found to be deficient in providing adequate revenues for repaying the federal investment. This paragraph also requires that the letter include a brief description of the filed rates, estimates of annual sales, and a description of how the new rate differs from the existing rate.

Paragraph (c) establishes the contents of the notice that BPA is required to file. This notice must be suitable for publication in the **Federal Register** and contain routine information relating to the filing.

Paragraph (d) establishes the content of the rate schedules.

Paragraph (e) is a new paragraph. It requires that BPA file a statement of cost and revenue data for each class of service. In the interim rule, this information was part of the Administrator's Record of Decision.

Paragraph (f) states the contents of the Administrator's Record of Decision. Section 7(i)(5) of the Northwest Power Act requires the Administrator to make a final decision establishing rates "on the record" and to provide a full and complete justification of that decision. Both the interim and final rules require that the Record of Decision contain a calendar history of the filing, a discussion of issues raised, a discussion of all applicable statutory regulatory requirements, and a description of the methodology used for determining revenue requirements. The final rule also requires that BPA file the entire administrative record used in establishing the proposed rate. The interim rule required that the Record of Decision contain any cost-of-service studies used by the Administrator in developing the rates. Cost of service studies are no longer required as part of the Record of Decision, but are separately required under § 300.12(c).

Paragraph (g) of the final rule requires the Administrator to file with the Commission any other materials not specified in subpart B which are otherwise required to be developed by the Administrator, specifically under section 7(i)(5) of the Act. The final rule

also adds a requirement that BPA file copies of all source material referred to in the Record of Decision and any other information requested by the Commission or its staff.

2. *Sections 300.11 and 300.12—Technical Support for the Rate Schedule.* Sections 300.11 and 300.12 establish the technical support required to be filed by the Administrator in support of a request for confirmation and approval. The supporting data are divided into data statements (section 300.11) and analysis of that data (section 300.12). The requirements for each of these categories are found in a separate section.

Section 300.11 specifies the content of six statements which provide the basic information that is necessary to develop a study to demonstrate that the proposed rates are sufficient to assure repayment of the Federal investment and other costs over a reasonable period of years. The data statements are identified as: Statement A—Sales and Revenues; Statement B—Power Resources; Statement C—Capitalized Investments or Costs; Statement D—Interest Expenses; Repayment of Investments and Debt Capital; Statement E—Operation, Maintenance and Other Annual Expenses; and Statement F—Cost Allocations. Although Statement C in the interim rule assumed that all major investments would be kept by means of a separate accounting, the final rule recognizes that repayment of some investments may not have a separate accounting and establishes a procedure for reporting this type of investment.

Section 300.12 (formerly §300.11(b)) requires the Administrator to provide an analysis of the information submitted in Statements A through F. The Administrator is authorized to use any appropriate analytical methodology, including a Power Repayment Study (PRS).

The approach to PRSs in the final rule differs from that of the interim rule. The interim rule gave short, general instructions on the contents of a PRS. The final rule, on the other hand, gives more detailed and specific instructions on the contents of a PRS, if one is used. The substance of both approaches is consistent; the main differences relate to specificity. In addition to more specifically describing a PRS, the final rule also requires that BPA file two other studies—a cost of service study and a revenue recovery study.

3. *Section 300.13—Waiver of Filing Requirements.* The final rule adds a new §300.13. This section requires BPA to file a statement requesting that the Commission waive any non-compliance in the filing or divergence from the Commission's filing requirements. The statement must also give BPA's reasons for such a non-compliance or divergence. The Commission will not, of course, waive requirements that simply are not met through inattention by the Administrator. The Commission will usually act on this request when it issues its decision on whether to grant interim approval.

C. Subpart C—Commission Rate Review and Approval

Subpart C establishes procedures that relate specifically to the approval of rates. Section 300.20 covers interim approval and §300.21 covers final confirmation and approval.

1. *Section 300.20—Interim Confirmation and Approval.* Paragraph (a) notes that the Commission will give interested persons an opportunity to comment on a request for interim approval by filing a notice in the **Federal Register**.

Paragraph (b) sets forth the range of actions the Commission may take on a request for interim rate acceptance. Upon receipt of an application, the Commission may take any of four possible courses of action. For applications that do not fully comply with either the Commission's regulations or the Northwest Power Act, the Commission may either reject the application or accept the application on the condition that BPA cure any deficiencies.

Once it is satisfied that an application complies with the relevant statutory and regulatory requirements, the Commission may order the rate schedule into effect on an interim basis, effective on the date requested by the Administrator or such other time as the Commission may order; or the Commission may deny the Administrator's interim rate approval request and proceed directly to review the application for final confirmation and approval. The interim rule allowed BPA a thirty-day opportunity to cure any non-compliance prior to a Commission decision to grant interim approval. The final rule eliminates this opportunity, but requires BPA to cure any noncompliance after the grant of interim approval.

Paragraph (c) states that the Commission will approve rates on an interim basis only if such rates are subject to refund with interest. The interest rate adopted is the rate or rates of interest charged to the BPA by the U.S. Treasury during the period of overcollection, unless another interest rate is ordered by the Commission.

Paragraph (d) provides for notice of any Commission action specified in paragraph (b) either by publication in the **Federal Register** or by mail. Under the final rule, notice would be mailed only to those entities on the Commission's service list, rather than to those listed in the Administrator's filing.

2. *Section 300.21—Final Confirmation and Approval.* Section 300.21 sets forth the procedures for final confirmation and approval of rates filed by BPA. This is a new section which restates procedures currently applied by the Commission to BPA under the Northwest Power Act. The Commission believes that it will assist BPA and others who have an interest in BPA's rates to codify practices that have become standard.

Paragraph (a) sets forth the Commission's procedures relating to public participation in final approval of BPA's rates. After the Commission grants interim approval of BPA's rates, the Commission will allow interested persons an opportunity to intervene in any proceedings held on the filing and to submit initial and reply comments on substantive issues raised by BPA's filing. Notice of this opportunity will typically be published as part of the Commission's order granting interim approval.

In certain circumstances, the Commission may hold a hearing on non-regional rates under section 7(k). Accordingly, the Commission's notice will provide an opportunity to comment on whether such a hearing should be held and the issues to be resolved at the hearing. Paragraph (b) states that the Commission will publish its decision on whether to grant a hearing under section 7(k) and the issues that should be discussed at the hearing.

Paragraph (c) sets forth the different standards of review for BPA's rates. In September 1982, the Commission determined that Congress intended that the Commission's review of regional rates under section 7(a) should be subjected to a more limited standard of review than its non-regional rates under section 7(k). *Order Resolving Scope of Commission's Jurisdiction, Granting Intervention, and Establishing Further Procedures*, 20 FERC Rep. ¶ 61,292 (1982). The final rule codifies this distinction as follows. The Commission will review regional rates (section 7(a) rates) to make sure that these rates (a) assure reasonable repayment of the federal investment in BPA's facilities (b) are based on BPA's total system costs, and (c) equitably allocate certain transmission costs between federal and non-federal use of the transmission

system. With respect to non-regional rates, the final rule lists the various statutes that set forth the higher standards of review.

Paragraph (d) sets forth the range of actions the Commission may take on final approval of rates filed by BPA.

Paragraph (e) sets forth the procedures to be followed if the Commission disapproves the filed rates. The Administrator will have 120 days to file substitute rates. The interim rate will remain in effect, subject to refund, pending approval of the substitute rates.

Paragraph (f) states that the Commission will publish in the **Federal Register** its decision to approve or disapprove BPA's rates and will mail its decision to those persons on the Commission's service list.

IV. Certification of No Significant Impact

The Regulatory Flexibility Act (RFA)[7] requires certain statements, descriptions, and analyses of rules that will have "a significant economic impact on a substantial number of small entities".[8] The Commission is not required to make an RFA analysis if it certifies that a rule will not have such an impact.[9]

This final rule imposes requirements only on BPA, which is not a "small entity" under the appropriate RFA definition.[10] The primary purpose of this rule is to establish procedures for the confirmation and approval of BPA rates for compliance with statutory standards. The procedures are designed to avoid delays which in the past have accompanied the filing of PMA rates.

Since this rule applies only to BPA and is procedural in nature, it will have little, if any, impact on small entities. Accordingly, the Commission certifies that this rule will not have "a significant economic impact on a substantial number of small entities."

V. Administrative Procedure and Paperwork Reduction Acts

The Commission's final rule differs from its interim rule in two important respects that require further explanation pursuant to section 553(b) of the Administrative Procedure Act. First, the final rule adds a section (section 300.21) that establishes procedures for final confirmation and approval. The Commission believes that the Administrative Procedure Act does not require that the Commission provide an additional opportunity for comment prior to making this part of the rule final. The final rate approval procedures do not impose new procedural burdens, such as filing requirements, on BPA or interested parties. They are designed only to standardize BPA proceedings before the Commission in terms of notice, opportunities for hearing, and to state the range of actions available to the Commission. The new provisions do not affect the substance of the rate case. As such, these procedural requirements for final confirmation and approval (section 300.21) are clearly matters of "agency organization, procedure, or practice" that do not require notice and comment. 5 U.S.C. 553(b)(A) (1976).

Second, the final rule (section 300.21(c)) sets forth standards of review which the Commission applies to BPA's rates, depending on the nature of the rate. The Commission believes, even though these are substantive additions to the regulations, that notice and comment are not required in this case because the Commission is merely codifying the standards that it set forth in an order issued in September 1982, which clarified how the standards of the Act were to be applied. *Order Resolving Scope of Commission's Jurisdiction . . .*, 20 FERC Rep. ¶ 61,292 (1982). Additionally, the Commission gave interested persons an opportunity to comment on the standard of review issues raised by that order. *Order Directing the Submittal of Briefs on Jurisdictional and Procedural Issues*, 18 FERC Rep. ¶ 61,037, 47 FR 3583 (1982). Accordingly, the Commission believes that since this rule merely codifies settled Commission precedent, further notice and comment is "unnecessary." 5 U.S.C. 553(b)(B) (1976) Moreover, the previous opportunity to comment satisfies the requirements of the APA.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520 (Supp. IV 1980), requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) (for requests imposed on the public) or the General Services Administration (GSA) (for requests imposed on other agencies). *See* OMB final rule, *Controlling Paperwork Burdens on the Public*, 48 FR 13,666, 13696 (1983) (to be codified at 5 CFR 1320.16). The Commission has consulted with both OMB and GSA and has been informed that prior approval is not necessary, since BPA and FERC are both part of the Department of Energy.

VI. Additional Opportunity for Comment

The Northwest Power Act does not require rehearing to be requested as a jurisdictional prerequisite to judical review of rules. Notwithstanding the "good cause" demonstrated here for promulgating final confirmation and approval procedures without notice and comment, the Commission does not wish to foreclose the opportunity for interested persons to comment on this feature of the final rule since it was not before the public for comment under the interim rule. In addition, the Commission wishes to highlight certain amendments to its filing requirements (Subpart B) that were in part inspired by consultations conducted to develop similar requirements for all other PMA's.[11] Therefore, the Commission will accept written comments on the effect of the final confirmation and approval procedures and the changes made pursuant to the staff-PMA consultations.

Any comments on these issues will be treated procedurally as petitions for reconsideration (18 CFR 385.207) which the Commission may deal with by: (1) Retaining the final rule as issued, without further order, (2) amending or clarifying the rule, or (3) proposing amendments for additional comment. This does not, of course, remove the customary opportunity to petition the Commission for reconsideration with respect to any aspect of the rule.

All comments must be submitted not later than 30 days after publication in the **Federal Register** and must reference Docket No. RM82–6–000. Address all comments to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

VII. Effective Date

The amendments made by this final rule will be effective 60 days after publication in the **Federal Register**.

List of Subjects in 18 CFR Part 300

Electric power rates.

(Pacific Northwest Electric Power and Conservation Act, 16 U.S.C. 839–839h (Supp. IV 1980); Department of Energy Organization Act, 42 U.S.C. 7101–7552 (Supp. IV 1980); Exec. Order 12,009, 3 CFR 142 (1978).

In consideration of the foregoing, the Commission amends Chapter I, Title 18

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[7] 5 U.S.C. 601–612 (Supp. IV 1980).

[8] *Id.* at 603(a).

[9] *Id.* at 605(b).

[10] *Id.* at section 601(3), *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (Supp. IV 1980). Section 3 of the Small Business Act defines "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

[11] These changes include:

1. adding to the definition of "proposed rate approval period," a limitation that the period cannot exceed five years (§ 300.1(b)(5)).

2. revisions to Statement C which cover the reporting of investments for which no separate accounting is kept (§ 300.11(b)(3)); and

3. a more detailed explanation of the contents of a power repayment study (§ 300.12(b)).

of the Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

1. In Part 300, the Table of Contents is amended by adding new §§ 300.12, 300.13, and 300.21, and by revising the Authority citation, to read as follows:

PART 300—Confirmation and Approval of the Rates of the Bonneville Power Administration

* * * * *

Subpart B—Filing Requirements

Sec.

* * * * *

300.12 Analysis of supporting data.
300.13 Waiver.

Subpart C—Commission Rate Reviews and Approval

* * * * *

300.21 Final confirmation and approval.

Authority: Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839–839h (Supp. IV 1980); Department of Energy Organization Act, 42 U.S.C. 7101–7552 (Supp. IV 1980); Exec. Order 12,009, 3 CFR Part 142 (1978).

2. Part 300 is revised to read as follows:

Subpart A—General Provisions

§ 300.1 Applicability and definitions.

(a) *Applicability.* This part sets forth procedures governing the filing, review, and disposition of the rate schedules for the sale or transmission of power and energy established by the Administrator of the Bonneville Power Administration under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). Except as otherwise provided by rule or order, the Commission's General Rules of Practice and Procedure (Part 385 of this Chapter), other than Rule 2201 (Ex Parte Communications), will apply to any filings, hearings, or other procedures under this Part, as applicable.

(b) *Definitions.* For the purposes of this Part, the definitions in section 3 of the Northwest Power Act and the following definitions apply.

(1) *Electric service* means any transmission or sale of electric power and energy by the Bonneville Power Administration, including capacity sales, energy sales, firm power sales, transmission services, or any combination of these services, and the utilization by the Bonneville Power Administration, by means of ownership, contractual arrangements, leasing, or other arrangements, of any facility to provide such sales or services.

(2) *Historic period* means the period commencing with the date of first commercial operation of a powerplant or transmission facility and ending on the last day of the latest year for which actual cost data are available, provided that the period does not end more than 18 months before the date on which the Administrator tenders the rate schedule for filing with the Commission.

(3) *Initial capital investment* means the cost of acquisition or construction of a power facility or non-power facility which has been assigned by the Administrator to be repaid from the power revenues of the Bonneville Power Administration, including but not limited to any cost of planning, design, land acquisition, construction, interest during construction, and testing incurred before the date on which the facility becomes operational or revenue-producing.

(4) *Power repayment study* or *PRS* means a study of the annual repayment of production and transmission investments and other costs through the application of revenues during the repayment period.

(5) *Proposed rate approval period* means the period during which the Administrator proposes to collect revenues for electric service under a rate schedule filed for Commission confirmation and approval under this part. This period must not exceed five years.

(6) *Rate schedule* means a statement by the Administrator describing:

(i) Type of service to which the rate is to be applied;

(ii) Rates and charges which the Bonneville Power Administration establishes for, or in connection with, its electric service; and

(iii) Classifications and other provisions which directly affect such rates and charges.

(7) *Rate test period* means a period, commencing with the end of the historic period, as defined in paragraph (b)(3) of this section, and continuing through the proposed rate approval period as defined in paragraph (b)(5) of this section, during which future estimates of costs and revenues should be modified by the Administrator to reflect changing conditions.

(8) *Replacement* means any substitution of a unit of property with another unit of property with another unit of like character.

§300.2 Staff Guidance.

The Administrator or a designee may seek guidance from Commission staff prior to submitting an application under subpart B, with respect to the appropriate form and content of such application.

Subpart B—Filing Requirements

§300.10 Application for confirmation and approval.

(a) *General provisions.* (1) *Contents of filing.* Any application under this subpart for confirmation and approval of rate schedules must include, as described in this section, a letter of request for rate approval, a notice of filing suitable for publication in the **Federal Register**, the rate schedule, a statement of revenue and related costs, the Administrator's Record of Decision and supporting documents, and the technical supporting information required under § 300.11.

(2) *Incorporation of information by reference.* Any information required under this subpart that has previously been submitted to the Commission in substantially the same form as specified in this section may be incorporated by reference only.

(3) *Time of filing.* Any rate schedule for which the Administrator requests approval must be tendered for filing with the Commission, in the form and with the materials specified in this subpart, not later than 60 days prior to the date such rate schedules are requested to be made effective.

(b) *Letter of request for rate approval.* A letter of request for rate approval must contain the following information:

(1) A description of the period for which the rate is proposed to be effective, delineated by an effective date and an expiration date, and a request, if any, for interim approval of the rate;

(2) A brief description of the proposed rates and charges and estimates of annual sales and revenues for the rate approval period under both existing and proposed rate schedules; and

(3) A description of how the filed rate differs in rate level or rate structure from the rate schedule currently effective.

(c) *Notice of filing.* The notice of filing, suitable for publication in the **Federal Register**, must contain the following information:

(1) The identification number or description of the rate schedule or contract;

(2) If the rate schedule includes changes in rates, the dollar amount and percent increase or decrease in rates;

(3) If the rate schedule includes changes other than rates, a brief description of the changes;

(4) A brief explanation of the reasons for any proposed change in the rate schedule;

(5) a statement whether interim approval is requested;

(6) the proposed effective date of the rate schedule; and

(7) the proposed rate approval period.

(d) *Rate schedules.* A filed rate schedule, as defined in § 300.1(b)(6), must describe the following, as appropriate:

(1) The class of service to which each rate schedule will apply and service areas or zones which will be affected by the filed rate;

(2) The character and conditions of service;

(3) The rate to be applied to capacity and energy services or other services;

(4) The method of computing or a definition of the billing demand;

(5) Special provisions, such as discounts, penalties, power factor adjustments, service interruptions, unauthorized overruns, and other similar provisions which may affect the rates and changes; and

(6) The period during which the rates will be effective.

(e) *Statement of Revenue and Related Costs.* Each filing shall include a statement which includes cost (if available) and revenue data for each class of service as specified in each rate schedule for the proposed period.

(f) *Administrator's Record of Decision and supporting documents.* (1) The Administrator must file the entire record on which the final decision establishing a rate schedule is based.

(2) The Administrator must file a Record of Decision that includes:

(i) A chronological discussion of the procedural history of the filing, including meetings held with the general public, required under section 7(i) of the Northwest Power Act;

(ii) A discussion of issues raised by customers or the public and how such issues were resolved;

(iii) A discussion of all statutory, regulatory, or other requirements which governed the Administrator's decision;

(iv) A description of any methodology used for determining revenue requirements and for developing appropriate rate structures; and

(v) A list identifying all documents submitted for Commission consideration; and

(vi) The names and addresses of any customer of the Bonneville Power Administration and other persons who have requested to be informed of the Commission's decision.

(g) *Additional filing requirements.* (1) The Administrator must file with the Commission any other information required to be developed under section 7(i)(5) of the Northwest Power Act, in relation to the Record of Decision, including all source materials referred to in the Administrator's Record of Decision.

(2) The Administrator must file any other information requested by the Office of Electric Power Regulation as needed for Commission analysis of the rate filing.

§ 300.11 Technical support for the rate schedule.

(a) *Filing requirement.* The Administrator must submit, in conjunction with any application under § 300.10, the technical support data described under paragraph (b) of this section and the analysis of data described under section 300.12 of this subpart.

(b) *Data.* (1) *Statement A—Sales and Revenues.* Statement A must include:

(i) Sales and revenues for each rate schedule for the last five years of the historic period, as defined in section 300.1(b)(2);

(ii) For the rate test period, the estimated annual sales and revenues for the existing and each proposed rate schedule, including a separate aggregation of any revenues from sources not covered by the rate schedule according to general classifications of such revenues; and

(iii) Brief explanations of how sales and revenue estimates are prepared and explanations of any changes in sales or revenues during the last five years of the historic period.

(2) *Statement B—Power Resources.* Statement B must contain a list of the capacity and energy resources for the last five years of the historic period and for the rate test period, used to support the sales and revenues figures contained in Statement A. The statement should identify resources according to the powerplant and any purchase or exchange agreement.

(3) *Statement C—Capitalized Investments or Costs.* (i) Statement C must account for all capitalized investments which have been assigned by the construction agency to be repaid from power revenues.

(ii) The statement shall include a listing, by year, of the following:

(A) All initial investments and additions to plant, including interest during construction, that produced revenue during the historic period or are expected to produce revenue during the rate test period;

(B) Capitalized deferred expenses; and

(C) Replacements made during the historic period and replacements projected to be made during the balance of the repayment period.

(iii) For each such investment, the statement shall specify:

(A) Whether the investment is an initial investment, an addition, a replacement, or a capitalized deferred annual expense;

(B) The date the investment was made;

(C) The year in which repayment is due to be completed;

(D) Whether the investment was financed through the issuance of revenue bonds, and the appropriate interest rate; and

(E) The authority or administrative procedure used for the adoption of such interest rate.

(iv) If available, the amount repaid on each investment to date shall be stated, however, if repayment on individual investments is not recorded, the amount repaid to date on each group of investments having common interest rates should be stated.

(v) For each year, the sum of unpaid individual investments or the unpaid portion of interest groups shown above must equal the unamortized investment shown in the power repayment study for that year.

(vi) The statement must describe the methods used to forecast replacements and the price level used to estimate replacement costs.

(4) *Statement D—Interest Expenses; Repayment of Investments and Debt Capital.* (i) For each capitalized investment and cost listed in Statement C, Statement D must describe, by interest group:

(A) The total unpaid balance outstanding at the end of the historic period;

(B) Payments made on principal and interest during each of the last five years of the historic period; and

(C) Annual payments expected to be made through the cost evaluation period.

(ii) The statement must describe how the interest expense was determined for each type of investment and include examples of such computations.

(5) *Statement E—Operation, Maintenance and Other Annual Expenses.* (i) Statement E must contain, for the last five years of the historic period and for the rate test period, as appropriate, a tabulation of actual and projected operation and maintenance, administrative and general, purchased power, wheeling, and any other expenses, other than interest. Statement E must:

(A) list expenses for each individual source, if purchased power and other similar expenses are derived from more than one source;

(B) explain any significant deviations from trends in expenses or any extraordinary expenses; and

(C) explain the price level used for estimating expenses.

(6) *Statement F—Cost Allocations.* (i) Statement F must contain, for each multiple-purpose reservoir project, unit, division, or system, a table or other summary showing total investments costs, the total annual operation and maintenance costs, and the allocation of all such costs among the various authorized purposes.

(ii) The statement must show the amount of power costs suballocated to irrigation functions, any changes from previous allocations, and the procedure used in allocating such costs. Currently valid allocations previously submitted to the Commission need not be furnished, if referenced.

§ 300.12 Analysis of supporting data.

(a) An analysis of the data provided under section 300.11 must be supported by an appropriate methodology developed by the Administrator.

(b) *Power Repayment Study.* (1) Any Power Repayment Study (PRS) submitted for this purpose must be developed using currently approved rates for estimating future revenues. If the filed rates differ from the current rates, the Administrator must provide a PRS which uses the level of revenues produced by the proposed rates. Unless otherwise required by statute, a PRS must contain only those investments in plant which will be in commercial operation during the proposed rate approval period, except replacements. Forecasts of costs beyond the rate test period must be based on conditions prevailing during the period, unless unusual circumstances warrant otherwise.

(2) A PRS must include, but need not be limited to, those items listed below:

(i) Operating revenues;

(ii) Operating expenses;

(iii) Interest expense;

(iv) Investment placed in service (using totals if the supporting statement annually shows a breakdown into the appropriate subcategories under each major heading); including the initial project, additions, replacements, and the total investment;

(v) Investment amortized;

(vi) Remaining unamortized investment;

(vii) Allowable unamortized investment (using totals if the supporting statement annually shows a breakdown into the appropriate subcategories under each major heading), including initial project, additions replacements, and total investment;

(viii) Irrigation investment assigned to be repaid from power revenues (using totals if the supporting statement annually shows a breakdown into the appropriate subcategories under each major heading), including irrigation investment assigned to power, investment repaid, remaining unpaid investment, and allowable unpaid investment;

(ix) Cumulative status of repayment.

(c) *Cost of Service Study.* For any project or system which provides more than one class of service for which differing rates are proposed, a cost of service study, if available, must be provided which shows how the costs of providing each service have been determined.

(d) *Revenue Recovery Study.* (1) A study must be provided which supports the filed rate and charges, including a narrative statement that explains how the rates and charges meet the objective of recovering the revenue necessary to repay the Federal investment and other costs in a reasonable period of time.

(2) If rates and charges have not been formulated on a cost related basis, the basis for each rate or charge should be explained.

§ 300.13 Waiver.

The Administrator must request waiver of any requirement of this subpart if an application that does not fully comply with the requirement is not to be considered deficient. The request must state the Administrator's reasons for such noncompliance and show good cause for any waiver.

Subpart C—Commission Rate Review and Approval

§ 300.20 Interim acceptance and review.

(a) *Opportunity to Comment.* The Commission will publish in the **Federal Register** notice of any filing made under this part, for which interim approval is requested. This notice will give interested persons an opportunity to submit written comments on whether interim approval should be granted.

(b) *Action on request for interim rate acceptance.* (1) *Deficient Applications.* Upon receipt of an application that does not comply with the requirements of this part, the Commission may:

(i) Accept the application and order the rate schedule into effect on an interim basis, effective on the date requested by the Administrator or at such time as the Commission may otherwise order, on the condition that any deficiencies in the filing are corrected by the Administrator to the satisfaction of and within such time specified by the Director of the Office of Electric Power Regulation; or

(ii) Deny the Administrator's interim rate request and reject the application, if the Commission determines that the Administrator's application:

(A) is patently deficient with respect to the filing requirements of this part; or

(B) fails to comply with the applicable provisions of the Northwest Power Act or such other Acts as may be applicable.

(2) *Applications that are in compliance.* Upon receipt of an application that complies with the requirements of this Part, the Commission may:

(i) Order the rate schedule into effect on an interim basis, effective on the date requested by the Administrator or at such time as the Commission may otherwise order; or

(ii) Deny the Administrator's interim rate request and review the application for final confirmation and approval of the rate schedule pursuant to the provisions of this part.

(c) *Condition of acceptance.* (1) *Condition.* Any rate schedule the Commission allows to become effective on an interim basis under paragraph (b) of this section, is subject to refund with interest under this paragraph.

(2) *Refund.* If any rate which the Commission makes effective on an interim basis exceeds the rate which is confirmed and approved by the Commission as a final rate, the Administrator, pursuant to any conditions established by the Commission, must refund with interest any portion of the rate increase collected during the interim period which exceeds the final rate. The Administrator may make refund under this part by means of a net energy billing which reflects the value of any overcharge or by other appropriate methods.

(3) *Interest.* Except as otherwise provided by the Commission, the Administrator must compute any amount of interest based on the revenues collected subject to refund and required to be refunded under paragraph (c)(2) by using the rate of interest or a weighted average of all rates of interest charged to the Bonneville Power Administration by the U.S. Treasury during the period for which the computation is made.

(d) *Notice of action on interim approval.* The Commission will publish in the **Federal Register** a notice of any action taken under paragraph (b) of this section and will mail notice to any person on the Commission's service list.

§ 300.21 Final confirmation and approval.

(a) *Opportunity to comment and intervene.* (1) The Commission will publish notice in the **Federal Register** giving interested persons an opportunity:

(i) To submit initial and reply comments on any filing made under Subpart B; and

(ii) To intervene in any proceeding held on such filing.

(2) Such notice will also give interested persons an opportunity to comment on whether it is necessary to hold a hearing on non-regional rates under section 7(k) of the Northwest Power Act and the issues to be resolved at such a hearing.

(3) This notice may be part of any Commission order granting interim approval under section 300.20 of this part.

(b) *Proceedings under section 7(k).* The Commission will publish a separate order if it determines that a hearing is necessary under section 7(k) of the Northwest Power Act. This order will, if appropriate, delineate the issues to be resolved at such hearing.

(c) *Standards of Review.* (1) *Rates under section 7(a).* The Commission will review any rate established by the Administrator under section 7(a) of the Northwest Power Act for compliance with the following standards:

(i) The rates must be sufficient to ensure repayment of the federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs.

(ii) The rates must be based upon the Administrator's total system costs.

(iii) With respect to transmission rates, the rates must equitably allocate the costs of the federal transmission system between federal and non-federal power utilizing such system.

(2) *Rates under section 7(k).* The Commission will review any rate established by the Administrator under section 7(k) of the Northwest Power Act for compliance with the requirements of the Bonneville Project Act, the Flood Control Act of 1944, the Federal Columbia River Transmission System Act, and the standards set forth in paragraph (c)(1) of this section.

(d) *Action on request for final confirmation and approval of rates.* Filed rates established by the Administrator will be considered for final confirmation and approval if the relevant filing complies with the filing requirements of Subpart B of these regulations. The Commission may take any of the following actions:

(1) Confirm and approve the rate schedule(s) for the period beginning with the date such rates were placed in effect on an interim basis to the expiration date requested in the application but not to exceed a five year period, or for such lesser period as the Commission deems appropriate;

(2) Remand the filing for further development of the record to support the filed rate schedules;

(3) Order an evidentiary hearing if there are questions of fact which can not be resolved from the record or through staff evaluation;

(4) Disapprove the filed rates; or

(5) Take such other action that the Commission considers appropriate.

(e) *Procedures upon disapproval.* (1) If the Commission disapproves the rates, the Administrator will be provided a 120-day period, or other period as the Commission may deem appropriate, to prepare substitute rates that resolve the Commission's concerns. If the filed rates have been approved on an interim basis, the rates will continue in effect on an interim basis until the Commission takes final action.

(2) If the Commission confirms and approves on a final basis rates that are lower than the filed rates, any charges made in excess of the finally-approved rates during the period that interim rates were in effect are subject to refund with interest under § 300.20(c).

(f) *Notice of action on final approval.* The Commission's Secretary will publish in the **Federal Register** a notice of any action taken under paragraph (d) of this section and will mail the notice to the persons on the Commission's service list.

[FR Doc. 83-22156 Filed 8-15-83; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Social Security Benefits; Disability Insurance Benefits; Deductions, Reductions, and Nonpayments of Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Final rules with comment period.

SUMMARY: These regulations amend the existing regulations under which Social Security benefits payable to a disabled worker and his or her family may be reduced because of the worker's concurrent entitlement to workers' compensation benefits. They provide that entitlement to certain other public disability benefits may reduce the disability benefits paid by Social Security; that the reduction applies to the first month of concurrent entitlement regardless of the month in which we are notified of entitlement to the public disability benefit; and that the reduction applies to all months of concurrent entitlement until the disabled worker attains age 65. These regulations also provide that where a public disability law or plan provides for reduction of the public disability benefit on the basis of entitlement to Social Security disability insurance benefits, that provision will preclude reduction of the Social Security benefits, but only if it was in effect on February 18, 1981. These regulations implement section 2208 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35).

DATE: These regulations are effective beginning August 16, 1983. We will consider any comments we receive by October 17, 1983, and will revise these regulations later if public comment warrants.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Room 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7951.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) contains Social Security amendments to improve the cost effectiveness of the Social Security programs. These regulations implement the provisions of the amendments providing for the reduction of Social Security disability insurance benefits.

Prior to these amendments, Social Security disability insurance benefits could be reduced if the worker was also receiving a workers' compensation benefit. The reduction was applied to the total Social Security benefits paid to the disabled worker and to the worker's family. This reduction was imposed for the months after the month that the Social Security Administration was notified of the worker's entitlement to a

workers' compensation benefit and before the month that the worker attained age 62. To the extent that the workers' compensation law or plan provided for the reduction of the workers' compensation benefit because of entitlement to a Social Security disability insurance benefit, the Social Security reduction was not applicable.

Because only workers' compensation benefits and not other types of public disability benefits were considered for the reduction, the total benefits to the disabled worker and the worker's family could and often did exceed the income the worker earned prior to becoming disabled. Section 2208 of the Omnibus Budget Reconciliation Act expands the previous provisions for reducing Social Security disability insurance benefits to include other public disability benefits. Certain public disability benefits, in addition to workers' compensation benefits, can reduce Social Security disability insurance benefits. The amount of the reduction due to the receipt of the public disability benefit will be computed in the same way as was the reduction due to the receipt of workers' compensation benefits alone. The amendment excludes from the reduction Veterans Administration benefits, public disability benefits based on employment covered under Social Security, public benefits based on need, and wholly private pension or private insurance benefits. The reduction applies to all months the disabled worker is concurrently entitled to Social Security disability insurance benefits and to a public disability benefit. The age of the disabled worker at which the reduction does not apply has been extended from the attainment of age 62 to the attainment of age 65 (the age at which disability insurance benefits are converted to retirement insurance benefits).

To the extent that the public disability benefit law or plan provides for a reduction when there is concurrent entitlement to a Social Security disability insurance benefit, the reduction of the Social Security disability insurance benefit will not apply, but only if the law or plan that provides for the reduction of the public disability benefit was in effect on February 18, 1981.

These amendments are effective with respect to beneficiaries who became disabled as defined under the Social Security Act on March 1, 1981, or later and whose first month of entitlement to disability insurance benefits was September 1981 or later.

Federal agencies must provide any information in the agency's possession that the Secretary may require for the purpose of making a timely determination of the amount of the reduction or verifying other information necessary in carrying out the reduction provisions. The Secretary is authorized to enter into agreements with States, political subdivisions and other organizations that administer a law or plan subject to these provisions to obtain information required for administration of the offset provision.

A clarification of existing policy has been included in these regulations. One of the examples in these regulations illustrates the longstanding Social Security policy regarding the effects of changes in the amount of the public disability benefit after the initial reduction. The policy is to recalculate the reduction each time there is a change in the amount of the public disability benefit.

These regulations reflect and apply (generally by example) clear provisions in the Omnibus Budget Reconciliation Act of 1981 and in one example clarifies existing Social Security policy. They do not grant or deny rights or do not impose obligations which do not already exist under the statute. Accordingly, we find that there is "good cause" in that it is "unnecessary" to publish these regulations with Notice of Proposed Rule Making in accordance with section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)).

Regulatory Procedures

Executive Order 12291

For the most part, cost savings from the reductions of Social Security disability insurance benefits because of the receipt of certain other disability benefits provided under Federal, State, or local laws or plans are not the result of this regulation, but rather are due to decisions made in the legislative process. Cost impacts directly resulting from the regulations themselves are minor. For this reason, the Secretary has determined that this rule is not a "major rule" under Executive Order 12291, and a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations affect only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, survivors, and disability insurance.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance)

Dated: March 3, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: July 13, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart E of Part 404 reads as follows:

Authority: Secs. 205, 207, and 1102, 53 Stat. 1368, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 405, 407, and 1302, unless otherwise noted.

2. Section 404.401 is amended by revising paragraph (a)(4) as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

* * * * *

(a) * * *

(4) An individual under age 65 is concurrently entitled to disability insurance benefits and to certain public disability benefits (see § 404.408);

* * * * *

3. Section 404.402 is amended by revising paragraphs (b)(1)(iv), the introductory text of (b)(2), and (b)(3) as follows:

§ 404.402 Interrelationship of deductions, reductions, adjustments, and nonpayments of benefits.

* * * * *

(b) * * *

(1) * * *

(iv) Before reduction because of entitlement to certain public disability benefits provided under Federal, State, or local laws or plans (see § 404.408);

* * * * *

(2) Reduction of benefits because of entitlement to certain public disability benefits (see § 404.408) is made before deduction:

* * * * *

(3) Reduction of the benefit of a spouse who is receiving a Government pension (see § 404.408(a)) is made after

the withholding of payments as listed in paragraph (d)(1) of this section and after reduction because of receipt of certain public disability benefits (paragraph (b)(2) of this section).

* * * * *

4. Section 404.408 is amended by changing the section heading and by revising paragraphs (a), (b), introductory text of (c)(1) and (c)(3), (c)(5), (d), (e), (f), (g), (h), (i), (j), (k), (l) and examples to read as follows:

§ 404.408 Reduction of benefits based on disability on account of receipt of certain other disability benefits provided under Federal, State, or local laws or plans.

(a) *When reduction required.* Under section 224 of the Act, a disability insurance benefit to which an individual is entitled under section 223 of the Act for a month (and any monthly benefit for the same month payable to others under section 202 on the basis of the same earnings record) is reduced (except as provided in paragraph (b) of this section) by an amount determined under paragraph (c) of this section if:

(1) The individual first became entitled to disability insurance benefits after 1965 but before September 1981 based on a period of disability that began after June 1, 1965, and before March 1981, and

(i) The individual entitled to the disability insurance benefit is also entitled to periodic benefits under a workers' compensation law or plan of the United States or a State for that month for a total or partial disability (whether or not permanent), and

(ii) The Secretary has, in a month before that month, received a notice of the entitlement, and

(iii) The individual has not attained age 62, or

(2) The individual first became entitled to disability insurance benefits after August 1981 based on a disability that began after February 1981, and

(i) The individual entitled to the disability insurance benefit is also, for that month, concurrently entitled to a periodic benefit (including workers' compensation or any other payments based on a work relationship) on account of a total or partial disability (whether or not permanent) under a law or plan of the United States, a State, a political subdivision, or an instrumentality of two or more of these entities, and

(ii) The individual has not attained age 65.

(b) *When reduction not made.* (1) The reduction of a benefit otherwise required by paragraph (a)(1) of this section is not made if the workers' compensation law or plan under which the periodic benefit is payable provides for the reduction of such periodic benefit when anyone is entitled to a benefit under title II of the Act on the basis of the earnings record of an individual entitled to a disability insurance benefit under section 223 of the Act.

(2) The reduction of a benefit otherwise required by paragraph (a)(2) of this section is not to be made if:

(i) The law or plan under which the periodic public disability benefit is payable provides for the reduction of that benefit when anyone is entitled to a benefit under title II of the Act on the basis of the earnings record of an individual entitled to a disability insurance benefit under section 223 of the Act and that law or plan so provided on February 18, 1981. (The reduction required by paragraph (a)(2) of this section will not be affected by public disability reduction provisions not actually in effect on this date or by changes made after February 18, 1981, to provisions that were in effect on this date providing for the reduction of benefits previously not subject to a reduction); or

(ii) The benefit is a Veterans Administration benefit, a public disability benefit (except workers' compensation) payable to a public employee based on employment covered under Social Security, a public benefit based on need, or a wholly private pension or private insurance benefit.

(c) *Amount of reduction*—(1) *General.* The total of benefits payable for a month under sections 223 and 202 of the Act to which paragraph (a) of this section applies is reduced monthly (but not below zero) by the amount by which the sum of the monthly disability insurance benefits payable on the disabled individual's earnings record and the other public disability benefits payable for that month exceeds the higher of:

* * * * *

(3) *Average current earnings defined.* (i) Beginning January 1, 1979, for purposes of this section, an individual's "average current earnings" is the largest of either paragraphs (c)(3)(i) (*a*), (*b*) or (*c*) of this section (after reducing the amount to the next lower multiple of $1 when the amount is not a multiple of $1):

* * * * *

(5) *Computing disability insurance benefits.* When reduction is required, the total monthly Social Security disability insurance benefits payable after reduction can be more easily computed by subtracting the monthly amount of the other public disability benefit from the higher of (c)(1) (i) or (ii). This is the method employed in the examples used in this section.

* * * * *

(d) *Items not counted for reduction.* Amounts paid or incurred, or to be incurred, by the individual for medical, legal, or related expenses in connection with the claim for public disability payments (see § 404.408 (a) and (b)) or the injury or occupational disease on which the public disability award or settlement agreement is based, are excluded in computing the reduction under paragraph (a) of this section to the extent they are consonant with the applicable Federal, State, or local law or plan and reflect either the actual amount of expenses already incurred or a reasonable estimate, given the circumstances in the individual's case, of future expenses. Any expenses not established by evidence required by the Administration or not reflecting a reasonable estimate of the individual's actual future expenses will not be excluded. These medical, legal, or related expenses may be evidenced by the public disability award, compromise agreement, a court order, or by other evidence as the Administration may require. This other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other clear and convincing evidence indicating the amount of expenses; or

(4) Any combination of the foregoing evidence from which the amount of expenses may be determinable.

(e) *Certification by individual concerning eligibility for public disability benefits.* Where it appears that an individual may be eligible for a public disability benefit which would give rise to a reduction under paragraph (a) of this section, the individual may be required, as a condition of certification for payment of any benefit under section 223 of the Act to any individual for any month, and of any benefit under section 202 of the Act for any month based on such individual's earnings record, to furnish evidence as requested by the Administration and to certify as to:

(1) Whether he or she has filed or intends to file any claim for a public disability benefit, and

(2) If he or she has so filed, whether there has been a decision on the claim. The Secretary may rely, in the absence of evidence to the contrary, upon a certification that he or she has not filed and does not intend to file such a claim, or that he or she has filed and no

decision has been made, in certifying any benefit for payment pursuant to section 205(i) of the Act.

(f) *Verification of eligibility or entitlement to a public disability benefit under paragraph (a).* Section 224 of the Act requires the head of any Federal agency to furnish the Secretary information from the Federal agency's records which is needed to determine the reduction amount, if any, or verify other information to carry out the provisions of this section. The Secretary is authorized to enter into agreements with States, political subdivisions, and other organizations that administer a law or plan of public disability benefits in order to obtain information that may be required to carry out the provisions of this section.

(g) *Public disability benefit payable on other than a monthly basis.* Where public disability benefits are paid periodically but not monthly, or in a lump sum as a commutation of or a substitute for periodic benefits, such as a compromise and release settlement, the reduction under this section is made at the time or times and in the amounts that the Administration determines will approximate as nearly as practicable the reduction required under paragraph (a) of this section.

(h) *Priorities.* (1) For an explanation of when a reduction is made under this section where other reductions, deductions, etc., are involved, see § 404.402.

(2) Whenever a reduction in the total of benefits for any month based on an individual's earnings record is made under paragraph (a) of this section, each benefit, except the disability insurance benefit, is first proportionately decreased. Any excess reduction over the sum of all the benefits, other than the disability insurance benefit, is then applied to the disability insurance benefit.

Examples:

Example 1: Effective September 1981, Harold is entitled to a monthly disability primary insurance amount of $507.90 and a monthly public disability benefit of $410.00 from the State. Eighty percent of Harold's averge current earnings is $800.00. Because this amount ($800.00) is higher than Harold's disability insurance benefit ($507.90), we subtract Harold's monthly public disability benefit ($410.00) from eighty percent of his average current earnings ($800.00). This leaves Harold a reduced monthly disability benefit of $390.00.

Example 2: In September 1981, Tom is entitled to a monthly disability primary insurance amount of $559.30. His wife and two children are also entitled to monthly benefits of $93.20 each. The total family benefit is $838.90. Tom is also receiving a monthly workers' compensation benefit of $500.00 from the State. Eighty percent of Tom's average current earnings is $820.10. Because the total family benefit ($838.90) is higher than 80 percent of the average current earnings ($820.10), we subtract the monthly workers' compensation benefit ($500.00) from the total family benefit ($838.90), leaving $338.90 payable. This means the monthly benefits to Tom's wife and children are reduced to zero, and Tom's monthly disability benefit is reduced to $338.90.

(i) *Effect of changes in family composition.* The addition or subtraction in the number of beneficiaries in a family may cause the family benefit to become, or cease to be, the applicable limit for reduction purposes under this section. When the family composition changes, the amount of the reduction is recalculated as though the new number of beneficiaries were entitled for the first month the reduction was imposed. If the applicable limit both before and after the change is 80 percent of the average current earnings and the limitation on maximum family benefits is in effect both before and after the change, the amount payable remains the same and is simply redistributed among the beneficiaries entitled on the same earnings record.

Examples:

Example 1: Frank is receiving $500.00 a month under the provisions of a State workers' compensation law. He had a prior period of disability which terminated in June 1978. In September 1981, Frank applies for a second period of disability and is awarded monthly disability insurance benefits with a primary insurance amount of $370.20. His child, Doug, qualifies for benefits of $135.10 a month on Frank's earnings record. The total family benefits is $505.30 monthly.

Frank's average monthly wage (as used to compute the primary insurance amount) is $400.00; eighty percent of his average current earnings (computed by using the 5 consecutive years in which his earnings were highest) is $428.80 (80% of $536.00); eighty percent of Frank's average current earnings (computed by using the 1 calendar year in which his earnings were highest) is $509.60 (80% of $637.00). The highest value for 80 percent of average current earnings is therefore $509.60 (80%). Since this is higher than the total family benefit ($505.30), the $509.60 is the applicable limit in determining the amount of the reduction (or offset). The amount payable after the reduction is—

80% of Frank's average current earnings	$509.60
Frank's monthly workers' compensation benefit	−500.00
Monthly benefit payable to Frank	9.60

No monthly benefits are payable to Doug because the reduction is applied to Doug's benefit first. In December 1981, another child, Mike, becomes entitled on Frank's earnings record. The monthly benefit to each child before reduction is now $109.10, the amount payable when there are two beneficiaries in addition to the wage earner. Thus, the total family benefit becomes $588.40. Because this is now higher than $509.60 (80% of Frank's average current earnings), $588.40 becomes the applicable limit in determining the amount of reduction. The amount payable after the increase in the total family benefit is—

The new total family benefit	$588.40
Frank's monthly workers' compensation rate	−500.00
Monthly benefit payable to Frank	88.40

No monthly benefits are payable to either child because the reduction (or offset) is applied to the family benefits first.

Example 2: Jack became entitled to disability insurance benefits in December 1973 (12/73), with a primary insurance amount (PIA) of $220.40. He was also receiving a workers' compensation benefit. An offset was imposed against the disability insurance benefit. By June 1977 (6/77), Jack's PIA had increased to $298.00 because of several statutory benefit increases. In December 1977 (12/77), his wife, Helen, attained age 65 and filed for unreduced wife's benefits. (She was not entitled to a benefit on her own earnings record.) This benefit was terminated in May 1978 (5/78), at her death. Helen's benefit was computed back to 12/73 as though she were entitled in the first month that offset was imposed against Jack. Since there were no other beneficiaries entitled and Helen's entire monthly benefit amount is subject to offset, the benefit payable to her for 12/77 through April 1978 (4/78), would be $38.80. This gives Helen the protected statutory benefit increases since 12/73. The table below shows how Helen's benefit was computed beginning with the first month offset was imposed.

Month of entitlement/ statutory increase	Jack's PIA	Helen's benefit prior to offset	Helen's statutory increase
December 1973	$220.40	$110.20	
March 1974	236.00	118.00	$7.80
June 1974	244.80	122.40	+4.40
June 1975	264.40	132.20	+9.80
June 1976	281.40	140.70	+8.50
June 1977	298.00	149.00	+8.30
December 1977 through April 1978 [1]	"	"	38.80

[1] Monthly benefit payable to Helen.

(j) *Effect of social security disability insurance benefit increases.* Any increase in benefits due to a recomputation or a statutory increase in benefit rates is not subject to the reduction for public disability benefits under paragraph (a) and does not change the amount to be deducted from the family benefit. The increase is simply added to what amount, if any, is payable. If a new beneficiary becomes entitled to monthly benefits on the same earnings record after the increase, the amount of the reduction is redistributed among the new beneficiaries entitled

under section 202 of the Act and deducted from their current benefit rate.

Example: In March 1981, Chuck became entitled to disability insurance benefits with a primary insurance amount of $362.40 a month. He has a wife and two children who are each entitled to a monthly benefit of $90.40. Chuck is receiving monthly disability compensation from a worker's compensation plan of $410.00. Eighty percent of his average current earnings is $800.00. Because this is higher than the total family benefit ($543.60), $800.00 is the applicable limit in computing the amount of reduction. The amount of monthly benefits payable after the reduction is—

Applicable limit	$800.00
Chuck's monthly disability compensation	-410.00
Total amount payable to Chuck and the family after reduction	$390.00
Amount payable to Chuck	-362.40
Total amount payable to the family	$27.60
$9.20 payable to each family member equals	$27.60
	3

In June 1981, the disability benefit rates were raised to reflect an increase in the cost-of-living. Chuck is now entitled to $403.00 a month and each family member is entitled to $67.20 a month (an increase of $6.80 to each family member). The monthly amounts payable after the cost-of-living increase are now $403.00 to Chuck and $16.00 to each family member ($9.20 plus the $6.80 increase).

In September 1981, another child becomes entitled to benefits based on Chuck's earnings record. The monthly amount payable to the family (excluding Chuck) must now be divided by 4:

$6.90 payable to each family member equals	$27.60
	4

The June 1981 cost-of-living increase is added to determine the amount payable. Chuck continues to receive $403.00 monthly. Each family member receives a cost-of-living increase of $5.10. Thus, the amount payable to each is $12.00 in September 1981 ($6.90 plus the $5.10 increase). [See Example 2 under (i).]

(k) *Effect of changes in the amount of the public disability benefit.* Any change in the amount of the public disability benefit received will result in a recalculation of the reduction under paragraph (a) and, potentially, an adjustment in the amount of such reduction. If the reduction is made under paragraph (a)(1) of this section, any increased reduction will be imposed effective with the month after the month the Secretary received notice of the increase in the public disability benefit (it should be noted that only workers' compensation can cause this reduction). Adjustments due to a decrease in the amount of the public disability benefit will be effective with the actual date the decreased amount was effective. If the reduction is made under paragraph (a)(2) of this section, any increase or decrease in the reduction will be imposed effective with the actual date of entitlement to the new amount of the public disability benefit.

Example: In September 1981, based on a disability which began March 12, 1981, Theresa became entitled to Social Security disability insurance benefits with a primary insurance amount of $445.70 a month. She had previously been entitled to Social Security disability insurance benefits from March 1967 through July 1969. She is receiving a temporary total workers' compensation payment of $227.50 a month. Eighty percent of her average current earnings is $610.50. The amount of monthly disability insurance benefit payable after reduction is—

80 percent of Theresa's average current earnings	$610.50
Theresa's monthly workers' compensation payment	-227.50
Total amount payable to Theresa after reduction	383.00

On November 15, 1981, the Secretary was notified that Theresa's workers' compensation rate was increased to $303.30 a month effective October 1, 1981. This increase reflected a cost-of-living adjustment granted to all workers' compensation recipients in her State. The reduction to her monthly disability insurance benefit is recomputed to take this increase into account—

80 percent of Theresa's average current earnings	$610.50
Theresa's monthly workers' compensation payment beginning October 1, 1981	-303.30
Total new amount payable to Theresa beginning October 1981 after recalculation of the reduction	$307.20

Effective January 1, 1982, Theresa's workers' compensation payment is decreased to $280.10 a month when she begins to receive a permanent partial payment. The reduction to her monthly disability insurance benefit is again recalculated to reflect her decreased workers' compensation amount—

80 percent of Theresa's average current earnings	$610.50
Theresa's monthly workers' compensation payment beginning January 1, 1982	-280.10
Total new amount payable to Theresa beginning January 1982 after recalculation of the reduction	$330.40

If, in the above example, Theresa had become entitled to disability insurance benefits in August 1981, the increased reduction to her benefit, due to the October 1, 1981 increase in her workers' compensation payment, would have been imposed beginning with December 1981, the month after the month she notified the Social Security Administration of the increase. The later decrease in her workers' compensation payment would still affect her disability insurance benefit beginning with January 1982.

(l) *Redetermination of benefits*—(1) *General.* In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 223 of the Act and any benefits under section 202 of the Act based on his or her wages and self-employment income is first required (in a continuous period of months), and in each third year thereafter, the amount of those benefits which are still subject to reduction under this section are redetermined, provided this redetermination does not result in any decrease in the total amount of benefits payable under title II of the Act on the basis of the workers' wages and self-employment income. The redetermined benefit is effective with the January following the year in which the redetermination is made.

(2) *Average current earnings.* In making the redetermination required by paragraph (1)(l) of this section, the individual's average current earnings (as defined in paragraph (c)(3) of this section) is deemed to be the product of his average current earnings as initially determined under paragraph (c)(3) of this section and:

(i) The rate of the average of the total wages (as defined in § 404.1049) of all persons for whom wages were reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which the redetermination is made, to the average of the total wages of all person reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability); and

(ii) In any case in which the reduction was first computed before 1978, the ratio of the average of the taxable wages reported to the Secretary of Health and Human Services for the first calendar quarter of 1977 to the average of the taxable wages reported to the Secretary of Health and Human Services for the first calendar quarter of the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability). Any amount determined under the preceding two sentences which is not a multiple of $1 is reduced to the next lower multiple of $1.

(3) *Effect of redetermination.* Where the applicable limit on total benefits previously used was 80 percent of the average current earnings, a redetermination under this paragraph may cause an increase in the amount of benefits payable. Also, where the limit

previously used was the total family benefit, the redetermination may cause the average current earnings to exceed the total family benefit and thus become the new applicable limit. If for some other reason (such as a statutory increase or recomputation) the benefit has already been increased to a level which equals or exceeds the benefit resulting from a redetermination under this paragraph, no additional increase is made. A redetermination is designed to bring benefits into line with current wage levels when no other change in payments has done so.

Example: In October 1978, Alice became entitled to disability insurance benefits with a primary insurance amount of $505.10. Her two children were also entitled to monthly benefits of $189.40 each. Alice was also entitled to monthly disability compensation benefits of $667.30 from the State. Eighty percent of Alice's average current earnings is $1340.80, and that amount is the applicable limit. The amount of monthly benefits payable after the reduction is—

Applicable limit	$1,340.60
Alice's State disability compensation benefit	−667.30
Total benefits payable to Alice and both children after reduction	$673.50
Alice's disability insurance benefit	−505.10
Payable to the children	$168.40
$84.20 payable to each child after reduction equals	$168.40
	2

In June 1979 and June 1980, cost-of-living increases in Social Security benefits raise Alice's benefit by $50.10 (to $555.20) and $79.40 (to $634.60) respectively. The children's benefits (before reduction) are each raised by $18.80 (to $208.20) and $29.80 (to $238.00). These increases in Social Security benefits are not subject to the reduction (i.e., offset).

In 1980, Alice's average current earnings are redetermined as required by law. The offset is recalculated, and if the amount payable to the family is higher than the current amount payable to the family, that higher amount becomes payable the following January (i.e., January 1981). The current amount payable to the family after the reduction is recalculated—

Alice's 1978 benefit after reduction	$505.10
Alice's cost-of-living increase in June 1979	+50.10
Alice's cost-of-living increase in June 1980	+79.40
One child's 1978 benefit after reduction	+84.20
That child's cost-of-living increase in June 1979	+18.70
That child's cost-of-living increase in June 1980	+29.70
The other child's 1978 benefit after reduction	+84.20
The other child's cost-of-living increase in June 1979	+18.70
The other child's cost-of-living increase in June 1980	+29.70
Total amount payable to the family after reduction in January 1981	899.80

The amount payable to the family after reduction is then recalculated using the redetermined average current earnings—

Average current earnings before redetermination	$1,676.00
Redetermination ratio effective for January 1981	×1.174
Redetermined average current earnings	$1,967.00
	×80%
80% of the redetermined average current earnings	$1,573.60
Alice's State disability compensation benefit	− 667.30
Total benefits payable to the family after offset	$906.30

We then compare the total amount currently being paid to the family ($899.80) to the total amount payable after the redetermination ($906.30). In this example, the redetermination yields a higher amount and, therefore, becomes payable the following January (i.e., January 1981). Additional computations are required to determine the amount that will be paid to each family member—

Total benefits payable to the family using the redetermined average current earnings	$906.30
Total cost-of-living increases to both children	×96.80
Balance payable	809.50
Alice's current benefit amount before reduction	−634.60
Payable to the children	174.90
Total cost-of-living increases to both children	+96.80
Total payable to children after reduction	271.70
$135.90 rounded from $135.85) payable to each child equals	$271.70
	2

(Sec. 224 of the Social Security Act; 79 Stat. 406, as amended; 42 U.S.C. 424)

[FR Doc. 83-22379 Filed 8-15-83; 8:45 am]

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Food and Drug Administration

21 CFR Part 74

[Docket No. 83C-0130]

[Phthalocyaninato(2-)] Copper; Listing as a Color Additive for Coloring Contact Lenses

Correction

In FR Doc. 83-20798, beginning on page 34946 in the issue of Tuesday, August 2, 1983, the "Docket No." in the heading should have appeared as set forth above.

BILLING CODE 1505-01-M

21 CFR Part 109

[Docket No. 75N-0013]

Polychlorinated Biphenyls in Paper Food-Packaging Material; Reduction of Tolerances; Settlement of Hearing

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing a settlement of the formal hearing in this final rule concerning a tolerance for polychlorinated biphenyls (PCB's) in paper food-packaging material. The settlement, as embodied in the final rule set forth below, permits the use of paper packaging material containing more that 10 parts per million (ppm) PCB's, if separated from food by a barrier that would limit PCB migration to the level that would result if no barrier were used and the PCB level in the packaging material were at the permitted level of 10 ppm.

DATES: Effective December 14, 1983; requests for reconsideration on or before September 15, 1983. The Director of the **Federal Register** approves the incorporation by reference of certain publications in 21 CFR 109.30 effective on December 14, 1983.

ADDRESS: Requests for reconsideration to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Allen H. Heim, Office of Science Coordination (HF-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1587.

SUPPLEMENTARY INFORMATION: On March 18, 1972, FDA proposed in the **Federal Register** to establish a tolerance for PCB's in all food-packaging material (37 FR 5705). On the basis of comments received, which in part indicated that of material used for food packaging, PCB contamination occurs only in recycled paper products, FDA on July 6, 1973, published a final rule establishing a 10 ppm tolerance for PCB's in paper food-packaging material (38 FR 18096). The regulation provided that paper food-packaging material would be exempt from the 10 ppm tolerance if separated from food by a barrier impermeable to PCB migration. Under section 406 and 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 346 and 371(e)), the final rule was subject to objections and requests for hearing.

Several paper companies and a trade association objected to the tolerance and requested a hearing. Under section 701(e)(2) of the act, the filing of objections operated to stay the effective date of the final rule (August 24, 1973; 38 FR 22794). On March 12, 1975, FDA published a notice of hearing and listed the issues to be considered at the hearing (40 FR 11563).

In November 1978, FDA's Bureau of Foods and the industry parties signed a proposed settlement agreement that, if approved by the Commissioner of Food and Drugs, would obviate a hearing. That proposed settlement agreement, and subsequent correspondence

between the Commissioner and the hearing parties, is part of the record of this final rule, and may be examined at the Dockets Management Branch (address above), from 9 a.m. to 4 p.m., Monday through Friday.

The proposed settlement agreement would have relaxed the final rule's barrier requirement to permit the use of a barrier that, although not impermeable to PCB's, would limit PCB migration to the level that would result if no barrier were used and the PCB level in the packaging material were at the permitted level of 10 ppm. The agreement provides for premarket approval of barrier by the Bureau of Foods using a specified test procedure.

In October 1979, the Commissioner requested that the parties to the proposed settlement agreement provide further explanation of some of its provisions. The parties filed a joint response in August 1980, which did not change the proposed agreement but explained certain of its provisions.

In October 1981, the Commissioner wrote to the parties and suggested certain changes to the test procedure, to include testing with high fat and liquid foods. The purpose of the suggested change was to ensure that a barrier would adequately prevent PCB contamination of all foods likely to be packaged in paperboard, and not just those foods that are so packaged today. The Commissioner was concerned about possible changes in food-packaging practices and new technology.

On May 11, 1983, the parties responded jointly to the Commissioner's suggested changes. The parties agreed that the original proposed settlement agreement was deficient because it did not provide for testing with high fat and liquid foods. They pointed out, however, that the proposed test procedure embodied in the settlement agreement is not appropriate for use with liquid receptor foods. They suggested alternative solid dry test foods and explained why their use would ensure that the PCB barrier is appropriate for use with high fat and liquid foods.

The Commissioner has reviewed the parties' submission, and has concluded that the revised settlement agreement should be accepted. The Commissioner believes that the parties are correct scientifically in stating that use of the test procedure proposed in the settlement agreement with liquid test foods would not be practicable because of the nature of the paperboard and the particular liquids suggested for testing, and that the results of tests with the new solid test receptor foods would also apply to liquid foods. The Commissioner believes that the revised settlement agreement would promote the public health by providing greater protection against PCB contamination of food, while not increasing regulatory burdens.

The Commissioner concludes that it is proper to accept the settlement agreement in lieu of holding a hearing. The Commissioner further concludes that it is appropriate to publish the terms of the settlement agreement as a final rule, rather than as a proposal, because the revised final rule set forth below, original final rule, and proposal have the same goal—ensuring that foods are not contaminated by PCB's in packinging material. The revised final rule is "in character with the original scheme" (*South Terminal Corp.* v. *Environmental Protection Agency*, 504 F.2d 646, 658 (1st Cir. 1974)); the changes made are "logical outgrowths" of the comments received in response to the proposal (*AFL–CIO* v. *Marshall*, 617 F.2d 636, 676 (D.C. Cir. 1979)). Thus, FDA concludes that a revised proposal is not necessary because it has provided the public "a reasonable and meaningful opportuntiy to participate in the rulemaking process" (*McCulloch Gas Processing Corp.* v. *Department of Energy*, 650 F.2d 1216, 1221 (Em. Appl. 1981)).

The Commissioner is providing for the submission of requests for reconsideration pursuant to 21 CFR 10.33. Unless FDA receives a timely request for reconsideration on or before September 15, 1983 and decides to grant that request, the final rule will become effective on December 14, 1983.

FDA's original final rule to establish a tolerance for PCB's in food-packaging material was the subject of a final environmental impact statement issued on December 18, 1972, and a supplement to the final environmental impact statement issued on July 2, 1973. The environmental considerations and conclusions contained in the final and supplemental environmental impact statements are applicable to the evaluation of the environmental effects of the settlement embodied in this revised final rule. The settlement does not appreciably change the environmental effects predicted and considered in agency decisionmaking at the time the original final rule was issued. Therefore, no further environmental review was conducted.

Section 109.30(d) of this final rule contains information collection requirements. The public is not required to comply with the information collection requirements until the Office of Management and Budget (OMB) approves these requirements under section 3507 of the Paperwork Reduction Act of 1980. A notice will be published in the **Federal Register** when approval is obtained.

List of Subjects in 21 CFR Part 109

Contaminants, Incorporation by reference, Polychlorinated biphenyls (PCB's).

PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 406, 701(e)), 52 Stat. 1049 as amended, 70 Stat. 919 as amended (21 U.S.C. 346, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), § 109.30 is amended by adding paragraphs (c) and (d) to read as follows:

§ 109.30 Tolerances for polychlorinated biphenyls (PCB's).

* * * * *

(c) A barrier is functional for purposes of paragraph (a)(9) of this section if the barrier limits migration of PCB's from the packaging material to food to a level not exceeding the migration which occurs under the same test conditions from packaging material containing 10 parts per million PCB without the use of a barrier. A class of barrier material is functional for purposes of paragraph (a)(9) of this section if a representative barrier of the class limits migration of PCB's from the packaging material to food to a level not exceeding the migration which occurs under the same test conditions from packaging material containing 10 parts per million PCB without the use of a barrier. Migration levels shall be determined for purpose of this paragraph solely by use of testing conditions described in "Test Procedures for Determination of PCB Permeability of Food Packaging, Inner-Wraps, September 1976, revised May 1983", which is incorporated by reference. Copies are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20204. A class of barrier material shall be deemed functional only if the definition of the class and the designation of one or more representative barriers has been approved by the Director, Bureau of Foods, Food and Drug Administration. In the event that the Director, Bureau of Foods, does not approve a proposal made to the Bureau regarding the definition of a class of barrier material or the designation of representative

barriers, the Director shall advise the person making the proposal of the reasons for the Bureau's disapproval within 90 days of receipt of the proposal. All proposals for definition of classes and determinations of the Food and Drug Administration regarding such proposals shall be on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

(d) Any person who asserts that a barrier or class of barriers is functional shall submit the results of tests conducted to determine the functionality of the barrier or class of barriers to Program Manager for Chemical Contaminants (HFF–421, or its successor), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. All barriers or classes of barriers shall be tested with the four solid food receptors specified in "Test Procedures for Determination of PCB Permeability of Food Packaging, Inner-Wraps, September 1976, revised May 1983", which is incorporated by reference. The availability of this reference is given in paragraph (c) of this section. The test results as to each barrier shall be accompanied by (1) a description of the barrier's composition adequate to enable identification; and (2) a specific definition of the barrier by relevant technical characteristics. The Bureau of Foods shall review submitted test results promptly. Within 60 days of the receipt of test results, the Director, Bureau of Foods, shall notify the person submitting the test results whether the tests were conducted in accordance with the "Analytical Methodology for Polychlorinated Biphenyls; June 1979", which is incorporated by reference, or the "Test Procedures for Determination of PCB Permeability of Food Packaging, Inner-Wraps, September 1976, revised May 1983" and whether, therefore, the barrier or class of barriers is deemed functional within the meaning of paragraph (c) of this section. The test results and any response of the Food and Drug Administration shall be placed on file with the Dockets Management Branch, Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Interested persons may, on or before September 15, 1983, submit to the Dockets Management Branch (address above) written requests for reconsideration. Two copies of any such requests are to be submitted, except individuals may submit one copy. Each copy should identify the docket number found in brackets in the heading of this document. Received requests for reconsideration may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective December 14, 1983.

(Secs. 406, 701(e), 52 Stat. 1049 as amended, 70 Stat. 919 as amended (21 U.S.C. 346, 371(e)))

Dated: August 4, 1983.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 83-22168 Filed 8-15-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 610

[Docket No. 83N-0054]

General Biological Products Standards; Constituent Materials

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending a regulation concerning constituent materials used in a biological product to specify that a preservative is not required in a multiple-dose container of an Allergenic Product in 50 percent or more glycerin. The final rule reflects agency policy and will clarify the regulation.

DATES: Effective August 16, 1983; comments by October 17, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael L. Hooton, National Center for Drugs and Biologics (HFN–813), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: Section 610.15 (21 CFR 610.15) of FDA's general biological product standards regulations provides general requirements for constituent materials in biological products, including requirements concerning use of preservatives in products in multiple-dose containers. The regulation does not identify the specific preservatives that are approved for use in the manufacture of products. Rather, the manufacturer of the licensed product must identify the preservative used and its concentration in its application for a product license and on the label affixed to each package containing the product (21 CFR 610.61(e)).

For over 20 years the agency has approved the use of glycerin in Allergenic Products to increase the stability of the allergens. Although glycerin is not universally recognized as an antifungal or antimicrobial preservative, the use of 50 percent glycerin in Allergenic Products for many years has shown it to have bacteriostatic activity. In addition, published data relating to this matter has been placed on file with the Dockets Management Branch (address above). Accordingly, the Office of Biologics has approved manufacturers' amendments to license applications that provide for the use of 50 percent glycerin in multiple-dose containers of Allergenic Products without requiring inclusion in the product of a universally recognized preservative (e.g., thimerosal). The final rule will clarify the regulation to reflect this agency policy.

Therefore, FDA is amending § 610.15 *Constituent materials* by adding a new phrase to the third sentence of paragraph (a) to specify that a preservative need not be added to a multiple-dose container of an Allergenic Product in 50 percent or more glycerin and by making certain other clarifying changes in the sentence.

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an envionmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The amendment clarifies the regulation but does not change the agency's policy regarding use of preservatives in Allergenic Products. Therefore, the agency concludes that this final rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory

Flexibility Act. This rule does not impose any paperwork requirements.

List of Subjects in 21 CFR Part 610

Biologics, Labeling.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 610 is amended in the introductory text of § 610.15(a) by revising the third sentence to read as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

§ 610.15 Constituent materials.

(a) * * * Products in multiple-dose containers shall contain a preservative, except that a preservative need not be added to Yellow Fever Vaccine; Polio Virus Vaccine, Live, Oral; viral vaccines labeled for use with the jet injector; dried vaccines when the accompanying diluent contains a preservative; or to an Allergenic Product in 50 percent or more glycerin. * * *

* * * * *

Under the Administrative Procedure Act (5 U.S.C. 553 (b) and (d)), the Commissioner finds that notice, public procedure, and delayed effective date are unnecessary for the amendment of § 610.15 because it does not impose an additional duty or burden on any person but rather clarifies a current interpretation of an existing regulation to avoid misinterpretation.

Interested persons may, on or before October 17, 1983, submit to the Dockets Management Branch (address above), written comments regarding this rulemaking. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Such comments will be considered in determining whether the clarification made in this document should be modified. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective August 16, 1983.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: July 28, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-22313 Filed 8-15-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 868

[Docket No. R-83-1105]

Comprehensive Improvement Assistance Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: The rule amends the Comprehensive Improvement Assistance Program regulations by revising the definition of Special Purpose Modernization to eliminate: (1) The one-time limitation on filing an application for Special Purpose Modernization for an individual project and (2) the deadline on Public Housing Agencies (PHAs) for filing such applications. These revisions are intended to allow PHAs to make energy-related improvements which are cost-effective.

DATES: Effective Date: October 11, 1983. Comment due date: October 17, 1983.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Comments should refer to the above docket number and title. A copy of each set of comments submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Pris Buckler, Room 4224, Office of Public Housing, Department of Housing Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5595. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Limitations on Special Purpose Modernization Removed

The Comprehensive Improvement Assistance Program (CIAP), which was established by section 14 of the United States Housing Act (USHA of 1937) (42 U.S.C. 1437*l*), provides assistance to Public Housing Agencies (PHAs), including Indian Housing Authorities, to improve the physical condition of existing public housing projects, and to upgrade the management and operation of such projects.

One form of assistance provided under CIAP is special purpose modernization which is a project modernization program that is limited to cost-effective energy conservation work items which will not be adversely affected by any subsequent Comprehensive Modernization.

Under § 868.3 of the current CIAP regulations, special purpose modernization may be approved only on a one-time basis for a particular project. This limitation is unduly restrictive in certain situations, for example, when:

1. In a prior year, the energy audit was funded under special purpose modernization and the PHA is now requesting funds under special purpose modernization to implement the results of the audit at the same project;

2. Energy conservation devices which were not on the market when the special purpose modernization was first approved are now available and the PHA is requesting funds under special purpose modernization for these items;

3. Energy conservation work which was not previously determined to be cost-effective is now determined to be cost-effective because of a large reduction in the cost of an energy conservation device or a large increase in the cost of energy; or

4. Special purpose modernization was approved for certain items with the greatest cost-savings and the PHA is now requesting funds for other items which are cost-effective, but have a slightly longer payback period.

In addition, the current § 868.3 provides that special purpose modernization may now be approved only in the first two years of a PHA's five-year plan. The Department believes that this limitation is inappropriate, since lack of funding may have prevented a PHA from completing all energy conservation work in the first two years of its five-year plan. Therefore, in order to facilitate cost-effective energy conservation improvements, the Department is revising the definition of "special purpose modernization" in § 868.3 to eliminate (1) the one-time limit on filing a request for funding of an individual project and (2) the deadline for filing such requests by a PHA.

Other Matters

This rule also corrects typographical errors in §§ 868.3 and 868.4 of the current rule.

This rule amends the requirements for applying for special purpose modernization in Federal Fiscal Year (FFY) 1984 and thereafter. Since PHAs must be provided sufficient time to prepare their FFY 1984 applications, the Department has determined that notice and prior public comments are impracticable and contrary to the public

interest and that good cause exists for making this rule effective as soon after publication as possible. However, public comments are invited and will be considered in adopting a final rule.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule should have no different economic impact on small PHAs than it does on large PHAs. Any economic impact should be beneficial since the rule provides PHAs greater flexibility in using special purpose modernization.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1983 (48 FR 18054), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number and title is 14.158—Public Housing—Modernization of Projects.

List of Subjects in 24 CFR Part 868

Loan programs: Housing and community development, Public housing, Reporting and recordkeeping requirements.

Part 868—[AMENDED]

Accordingly, the Department amends 24 CFR Part 868 as follows:

1. In § 868.3, the definition of "special purpose modernization" is revised to read as follows:

§ 868.3 Definitions.

* * * * *

"Special purpose modernization" means a modernization program for a project that is limited to cost-effective energy conservation work items which will not be adversely affected by any subsequent Comprehensive Modernization. For such projects, management improvements are not eligible modernization costs. Special purpose modernization also means the approval of additional contract or budget authority to meet increased interest costs, or to effect the transfer of modernization funds between projects with modernization programs approved before July 1, 1978.

* * * * *

2. In FR Doc. 82–13898, appearing in the **Federal Register** issue of May 21, 1982 at page 22315, § 868.3, the definition "HUD office" is corrected by changing "of" to read "or."

3. In FR Doc. 82–13898, appearing in the **Federal Register** issue of May 21, 1982 at page 22316, § 868.4, the introductory text to paragraph (b)(1) is corrected by changing "of" to read "or."

(United States Housing Act of 1937 (42 U.S.C. 1437), sec. 7(d), Dept. of HUD Act (42 U.S.C. 3535(d))

Dated: July 21, 1983.

W. Calvert Brand,

General Deputy Assistant Secretary of Housing—Federal Housing Commissioner.

[FR Doc. 83–22346 Filed 8–15–83; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approval of Supplements to the Washington State Plan

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This notice approves various supplements to the Washington State Plan including modifications to its administrative rules, policies, and field procedures in accordance with formal assurances provided. These amendments were adopted in response to assurances made by the State at the time of approval of the plan supplements. The amendments have been determined to satisfy those State assurances.

EFFECTIVE DATE: August 12, 1983.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523–8045.

SUPPLEMENTARY INFORMATION:

Background

Part 1953 of Title 29, Code of Federal Regulations, provides procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision and describing the plan.

On February 9, 1982, notices were published in the **Federal Register** describing and approving several developmental plan supplements (47 FR 5889) and certifying completion of all developmental steps of its plan (47 FR 5889). As a condition of approval of the supplements, the State adopted interim procedures and provided assurances that it would take prompt action to formally remedy several procedural concerns identified by Federal review. By letters of August 27, 1982, October 7, 1982, October 18, 1982, and March 8, 1983, the State provided supplements which fulfilled the assurances.

Description of Plan Supplements

1. Washington Adminstrative Rules (WAC 296 Chapters 350 and 360). The State added provisions requiring posting of notices of redetermination issued when contested citations are modified by administrative review, settlement agreements, notices of appeals, conferences, and hearings of the State appeals board. The notice of redetermination form was modified to reflect the posting requirement and employee appeal rights. The extension of abatement rules had incorrectly included a reference to administrative hearing rules used in workers compensation cases, which has been deleted. An added provision specifies that settlement agreements relating to appeals must, if applicable, include an abatement date and statement of payment of penalty. A requirement that