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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 910

[Lemon Regulation 450]

#### Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 225,000 cartons during the period February 12-18, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

**EFFECTIVE DATE:** February 12, 1984.

**FOR FURTHER INFORMATION CONTACT:**

William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available

information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on February 7, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is slightly easier.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

#### List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

Section 910.750 is added as follows:

#### § 910.750 Lemon Regulation 450.

The quantity of lemons grown in California and Arizona which may be handled during the period February 12, 1984, through February 18, 1984, is established at 225,000 cartons.

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

Dated: February 8, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Division,  
Agricultural Marketing Service.

[FR Doc. 84-3874 Filed 2-9-84; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 238

#### Contracts With Transportation Lines; Addition of American Airlines, Inc.

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the listing of carriers which have entered into agreements with the Service for the preinspection of their passenger and crews at locations outside the United States by adding the name of American Airlines, Inc.

**EFFECTIVE DATE:** January 26, 1984.

**FOR FURTHER INFORMATION CONTACT:**

Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

**SUPPLEMENTARY INFORMATION:** The Commissioner of Immigration and Naturalization entered into an agreement with American Airlines, Inc. on January 26, 1984 to provide for the preinspection of its passengers and crews as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds an air carrier's name to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

#### List of Subjects in 8 CFR Part 238

Air carriers, Airlines, Aliens, Government contracts, Inspections.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

**PART 238—CONTRACTS WITH TRANSPORTATION LINES****§ 238.4 [Amended]**

Section 238.4 is amended by adding the name "American Airlines, Inc." under "At Calgary".

(Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228))

Dated: February 7, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-3704 Filed 2-9-84; 8:45 am]

BILLING CODE 4410-10-M

**8 CFR Part 238****Contracts With Transportation Lines; Addition of Hawaiian Airlines**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule adds Hawaiian Airlines to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

**EFFECTIVE DATE:** January 30, 1984.

**FOR FURTHER INFORMATION CONTACT:**

Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

**SUPPLEMENTARY INFORMATION:** This amendment to 8 CFR 238.3 is published pursuant to 5 U.S.C. 552. The Commissioner of Immigration and Naturalization Service entered into an agreement with Hawaiian Airlines on January 30, 1984 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

**List of Subjects in 8 CFR Part 238**

Airlines, Aliens, Government contracts, Travel, Travel restriction.

**PART 238—CONTRACTS WITH TRANSPORTATION LINES**

Accordingly, 8 CFR Part 238 is amended as follows:

**§ 238.3 [Amended]**

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by adding in alphabetical sequence, "Hawaiian Airlines".

(Secs. 103, 66 Stat. 173 (8 U.S.C. 1103); 238, 66 Stat. 202 (8 U.S.C. 1228))

Dated: February 7, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-3705 Filed 2-9-84; 8:45 am]

BILLING CODE 4410-10-M

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 92**

[Docket No. 84-006]

**Specifically Approved States Authorized To Receive Mares and Stallions Imported From CEM-Affected Countries**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** This document affirms the interim rule which added Louisiana to the list of approved States authorized to receive certain mares and stallions imported into the United States from countries affected with contagious equine metritis (CEM). This action is needed because the Deputy Administrator for Veterinary Services has determined that Louisiana has laws or regulations in effect to require the additional inspection, treatment, and testing of such horses to further ensure their freedom from CEM as required by the regulations. This action is necessary in order to avoid the imposition of unnecessary restrictions on importers of mares and stallions from countries affected with CEM.

**EFFECTIVE DATE:** February 10, 1984.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mark Dulin, VS, APHIS, USDA, Federal Building, Room 844-AAA, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301-436-8170.

**SUPPLEMENTARY INFORMATION:****Background**

Section 92.2(i) of the regulations in 9 CFR Part 92, among other things, authorities the importation of certain horses (mares and stallions over 731 days of age) into the United States from countries affected with contagious equine metritis (CEM) when specific requirements to prevent their introducing CEM into the United States are met, and the animals imported are moved into approved States for further inspection, treatment, and testing.

A document published in the *Federal Register* on November 25, 1983 (48 FR 53088-53089), set forth an interim rule amending § 92.4 of the regulations in 9 CFR Part 92 by adding Louisiana to the lists of States approved to receive these mares and stallions. The addition of Louisiana to the lists was based on the finding that it meets certain minimum standards concerning treatment, testing, and handling procedures for these mares and stallions.

The interim rule was made effective upon publication. Comments were solicited for 60 days after publication of the amendments. No comments were received. The factual situation which was set forth in the document of November 25, 1983, still provides a basis for the amendments.

**Executive Order 12291 and Regulatory Flexibility Act**

This action has been reviewed in conformance with Executive Order 12291 and Secretary's Memorandum 1512-1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant annual effect on the economy, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have adverse effects 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.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291 and the Department of Agriculture has waived the requirements of Secretary's Memorandum 1512-1.

This action affirms an interim rule which provides a means by which mares and stallions over 731 days of age from countries affected with CEM and bound for Louisiana can be imported directly into Louisiana. Otherwise, the mares and stallions would be allowed to be imported only to other States which have been approved to receive these mares and stallions from countries affected with CEM. The nearest State to Louisiana approved to receive mares and stallions from countries affected with CEM is Kentucky. This action should result in a decrease of transportation costs for such horses.

It is anticipated that fewer than 12 mares and stallions from countries affected with CEM will be imported into the State of Louisiana annually. This compares with 320 such animals imported into the entire United States during Fiscal Year 1983 and with approximately 40,000 horses of all classes imported into the United States during that same period.

Based on the circumstances explained above, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have significant economic effect on a substantial number of small entities.

#### List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, the interim rule published at 48 FR 53088, November 25, 1983, is adopted as a final rule.

**AUTHORITY:** Sec. 2, 32 Stat. 792, as amended; secs. 4 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 7th day of February 1984.

J.K. Atwell,

*Deputy Administrator, Veterinary Services.*

[FR Doc. 84-3730 Filed 2-9-84; 8:45 am]

BILLING CODE 3410-34-M

**SUMMARY:** This amendment adds a new airworthiness directive (AD) applicable to certain Airbus Industrie Model A300 series B2 and B4 airplanes which requires inspections, modifications, and replacements, if necessary, of certain main landing gear hinge arm components. Corrosion has been found in areas of the main landing gear hinge arm which, if left uncorrected, could lead to collapse of the main landing gear.

**EFFECTIVE DATE:** March 19, 1984.

**ADDRESSES:** The service bulletins specified in this AD may be obtained upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France, or may be examined at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** The Direction Generale de l'Aviation Civile (DGAC), which is the French Civil Aviation Authority, issued two AD's mandating compliance with four Airbus Industrie and four Messier-Hispano-Bugatti service bulletins. During routine maintenance inspections of several reinforced hinge arms on the main landing gear, corrosion was found at the hinge arm-trunnion blend radii on both the actuating cylinder and universal joint sides. The corrosion on the actuating cylinder side is on areas subjected to high stress levels which could lead to the formation of cracks, possible failure of the hinge arm, and eventual collapse of the main landing gear. The service bulletins prescribe inspections, and if corrosion is found, overhaul or replacement of the hinge arms. To prevent the corrosion from recurring, modifications are also prescribed.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspections of the main landing gear hinge arms, incorporation of modifications, and if needed, replacement of components, was published in the *Federal Register* on September 14, 1983, (48 FR 41167). The comment period closed on October 31, 1983, and interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received. These

comments stated no objection to the proposal. The final rule has some editorial changes.

It is estimated that 22 U.S. registered airplanes will be affected by this AD, that it will take approximately 105 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Repair parts are estimated at \$2,200 per airplane. Based on these figures, the total cost impact of this AD to the sole U.S. operator is estimated to be \$140,800. For these reasons, the rule is not considered to be a major rule under the criteria of Executive Order 12291. No small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule with minor editorial changes.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A300 airplanes, certificated in all categories and whose serial numbers are listed in paragraph 1, Planning Information, of Airbus Industrie (AI) Service Bulletin A300-32-356, Revision 1, dated December 1, 1982. To prevent failure of main landing gear hinge arms, accomplish the following, unless previously accomplished:

A. Within 120 days from the effective date of this AD, measure the displacement of the bronze bushing fitted in the stirrup on the actuating cylinder side of all affected hinge arms in accordance with paragraph 2.B of Messier-Hispano-Bugatti (MHB) Service Bulletin 470-32-422, Revision 1, dated December 3, 1982. Depending on the results of the above measurements and within the number of landings specified in the service bulletin, repeat the measurement of the displacement or visually inspect for corrosion, as appropriate, the blending radii of attachment between the trunnions and the hinge arm body in accordance with the instructions of the service bulletin.

1. If no trace of corrosion is found, incorporate the modifications AI 4544/S53521 and AI 4544/S5548, described in AI Service Bulletins A300-32-348, Revision 2 and A300-32-355, Revision 2, both dated May 16, 1983, and in accordance with the instructions of MHB Service Bulletins 470-32-421, Revision 2 and 470-32-407, Revision 2, both dated March 31, 1983.

2. If corrosion is detected, replace the affected hinge arms prior to further flight

either with new arms or with arms modified in accordance with the instructions of MHB Service Bulletin 470-32-431, dated December 24, 1982, related to AI Service Bulletin A300-32-362, dated June 15, 1983, after incorporating the modifications required by paragraph A.1. of this AD.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective March 19, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

**Note.**—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities since no small entities operate the Model A300 airplanes. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT**.

Issued in Seattle, Washington on February 1, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-3025 Filed 2-9-84; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 83-NM-64-AD; Amdt. 39-4803]

#### Airworthiness Directives; Boeing Model 737 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds an airworthiness directive (AD) that requires a periodic check of Boeing Model 737 fuel lines contained within the wing fuel tanks for air leakage. These checks are necessary to detect fuel line deterioration which, in conjunction with loss of fuel boost pumps, can result in simultaneous unrecoverable loss of power on both engines.

**DATE:** Effective March 12, 1984.

Compliance scheduled as prescribed in the body of the AD.

**ADDRESSES:** The applicable service bulletin may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at the address shown below.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Stewart R. Miller, Aerospace Engineer, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office, Federal Aviation Administration, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2969. Mailing Address: Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 (14 CFR Part 39) of the Federal Aviation Regulations to include an AD requiring periodic checks for air leakage into Boeing Model 737 fuel lines contained within the wing fuel tanks was published in the *Federal Register* on August 22, 1983 (48 FR 38005).

Interested persons have been afforded the opportunity to participate in the making of this amendment and due consideration has been given to all relevant data and comments received. Nine comments concerning the proposed rule were received from the type certificate holder, domestic airlines, and other interested parties. Several substantive changes and changes of an editorial and clarifying nature have been made to the proposed rule based upon the comments received and upon further review within the FAA.

#### Discussion of Comments

Two commenters felt that no AD is needed because a Service Bulletin would provide adequate operator incentive to perform the required check. The FAA does not accept this rationale. Service Bulletin compliance is optional, therefore, there is no assurance that necessary inspections will be performed on all aircraft in a timely manner unless an AD is adopted to make compliance mandatory.

One commenter objected to the AD because the MSG-2 maintenance analysis used by the industry for the Boeing Model 737 considers only single failure modes. This commenter contends that fuel line leaks plus four other conditions are necessary to cause simultaneous loss of power of both engines. The FAA agrees that conditions other than fuel line leaks must be present to cause loss of power of engines. However, the subject leaks are

not detectable without the proposed inspections and could, therefore, be expected to gradually develop and remain for the life of the airplane. Loss of all electrical power, an event that has happened with significant frequency on the Model 737, would then be sufficient to result in loss of both engines. In the view of the FAA this is unacceptable.

One commenter proposed a pressure check as an alternative to the Boeing Service Bulletin procedure. A pressure check procedure failed to detect the original problems, so must be considered inadequate.

One commenter objected to the AD because it was discriminatory in that it only addressed the Boeing Model 737. The FAA is presently reviewing other transport aircraft fuel systems and will take additional action on other aircraft if required.

Several commenters felt that the compliance times proposed were unduly restrictive. Upon further review, the FAA determined that the compliance times given in Boeing Service Bulletin 737-28-1047, dated July 22, 1983, may be accepted without compromising safety.

Four commenters had no objection to the AD as proposed and indicated no compliance problems. Two other commenters had no objection to the intent of the AD, but recommended that additional repair and inspection options offered in Boeing Service Bulletin 737-28-1047 be included in the AD. The FAA agrees with this assessment and the final rule reflects this change.

#### Cost Estimate

It is estimated that a total of 300 airplanes will be affected by this AD, it will take less than 1 manhour per airplane to accomplish the proposed inspection, and the average labor cost will be \$35 per manhour. Based on these estimates, the total cost impact of this AD will be \$10,500 to operators of U.S. registered airplanes. Fuel line repair costs have not been included in this estimate since the potential extent of such is unknown. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected because few, if any, small entities operate Boeing Model 737 aircraft.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the changes noted.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Boeing Model 737 series airplanes certificated in all categories. Prior to the accumulation of either 20,000 flight hours or 7 years of age, or within 500 flight hours, whichever occurs later after the effective date of this AD:

A. Institute an inspection program in accordance with Boeing Service Bulletin 737-28-1047, dated July 22, 1983, or later FAA approved revision.

B. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or repairs required by this AD.

This amendment becomes effective March 12, 1984.

**Note.**—For the reasons discussed in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities since few small entities operate the model 737. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington on January 26, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-3627 Filed 2-9-84; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

[Docket No. 84-NM-07-AD; Amdt. 39-4808]

**Airworthiness Directives; Lockheed-California Company Model L-1011-385 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) that requires an inspection of certain wire bundles in the aft compartment of Lockheed Model L-1011-385 series airplanes and corrective action, if necessary. This AD is prompted by reports of improper harness retention and wire bundles that have been severed by an adjacent mechanism. This action is necessary to minimize the likelihood of a fire hazard caused by chafed or severed wires.

**DATES:** Effective February 21, 1984.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

**ADDRESSES:** The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harry Wasinger, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2831.

**SUPPLEMENTARY INFORMATION:** During pitch control system testing of a production aircraft at Palmdale, California, a wiring harness in the vicinity of the righthand stabilizer power servo was severed by the stabilizer servo feedback arm and arcing was observed. Inspection of the wiring harness and attachments determined that three of its clamps and an associated clip were not installed on the power servo. Other L-1011's at Palmdale were subsequently inspected and the absence of these clamps and clips on both righthand and lefthand servos was verified on these aircraft. A review of inspection records on delivered airplanes cannot conclusively determine if the subject clamps and clips were installed in all the fleet. Severance of the harness could occur on either the lefthand or righthand servos if the harness is not properly secured. A severed wire harness does not cause degradation of the pitch control authority under normal conditions, but it can cause arcing which could ignite combustible vapors in the aft compartment. A severed harness can be detected on an aircraft shut-down or on a preflight check by flight crew

observations, but would not be detected in flight.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires an inspection for correct harness retention, damaged or severed wires, and corrective action, if necessary.

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

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**Lockheed-California Company:** Applies to Lockheed Model L-1011-385 series airplanes, certificated in all categories. Compliance required as indicated unless previously accomplished.

To prevent the possibility of a fire hazard due to electrical arcing in two aft body compartments, accomplish the following:

A. Prior to 300 flight hours after the effective date of this AD, perform the aircraft wiring inspection and corrective action, if necessary, in accordance with Part 2, Accomplishment Instructions, in Lockheed-California Company L-1011 Service Bulletin 093-27-285, dated July 12, 1983, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note.**—Airplanes previously inspected in accordance with Lockheed L-1011 Service Bulletin 093-27-285, dated July 12, 1983, or in accordance with alternate inspection procedures since June 24, 1983, approved by an FAA Principal Maintenance Inspector (PMI), are considered to comply with the inspection requirements of this AD.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification

Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective February 21, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

**Note.**—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington on February 1, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-3623 Filed 2-9-84; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 83-NM-76-AD; Amdt. 39-4807]

#### Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) that requires installation of a positive antirotational stop on the horizontal stabilizer single chain differential drive assembly on McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes. Installation of this unit will provide an automatic means of locking the horizontal stabilizer in position following the failure of a differential drive shear pin. This AD is required because a failure of the shear pin could allow uncommanded movement of the horizontal stabilizer and result in potentially hazardous airplane handling characteristics.

**DATES:** Effective March 19, 1984.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

**ADDRESSES:** The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2826.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to adopt a new airworthiness directive (AD) to require the installation of a positive antirotational stop on the horizontal stabilizer single chain differential drive assembly on McDonnell Douglas DC-10 and KC-10A (Military) series airplanes was published in the Federal Register on August 18, 1983 (48 FR 37427). This action is necessary to require modification of the horizontal stabilizer drive assembly to minimize the possibility of uncommanded horizontal stabilizer movement during flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all relevant data and comments provided. Four comments were received in response to the notice of proposed rulemaking. None of the parties who made comments objected to the intent of the proposed rule.

#### Discussion of Comments

All parties commented that they feel the compliance time for the final rule should be extended beyond the six months called for in the NPRM, with one commenter requesting 18 months. After consideration of all comments received, the FAA considers a six-month compliance period appropriate because: (1) Based on the anticipated effective date of the rule, this will have allowed operators approximately 18 months from the original issuance of the service bulletin; and (2) this will be consistent with manufacturer's recommended compliance date for the applicable service bulletin. Subsequent to publication of the NPRM, the manufacturer released Revision 1 to DC-10 Service Bulletin 27-192. Revision 1 revises the bulletin effectivity and

resequences some of the accomplishment instructions. The changes made do not significantly affect the accomplishment of the proposed rule. For this reason the final rule is modified to incorporate McDonnell Douglas DC-10 Service Bulletin 27-192, Revision 1, dated August 1, 1983.

#### Cost Estimate

The estimated costs associated with this AD are as follows: 141 domestic airplanes will be affected, and it will require approximately 16 manhours per airplane to accomplish the required modification, at an average labor charge of \$35.00 per hour. The modification kit can be obtained at a cost of approximately \$4,000. Based upon these figures, the total economic impact is estimated to be \$643,000. No small entities within the meaning of the Regulatory Flexibility Act would be affected.

After careful review of available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the change previously noted.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes, incorporating a horizontal stabilizer single chain differential drive system, certificated in all categories. Compliance require within 6 months after the effective date of this AD, unless previously accomplished.

To prevent uncommanded movement of the horizontal stabilizer following fused drive system shear pin failure, accomplish the following:

A. Modify the horizontal stabilizer drive assembly in accordance with Section 2, Accomplishment Instructions, of McDonnell Douglas DC-10 Service Bulletin 27-192, Revision 1, dated August 1, 1983, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note.**—No additional work is required for those operators who accomplished the original issue of McDonnell Douglas DC-10 Service Bulletin 27-192, dated March 17, 1983.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the

accomplishment of the modification required by this AD.

C. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective March 19, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

**Note.**—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-10 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT**.

Issued in Seattle, Washington on February 1, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region

[FR Doc. 84-3624 Filed 2-9-84; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 83-NM-65-AD; Amdt. 39-4805]

#### Airworthiness Directives; Boeing Model 747 and McDonnell Douglas Model DC-9 and DC-10 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) applicable to Boeing Model 747 series and McDonnell Douglas Model DC-9 series and DC-10 series airplanes which requires a one-time inspection and subsequent removal of certain nonconforming landing gear components

manufactured by Precision Tube Draw and Machine, Inc., 401 East Alondra Blvd., Gardena, California 90427. This AD is prompted by discovery of three landing gear components at a repair station which were to have been scrapped during manufacture. Subsequent checks confirmed one of the components to be out of drawing tolerance. Additional landing gear components for which conformity could not be established are unaccounted for, and are assumed to have entered the market place through unauthorized channels. Use of unapproved parts could result in landing gear failure.

**DATES:** Effective March 19, 1984.

**ADDRESSES:** Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-NM-65-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**FOR FURTHER INFORMATION CONTACT:** Mr. Owen Schrader, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, telephone (206) 431-2923. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Mr. Michael N. Asahara, Sr., Airframe Branch, ANM-120L, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2824.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD to require inspection for and subsequent removal of certain nonconforming landing gear components was published in the *Federal Register* on September 6, 1983 (48 FR 40266). The comment period for the proposal closed on October 24, 1983.

Interested persons have been afforded an opportunity to participate in the making of this AD. Due consideration has been given to all comments received. Comments were received from eleven operators, the Air Transport Association of America, and two manufacturers.

Several commenters requested that the AD provide that components delivered with production airplanes or purchased from Boeing, Douglas, or Cleveland Pneumatic, as spares, not be affected by the AD. The FAA has determined that none of the affected components originated from these sources; therefore, paragraph A. has been changed accordingly.

Three commenters requested that additional time be granted after discovery of any nonconforming parts to allow for orderly scheduling of the airplane into a maintenance facility. The FAA does not concur. The 180-day time period allows ample time to schedule an airplane into a maintenance facility.

Two commenters requested that a specific time period be established as to when these components may have entered the market. The FAA concurs and has changed paragraph A. accordingly.

The manufacturer identified two parts by serial number that were found to be in conformity and requested that they be removed from the listing of affected parts. The FAA concurs and Table I has been revised by removing these two items.

Another commenter requested that conformity could be shown by records search. This was the original intent of the FAA and paragraph A. has been clarified in this regard.

Another commenter requested that the fourth column in Table I be deleted as the numbers shown are only used by the manufacturer and its subcontractors and do not appear on the parts. The FAA concurs that these numbers may cause confusion and therefore Table I has been revised by removing these numbers.

Another commenter requested that the serial numbers should have the prefix CPT, with the exception of serial number M495. All parts should also have the suffix PTM. This is necessary because the serial number without the prefix and suffix may be a duplicate of the serial number of another part. The FAA concurs and Table I has been revised.

One commenter noted a reference in Table I to the DC-9-80 for a group of parts which may be used on all DC-9 aircraft. This was an editorial error, and has been corrected in the final rule. The AD affects all DC-9 series airplanes.

Another commenter desired to delete the requirement to "render the parts unserviceable" if conformity cannot be shown. The FAA concurs and paragraph B. has been revised accordingly.

Another commenter stated that not all serial numbers are legible on these parts, which could cause unnecessary disruption of service and scrapping of legitimate parts. If the records, place of origin, date of purchase, or visible serial number of a specific part cannot confirm the state of conformity, then the part must be removed. The AD was not altered because of this comment.

Another commenter requested that the AD be specific as to who shall

determine conformity and to what specific criteria. The FAA believes this request has merit, and paragraph C. has been revised accordingly.

Since the installation of these nonconforming components is likely to have already occurred and their design conformity is unknown, an airworthiness directive is being issued, which requires a one-time inspection and subsequent removal of certain landing gear components listed in the body of the AD unless conformity can be shown to exist. If used, these parts could result in landing gear failure.

It is estimated that 800 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$35 per manhour. Based on these figures, the total cost impact of the AD is estimated to be \$250,000. Replacement cost is not considered. For these reasons the AD is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the

meaning of the Regulatory Flexibility Act will be affected.

After careful review of the available date, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the changes noted.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**Boeing Model 747 and McDonnell Douglas Model DC-9 and DC-10 series airplanes certificated in all categories:**

A. Within 180 days from the effective date of this AD, unless already accomplished, determine if any components listed by serial number in Table I, below, are installed on or in the landing gear assembly. This determination may be made by review of records or by inspection of parts to determine serial numbers. Components delivered with

production airplanes or purchased from Boeing, Douglas, or Cleveland Pneumatics, as spares, are not affected by this AD. Components purchased prior to January 1, 1979, are not affected by this AD.

B. If any components listed in Table I are found replace them with approved parts before further flight.

C. Future use of any components listed by serial number in Table I is prohibited, unless it is determined by the manufacturer or demonstrated to the FAA that the component is in conformity to type design.

D. Upon request of the operator, an FAA Principal Maintenance Inspector may adjust the compliance times if the request contains substantiating data to justify the change, and subject to prior approval by the Manager, Seattle Aircraft Certification Office, for the Boeing Model 747, or the Manager, Los Angeles Aircraft Certification Office, for the McDonnell Douglas Models DC-9 and DC-10.

E. Alternate means of compliance with the AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, for the Boeing Model 747, or the Manager, Los Angeles Aircraft Certification Office for the McDonnell Douglas Models DC-9 and DC-10.

F. Aircraft may be ferried to a base for maintenance in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations.

TABLE I

Aircraft	Part nomenclature	Aircraft Manufacturers part No.	Serial Nos.
Boeing 747-100/200	Brace Assembly Side Body Landing Gear	65805280	CPT 1163 PTM CPT 1257 PTM CPT 2474 PTM CPT 2714 PTM CPT 2828 PTM CPT 2836 PTM CPT 2838 PTM CPT 2839 PTM CPT 2886 PTM CPT 2908 PTM CPT 2959 PTM CPT 2981 PTM CPT 2982 PTM CPT 2991 PTM CPT 3048 PTM CPT 3056 PTM CPT 3063 PTM CPT 3090 PTM CPT 3091 PTM CPT 3101 PTM CPT 3149 PTM CPT 3691 PTM CPT 3733 PTM CPT 3398 PTM
	Wing & Body Gear	65805133	CPT 1134 PTM CPT 1160 PTM CPT 1201 PTM1207 CPT 1129 PTM CPT 1395 PTM CPT 1310 PTM CPT 1308 PTM CPT 1417 PTM CPT 1422 PTM CPT 1440 PTM CPT 1301 PTM CPT 1306 PTM CPT 1180 PTM CPT 1161 PTM CPT 1178 PTM CPT 1208 PTM CPT 1209 PTM CPT 1246 PTM CPT 402 PTM CPT 421 PTM
Boeing 747-SP McDonnell Douglas DC-9	Axle Wing & Body Gear	65B19917	CPT 4361 PTM CPT 0886 PTM M 495 PTM
	Nose Gear Cylinder	5920602-5 or 5920602-501	
McDonnell Douglas DC-10	Nose Gear Piston	5950603-501 or 5920603-5	
	Main Gear Link Assy Lower Down Lock	ARG7009-501 or ARG7009-7	
	Axle MLG	ARG7313-3 or ARG7313-1	
	Link	ARG7107-5 or ARG7107-1	
	Bolt—Torque, Link—Upper MLG	ARG7323-1	

TABLE I—Continued

Aircraft	Part nomenclature	Aircraft Manufacturers part No.	Serial Nos.
	Arm—Downlock MLG.....	ARG7147-1 or ARG7147-3	CPT 1328 PTM
	Link Assembly Forward Brake.....	ARG7019-1 or ARG7019-5	CPT 019 PTM CPT 941 PTM
	Link Assembly Forward Brake MLG.....	ARG7378-1 or ARG7378-3	CPT 672 PTM CPT 758 PTM
	Bolt—Torque Link—Lower MLG.....	ARG7337-1	CPT 063 PTM CPT 039 PTM CPT 073 PTM CPT 040 PTM CPT 041 PTM

This amendment becomes effective March 19, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

**Note.**—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities since few, if any, small entities operate the Model 747, DC-9, or DC-10 airplanes. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on February 1, 1984.

Wayne J. Barlow,

Acting Director Northwest Mountain Region.

[FR Doc. 84-3628 Filed 2-9-84; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 84-CE-1-AD; Amendment 39-4804]

#### Airworthiness Directives; Cessna Models 414A, 421C and 425 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to certain Cessna Models 414A, 421C and 425 airplanes which requires a one-time inspection of windshield attachment fastener holes for cracks, and repair or replacement of cracked windshields as necessary. A limit on pressurization differential is also imposed until these inspections are accomplished. An instance of an inflight windshield failure has occurred on a Model 414A airplane. The pressurization limitation and inspection will assure the continued structural integrity and prevent failure or loss of the windshield.

**EFFECTIVE DATE:** February 16, 1984.

**Compliance:** As prescribed in the body of the AD.

**ADDRESSES:** Cessna Multi-engine Customer Care Service Information Letter ME83-33 dated September 30, 1983, and Revision 1 dated December 2, 1983, pertaining to this subject on Models 414A and 421C airplanes and applicable to this AD may be obtained from Cessna Aircraft Company, Piston Aircraft Marketing Division, Wichita, Kansas 62201; Telephone (316) 685-9111.

Cessna Prop-Jet Customer Care Service Information Letter PJ83-18 dated September 30, 1983, and Revision 1 dated November 23, 1983, pertaining to this subject on the Model 425 airplanes and applicable to this AD may be obtained from Cessna Aircraft Company, Conquest Marketing Division, Wichita, Kansas 67277; Telephone (316) 946-6600. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:**

Lawrence S. Abbott, Aerospace Engineer, Aircraft Certification Office, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 269-7005.

**SUPPLEMENTARY INFORMATION:**

Windshields on Cessna Models 414A, 421C and 425 are secured to the fuselage by fasteners around the periphery of the windshield. Contact between the windshield and fastener is prevented by grommets in oversize fastener holes. There have been reports that cracks have developed at the fastener location in the acrylic windshield when improperly installed. Typically the fastener contacts an attachment hole in the windshield and initiates a crack at the contact point. The manufacturer believes that some windshields installed at the factory may have been improperly installed. Accordingly, Cessna issued Service Information Letters ME83-33, dated September 30, 1983, and Revision 1 dated December 2, 1983, and PJ83-18,

dated September 30, 1983, and Revision 1 dated November 23, 1983, which recommend a one-time inspection of the windshield attach hole for cracks on airplanes with the original factory windshield installation. If one or more cracks are found, the Service Letters recommend the windshield be replaced or repaired and properly installed. This inspection, and windshield repair or replacement, if necessary, will eliminate the cracking problem described above and assure the continued structural integrity of the windshield.

Since the FAA has determined that the unsafe conditions described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring a one-time inspection of the windshields per Cessna Service Information Letters ME83-33 and Revision 1 or PJ83-18 and Revision 1 as applicable on certain Cessna Models 414A, 421C, and 425 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

#### List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation

Regulations (14 CFR Section 39.13) is amended by adding the following new AD.

**Cessna:** Applies to Model 414A (Serial Numbers 414A0001 through 414A0833; 414A0835 through 414A0851; 414A0853 through 414A0856; and 414A0858), Model 421C (Serial Numbers 421C0273 through 421C1257), and Model 425 (Serial Number 425-0002 through 425-0177), airplanes with the original factory windshield installation certificated in any category.

**Compliance:** Required as indicated, unless already accomplished.

To prevent cracking and possible loss of the windshield, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD fabricate and install, adjacent to the cabin pressurization switch, a temporary placard having white letters of  $\frac{3}{16}$ " minimum height on red background which reads:

**"LIMIT PRESSURIZATION TO 3.0 PSI MAXIMUM";**

and operate the airplane in accordance with this placard.

(b) Within 100 hours time-in-service after the effective date of this AD.

(1) Visually inspect the attach holes in the pilots and co-pilots windshield in accordance with applicable Cessna Service Information Letters ME83-33 dated September 30, 1983, and ME83-33 Revision 1 dated December 2, 1983, or PJ83-18 dated September 30, 1983, and PJ83-18 Revision 1 dated November 23, 1983.

(2) Replace or repair unacceptable windshields in accordance with the criteria and instruction in the applicable Cessna Service Information Letters and Revisions.

(3) Remove the temporary placard installed per paragraph a).

(c) Airplanes may be flown depressurized in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) The placard required by paragraph a) of this AD may be installed by the holder of at least an FAA private pilot certificate on any airplane he or she owns or operates. This person must make the prescribed entry in the aircraft maintenance records indicating compliance with paragraph a) of this AD.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas, 67209; Telephone (316) 269-7000.

This amendment becomes effective on February 16, 1984.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89)).

**Note.**—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be

issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on February 1, 1984.

**Murray E. Smith,**

*Director, Central Region.*

[FR Doc. 84-3026 Filed 2-9-84; 8:45 am]

**BILLING CODE 4910-13-M**

#### 14 CFR Part 97

[Docket No. 23897; Amdt. No. 1261]

#### Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

#### For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

#### For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the Region in which the affected airport is located.

#### By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. § 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register* expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of

new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

#### List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Aviation safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. By Amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

\* \* \* Effective April 12, 1984

Bowie, TX—Bowie Muni, VOR/DME RWY 17, Amdt. 2, Cancelled

\* \* \* Effective March 15, 1984

Washington, D.C.—Washington National, VOR/DME RWY 18, Amdt. 7

Jefferson, GA—Jackson County, VOR/DME RWY 34, Orig.

Marshalltown, IA—Marshalltown Muni, VOR RWY 12, Amdt. 5

Marshalltown, IA—Marshalltown Muni, VOR RWY 30, Amdt. 5

Olathe, KS—Johnson County Executive, VOR RWY 35, Amdt. 8

Presque Isle, ME—Northern Maine Regional Arpt at Presque Isle, VOR/DME RWY 1, Amdt. 10

Baldwin, MI—Baldwin Muni, VOR/DME-A, Orig.

Holland, MI—Tulip City, VOR-A, Amdt. 7

Glenwood, MN—Glenwood Muni, VOR RWY 33, Amdt. 1

Morris, MN—Morris-Stevens County, VOR RWY 32, Amdt. 2

Okolona, MS—Okolona Muni-Richard Stovall Field, VOR/DME RWY 18, Orig.

Laurel, MT—Laurel Muni, VOR RWY 21, Orig.

Clovis, NM—Clovis Muni, VOR RWY 22, Amdt. 2

Pembina, ND—Pembina Muni, VOR RWY 33, Amdt. 2

Lake Geneva, WI—Americana, VOR RWY 23, Amdt. 5

West Bend, WI—West Bend Muni, VOR RWY 13, Amdt. 4

West Bend, WI—West Bend Muni, VOR RWY 24, Amdt. 1

West Bend, WI—West Bend Muni, VOR RWY 31, Amdt. 7

\* \* \* Effective January 26, 1984

Sanford, ME—Sanford Muni, VOR RWY 7, Amdt. 1

\* \* \* Effective January 19, 1984

Rapid City, SD—Rapid City Regional, VOR/DME or TACAN RWY 14, Amdt. 13

\* \* \* Effective January 12, 1984

Statesville, NC—Statesville Muni, VOR/DME RWY 10, Amdt. 4

\* \* \* Effective January 11, 1984

Huntsville, AL—Huntsville-Madison Co Arpt—Carl T Jones Field, VOR-A, Amdt. 10

The FAA published an Amendment in Docket No. 23856, Amdt. No. 1257 to Part 97 of the Federal Aviation Regulations (VOL 48 FR No. 238 Page 55114; dated December 9, 1983) under Section 97.23 effective March 15, 1984, which is hereby amended as follows:

Alexandria, LA—Esler Regional, VOR RWY 14, Amdt. 12;

Alexandria, LA—Esler Regional, VOR RWY 32, Amdt. 13;

Bunkie, LA—Bunkie Muni, VOR/DME-A, Amdt. 1, Cancellation;

Marksville, LA—Marksville Muni, VOR/DME-A, Amdt. 1, Cancellation;

Marksville, LA—Marksville Muni, VOR/DME-B, Orig.; and

Pineville, LA—Pineville Muni, VOR-A, Amdt. 3 are rescinded.

The following will remain in effect:

Alexandria, LA—Esler Regional, VOR RWY 14, Amdt. 11;

Alexandria, LA—Esler Regional, VOR RWY 32, Amdt. 12;

Bunkie, LA—Bunkie Muni, VOR/DME-A, Amdt. 1;

Marksville, LA—Marksville Muni, VOR/DME-A, Amdt. 1; and

Pineville, LA—Pineville Muni, VOR-A, Amdt. 2.

2. By amending Part 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

\* \* \* Effective March 15, 1984

Olathe, KS—Johnson County Executive, LOC RWY 17, Amdt. 4

\* \* \* Effective February 16, 1984

Springdale, AR—Springdale Muni, LOC RWY 18, Orig.

\* \* \* Effective January 13, 1984

Reno, NV—Reno Cannon Intl, LOC-1 RWY 16R, Amdt. 2

Reno, NV—Reno Cannon Intl, LOC-2 RWY 16R, Amdt. 1

The FAA published an Amendment in Docket No. 23856, Amdt. No. 1257 to Part 97 of the Federal Aviation Regulations (VOL 48 FR No. 238 Page 55114; dated December 9, 1983) under Section 97.25 effective March 15, 1984, which is hereby amended as follows:

Alexandria, LA—Esler Regional, LOC BC RWY 8, Amdt. 8 is rescinded.

Alexandria, LA—Esler Regional, LOC BC RWY 8, Amdt. 7 remains in effect.

3. By amending Part 97.27 NDB and NDB/DME SIAPs identified as follows:

\* \* \* Effective May 10, 1984

Covington/Cincinnati, KY—Greater Cincinnati Intl, NDB RWY 9R, Amdt. 8

Covington/Cincinnati, KY—Greater Cincinnati Intl, NDB RWY 18, Amdt. 13

Covington/Cincinnati, KY—Greater Cincinnati Intl, NDB RWY 36, Amdt. 26, Cancelled

\* \* \* Effective March 15, 1984

Show Low, AZ—Show Low Muni, NDB-A, Orig.

Hugoton, KS—Hugoton Muni, NDB RWY 2, Orig.

Frenchville, ME—Northern Aroostook Regional, NDB RWY 32, Amdt. 2

Medford, OK—Medford Muni, NDB RWY 17, Amdt. 1

Marysville, OH—Union County, NDB RWY 27, Amdt. 4, Cancelled

Marysville, OH—Union County, NDB RWY 27, Orig.

Presidio, TX—Presidio Lely Intl, NDB-A, Orig., Cancelled

Barre-Montpelier, VT—Edward F Knapp State, NDB RWY 35, Amdt. 2

West Dover, VT—Mount Snow, NDB RWY 1, Orig.

West Bend, WI—West Bend Muni, NDB RWY 31, Amdt. 8

\* \* \* Effective January 13, 1984

Reno, NV—Reno Canon Intl, NDB RWY 16R, Amdt. 2

\* \* \* Effective January 12, 1984

Statesville, NC—Statesville Muni, NDB RWY 20, Amdt. 6

\* \* \* Effective January 11, 1984

Huntsville, AL—Huntsville-Madison Co Arpt—Carl T Jones Field, NDB RWY 18R, Amdt. 10

The FAA published an Amendment in Docket No. 23856, Amdt. No. 1257 to Part 97 of the Federal Aviation Regulations (VOL 48 FR No. 238 Page 55114; dated December 9, 1983) under Section 97.27 effective March 15, 1984, which is hereby amended as follows:

Alexandria, LA—Esler Regional, NDB RWY 26, Amdt. 7;

DeRidder, LA—Beauregard Parish, NDB RWY 36, Amdt. 1;

New Roads, LA—False River Airpark, NDB RWY 36, Amdt. 1;

Marksville, LA—Marksville Muni, NDB RWY 4, Orig.; Cancellation;  
 Marksville, LA—Marksville Muni, NDB RWY 22, Orig.; and  
 Natchitoches, LA—Natchitoches Muni, NDB RWY 34, Amdt. 3 are rescinded.

The following will remain in effect:

Alexandria, LA—Esler Regional, NDB RWY 26, Amdt. 6;  
 DeRidder, LA—Beauregard Parish, NDB RWY 36, Orig.;  
 New Roads, LA—False River Airpark, NDB RWY 36, Orig.;  
 Marksville, LA—Marksville Muni, NDB RWY 4, Orig.; and  
 Natchitoches, LA—Natchitoches Muni, NDB RWY 34, Amdt. 2.

4 By amending Part 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

\* \* \* Effective May 10, 1984

Covington/Cincinnati, KY—Greater Cincinnati Intl, ILS RWY 9R, Amdt. 10  
 Covington/Cincinnati, KY—Greater Cincinnati Intl, ILS RWY 18, Amdt. 14  
 Covington/Cincinnati, KY—Greater Cincinnati Intl, ILS RWY 27L, Amdt. 7  
 Covington/Cincinnati, KY—Greater Cincinnati Intl, ILS RWY 36, Amdt. 30

\* \* \* Effective April 12, 1984

Dallas-Fort Worth, TX—Dallas-Fort Worth Regional, ILS RWY 35L, Amdt. 10, Cancelled  
 Dallas-Fort Worth, TX—Dallas-Fort Worth Regional, ILS RWY 36R, Amdt. 10, Cancelled

\* \* \* Effective March 15, 1984

Groton (New London), CT—Groton-New London, ILS RWY 5, Amdt. 7  
 Miami, FL—Miami Intl, ILS RWY 9L, Amdt. 26  
 Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, ILS RWY 4, Amdt. 21  
 Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, ILS RWY 11R, Amdt. 2

Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, ILS RWY 22, Amdt. 1  
 Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, ILS RWY 29L, Amdt. 38

Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, ILS RWY 29R, Amdt. 5

Salt Lake City, UT—Salt Lake City Intl, ILS/DME RWY 16R, Amdt. 2

\* \* \* Effective January 25, 1984

Greenville, SC—Greenville Downtown, ILS RWY 36, Amdt. 25

\* \* \* Effective January 20, 1984

Syracuse, NY—Syracuse Hancock Intl, ILS RWY 10, Amdt. 3

\* \* \* Effective January 13, 1984

Reno, NV—Reno Cannon Intl, ILS RWY 16R, Amdt. 4

\* \* \* Effective January 11, 1984

Huntsville, AL—Huntsville-Madison Co Arpt—Carl T Jones Field, ILS RWY 18R, Amdt. 15

Huntsville, AL—Huntsville-Madison Co Arpt—Carl T Jones Field, ILS RWY 36L, Amdt. 2

The FAA published an Amendment in Docket No. 23856, Amdt. No. 1257 to Part 97 of the Federal Aviation Regulations (VOL 48 FR No. 238 Page 55114; dated December 9, 1983) under Section 97.27 effective March 15, 1984, which is hereby amended as follows:

Alexandria, LA—Esler Regional, ILS RWY 26, Amdt. 11 is rescinded.

Alexandria, LA—Esler Regional, ILS RWY 26, Amdt. 10 remains in effective.

5. By amending Part 97.31 RADAR SIAPs identified as follows:

\* \* \* Effective May 10, 1984

Covington/Cincinnati, KY—Greater Cincinnati Intl, RADAR-1, Amdt. 20

\* \* \* Effective March 15, 1984

Anchorage, AK—Anchorage Intl, RADAR-1, Amdt. 9

Galena, AK—Galena, RADAR-1, Amdt. 7

6. By amending Part 97.33 RNAV SIAPs identified as follows:

\* \* \* Effective March 15, 1984

Holland, MI—Tulip City, RNAV RWY 26, Amdt. 2

West Bend, WI—West Bend Muni, RNAV RWY 13, Amdt. 4

\* \* \* Effective January 12, 1984

Statesville, NC—Statesville Muni, RNAV RWY 2, Amdt. 4

{Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3)}

**Note.**—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on February 3, 1984.

**Kenneth S. Hunt,**

*Director of Flight Operations.*

**Note.**—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

[FR Doc. 84-3618 Filed 2-9-84; 8:45 am]

**BILLING CODE 4910-13-M**

## CIVIL AERONAUTICS BOARD

### 14 CFR Part 253

[Economic Reg; Amdt. No. 4; Docket 41443; ER-1375]

### Terms of Contract of Carriage

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Final rule.

**SUMMARY:** The CAB is conforming its rules to allow air carriers to incorporate their domestic baggage liability rules by reference. These terms may include limits on the air carrier's liability for loss, damage, or delay of goods and baggage, including fragile and perishable goods. This rule is consistent with the final domestic baggage rule, ER-1374, that was adopted today. This action is taken in response to a petition by the Air Transport Association.

**DATES:** Adopted: December 23, 1983. Effective: April 10, 1984.

**FOR FURTHER INFORMATION CONTACT:** Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

**SUPPLEMENTARY INFORMATION:** This rule is adopted for the reasons discussed in ER-1374, which was adopted today.

### List of Subjects in 14 CFR Part 253

Advertising, Air carriers, Air transportation, Claims, Consumer protection, Freight, Law, and Travel.

### PART 253—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 253, *Notice of Terms of Contracts of Carriage*, as follows:

#### 1. The authority for Part 253 is:

**Authority:** Secs. 204, 403, 404, and 411, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 760, 769; 49 U.S.C. 1324, 1373, 1374, 1381.

2. Paragraph (b)(1) of § 253.5 is amended by adding a reference to baggage terms so that it reads:

#### § 253.5 Notice of incorporated terms.

(b) \* \* \*

(1) Limits on the air carrier's liability for personal injury or death of passengers, and for loss, damage, or delay of goods and baggage, including fragile or perishable goods.

By the Civil Aeronautics Board.  
Phyllis T. Kaylor,  
Secretary.

[ER Doc. 84-3798 Filed 2-9-84; 8:45 am]  
BILLING CODE 6320-01-M

#### 14 CFR Part 254

[Economic Reg.; Docket 41443; ER-1374]

#### Domestic Baggage Liability

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Final rule.

**SUMMARY:** The CAB is adopting final rules on domestic baggage liability for airlines. The rules apply to all flights on large aircraft (over 60 seats) and to small aircraft flights that are on the same ticket. These airlines may not limit their liability for lost, damaged or delayed baggage to less than \$1250 per passenger. Airlines may notify passengers by a written notice on or with the airline ticket of their limitations on liability either by specific notice or by providing a Board-mandated notice. This rule is adopted partly on the Board's initiative, and partly in response to a petition by the Air Transport Association.

**DATES:** Adopted: December 23, 1983.

Effective: April 10, 1984.

**FOR FURTHER INFORMATION CONTACT:**

Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; 202-673-5442.

**SUPPLEMENTARY INFORMATION:** In September 1982, the Board adopted a final rule (ER-1305, 47 FR 52987, November 24, 1982) on baggage liability rules for air carriers in interstate and overseas air transportation. That rule, which was codified as 14 CFR Part 254, provided that airlines in interstate and overseas air transportation could not limit their liability for direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of, a passenger's personal property, including baggage, in its custody to less than \$1000 per passenger.

The rule did not apply to flights on aircraft with less than 60 passenger seats. In addition, Part 254 required a carrier to provide written notice to passengers on or with its tickets concerning any limitation on its baggage liability, including its rules for fragile and perishable goods, and the availability, if the carrier provided it, of excess valuation insurance coverage. This rule was the result of a reexamination of the need for continued

regulation in this area during and after sunset of the Board.

On December 17, 1982, the Air Transport Association (ATA) petitioned the Board to amend the new Part 254 prior to its effective date of February 22, 1983. ATA argued that requiring each carrier to give specific ticket notice of its baggage liability rules would undermine the usefulness of standard ticket stock used by travel agents. In addition, it argued that the Board failed to give adequate notice and opportunity to comment on its proposal to raise the minimum liability limit from \$750 to \$1000, and that the Board did not fulfill the requirements of the Administrative Procedure Act in adopting the notice provisions in Part 254.

In response to ATA's petition, the Board stayed the February 22, 1983, effective date of the rule by ER-1305A, 48 FR 6961, February 17, 1983. After some further deliberation, it adopted a notice of proposed rulemaking (EDR-458, 48 FR 52987, May 18, 1983) to address ATA's concerns and to request further comments on the applicability of the rule, the notice requirements and the minimum liability limitations.

EDR-458 proposed to:

1. Require carriers to provide specific notice of liability limitations to passengers on or with their tickets by either providing a statement of their actual monetary baggage liability limitation, or including a Board-prescribed statement;
2. Require any carrier, regardless of aircraft size, to observe the Board's minimum baggage liability limits for all flight segments included on the same ticket with a large-aircraft segment;
3. Increase the minimum liability limitation to either \$1,000 or \$1,250; and
4. Require carriers to provide excess valuation insurance coverage.

Comments were filed by airlines, consumer groups, governments, businesses and private individuals. The commenters included the Air Transport Association (representing Air Cal, Air Florida, Alaska, American, Capitol, Continental, Delta, Frontier, Midway, Northwest, Pan Am, PSA, TWA, United, USAir and Western), the Regional Airline Association (RAA), Global International Airways, People Express, Southwest, Transamerica, the Aviation Consumer Action Project (ACAP), the International Airline Passengers Association (IAPA), the State of Hawaii, Jewel Companies, the Natrona County International Airport, the law offices of Thomas A. Dickerson, and five individuals. Each issue will be discussed separately.

#### Notice to Passengers

ER-1305 required each carrier to provide written notice to passengers, on or with its tickets, concerning (1) any limitation on baggage liability, including rules for fragile or perishable goods, and (2) the availability, if the carrier provided it, of excess valuation insurance coverage.

The Board subsequently expressed concern that carrier-specific notice might levy unjustified costs on airlines and travel agents because each carrier would have to print and distribute its own ticket or stuffer to its entire sales network. The Board acknowledged that such carrier-specific notice might undermine the uniform ticket stock system, which provides many benefits for consumers, travel agents, and air carriers.

In EDR-458, the Board proposed to amend its requirement that each carrier provide specific notice of its liability limitation, to allow carriers to give notice of their liability limitation by using one of two options. The first option was to permit a carrier to include a statement of its actual monetary liability on or with its ticket. The second proposed option was to permit an airline to use the following statement:

Federal rules require any limit on an airline's baggage liability to be at least \$1000 per passenger, except for flights on small aircraft where lower limits may apply. Airlines may have higher limits.

EDR-458 proposed that this notice be printed on or with the uniform ticket stock. The Board included the reference to liability on small aircraft to alert connecting passengers that the small-aircraft operator may have lower baggage liability than airlines using large aircraft. In the alternative, the Board proposed to apply its minimum baggage liability limitation to all carriers on any flight segment that is included on the same ticket as a large aircraft segment. This issue is discussed below.

Most of the commenters that addressed the issue of notice supported the proposal, with some qualifications. ATA said that the proposal met its concerns and that the prescribed ticket notice would alert passengers to the minimum liability limits. In addition, it noted that the industry has already included a baggage liability limitation notice on uniform ticket stock.

RAA, Hawaii and Mr. Jones endorsed the proposal. Transamerica further asked that the requirement apply only to tickets printed after the effective date of the rule, since it keeps a full year's supply on hand.

Ms. Ann Stevens stated that passengers should be given oral and written notice of the carrier's liability policy, and asked to sign a "statement of understanding" at check-in. She suggested that the airline be required to keep the statement on file until the time for making claims has passed, and that if the carrier fails to do so, it should not be able to limit its liability. Additionally, she would not apply the limits in cases of gross negligence, such as failure to provide adequate security for the baggage. Finally, she advocated requiring an airline to demonstrate when items are lost that it has made an effort to locate the baggage.

Opposing the Board's proposal were Mr. Dickerson and ACAP. Dickerson stated that other businesses that provide bailments, such as railroads and inns, are not permitted to limit their liability through incorporation by reference. He argued that incorporation by reference "provides no effective notice and has been used in consumer litigation to justify the enforcement of contractual terms which consumers may never see". He concluded that liability limitations should be permitted only where there has been effective notice of the limitations.

ACAP disputed the Board's finding that the cost of using individual ticket stuffers is unjustified by the benefits consumers derive from them. It stated that baggage rules are of exceptional importance to all passengers because this is the area where they incur the greatest financial losses. According to ACAP, incorporation by reference will not give passengers adequate notice of the rules, because only well-educated passengers will know what incorporation by reference means, and most passengers have neither the time nor the incentive to look up the rules.

In recognition of the Board's intent to permit carriers to incorporate by reference, ACAP urged the Board to consider requiring carriers to notify passengers of their baggage rules through other, less burdensome means. Specifically, it suggested that ticket locations have counter signs explaining the baggage liability rules, and have explanations printed on a one-page document that would be available on a free, take-one basis. ACAP argued that this approach would not involve the Board in dictating the content of the rules and would not impose a burden on travel agents.

The Board considers that use of a notice similar to that specified in the rule will allow carriers to continue to use uniform ticket stock while giving passengers adequate notice of the minimum liability limitation. Uniform

ticket stock is important to the functioning of the airline system, with the majority of tickets now sold by travel agents that act for almost all of the carriers. Standard ticket stock benefits all the parties involved by facilitating ticketing of passengers, settlements, and refunds and exchanges. In light of the number of carriers that are handled by a typical travel agent today—a number that is steadily increasing—the Board finds it impractical to require each agent to have different ticket stock or stuffers for each carrier. The benefits to the public from such a cumbersome system would be negligible.

The suggestion that the Board initiate a new form of passenger notice, through giveaway documents or counter signs, is outside the scope of the proposal in this rulemaking. Absent a further substantial demonstration of need, however, the Board remains of the opinion that the elaborate system of notice established by this Part 254 and by Part 253—ticket notice, summary of terms available through travel agents, and full contract terms available on request—is adequate for the purpose.

To some extent, the arguments raised by Dickerson and ACAP against incorporation by reference were considered and disposed of in the rulemaking on Part 253, ER-1302, 47 FR 52128, November 19, 1982. The Board concluded there that short-form ticketing was important to the efficiency of the air transportation system, and that there was no cost justification for replacing the tariff system with one of bulky individual contracts to be given out to each airline passenger. Baggage liability is just one of the many terms of the contract of carriage that are comprehended by that basic policy decision. The Board has recognized, however, the importance of baggage liability to passengers, and its special concern for that subject is the reason for the individual rules that are the subject of this proceeding. The intent of the rules is to alert every passenger directly, in simple terms, of the carrier's limitation of liability, while making the details available through less costly means under the provisions of Part 253. This type and level of notice is at least as detailed and "direct" as that provided by the tariff system that existed before 1983.

The Board has decided to adopt the proposed notice requirements, with some modifications. A carrier may provide conspicuous notice, on or with its tickets, of its liability limit by including either (1) the Board-mandated notice, or (2) a specific statement of its actual liability limitation. The Board

finds that either of these types of notice, which states the amount of the limit, is more likely to be understood by passengers than a general notice that liability may be limited.

The Board has decided, however, to modify the Board-mandated notice for clarity and to conform to the changes made in this final rule. The revised text states:

Federal rules require any limit on an airline's baggage liability to be at least \$1250 per passenger.

The notice has been changed to reflect the minimum baggage liability limitation and to notify passengers as simply as possible of the applicability of the rule. The Board has omitted the sentence stating that the limit might be lower on small aircraft. Such a notice would have been irrelevant and potentially confusing, since as will be discussed below, the Board has decided to apply the rule to small aircraft operations that are included on the same ticket as a large-aircraft segment. Finally, the Board has omitted the sentence stating that liability limits may be higher because it was redundant.

The Board does not find Ms. Stevens' suggestions, for detailed written agreements and notices to be exchanged and retained as each passenger checks in, to be justified in light of the costs that would be involved. Her suggestions with respect to the effect of gross negligence and actions by the airline in response to a loss of baggage are outside the scope of this rulemaking. This proceeding does not concern the basic rules of tort law—degree of fault, mitigating action—that have always underlain the legal rights and duties between passengers and carriers.

In an accompanying final rule, the Board is amending paragraph (b)(1) of § 253.5, *Notice of incorporated terms*, to add the following item to the list of subjects on which passengers may obtain contract information from their ticket sellers: "Limits on the air carriers liability \* \* \* for loss, damage, or delay of goods and baggage, including fragile and perishable items." This change will make each carrier's main provisions on baggage liability available to the public for inspection at every ticket-selling location, including travel agents.

#### Small Aircraft Operations

The Board has not in the past imposed any minimum baggage liability limitations directly on air taxis. Such carriers are, however, required to provide a notice under § 298.30 at all ticketing locations stating their policy on baggage liability. In addition, prior to

the sunset of domestic tariffs, air taxis that filed tariffs for their interline operations with certificated carriers were required to conform to the \$750 minimum liability limitation.

In EDR-458, the Board expressed its concern that any prescribed form of ticket notice alert passengers to the fact that the rule only applied to flights on large aircraft. The Board was concerned that passengers, especially on connecting flights with large and small aircraft, would not know that different rules applied depending on the size of the aircraft. In addition, the Board recognized that when a bag is lost during interline travel involving both large and small aircraft, it is often difficult for the passenger to establish which airline is at fault and which liability limit applies.

To remedy this problem, the proposed Board-mandated notice included a warning that lower limits may apply to flights on small aircraft. In the alternative, the Board proposed to require operators of small aircraft to observe the minimum baggage liability limits for all flight segments included on the same ticket with a large-aircraft segment. The Board requested comments on both alternatives.

Most of the comments that addressed the problem supported extension of the minimum liability rules to air taxis. The supporters included ATA, IAPA, the State of Hawaii, Natrona County, and one individual. ATA stated that extension to these small aircraft operations is a good idea because passengers are unaware that travel on aircraft of different sizes might involve differing liability limits. Additionally, it maintained that a distinction in liability limits between operators of small and large aircraft was unjustified, because a small aircraft operator is just as likely to be at fault as a large aircraft operator. ATA and IAPA both noted that the size of the aircraft is irrelevant to the value of articles contained in a bag.

The State of Hawaii urged the Board to extend its rules to all carriers in scheduled service, without regard to interlining, and to on-demand carriers that interline. It argued that a two-tier baggage liability limitation would confuse passengers, especially foreign visitors.

IAPA contended that when a commuter and a certificated carrier interline, the large carrier often accepts liability only for the lower of the two maximum liability limits. Since there has been increased interlining between commuter and certificated carriers, it believed that all commuter carriers should be required to offer the same baggage protection as certificated

carriers. One individual stated that some commuters have become "nearly small regional carriers" and as a result should be treated as other airlines.

The Regional Airline Association argued that since deregulation, consumer complaints concerning baggage have decreased. As a result, it stated, "the low level of complaints shows no compelling need for drastic reform of the practices of regional air carriers in this area, which are presently largely unregulated. RAA argued that the Board has not shown any change in the regulatory atmosphere since the adoption of ER-1305, where it rejected extension of the rule to commuter air carriers participating in joint tariffs. RAA's board of directors, however, voted not to object to the proposal if the \$750 liability limit were retained and the rules were extended to all carriers.

RAA pointed out that extension to small-aircraft operations covered on the same ticket as another flight segment involving large aircraft will, as a practical matter, extend the Board's liability limits to all commuters. It stated that almost all regionals interline to a substantial extent, and it is not feasible for them to maintain two levels of baggage liability.

RAA stated that the proposed notice will adequately warn the public about possible lower liability limits on small-aircraft segments of multi-segment trips. It said that the Board historically has not regulated the baggage liability practices of uncertificated regional/commuter carriers, even though a standardized notice on uniform ticket stock has been used without any serious problems. It argued that the prescribed notice would not be the only warning that passengers will receive. In addition to that required under Part 253, 14 CFR 298.30 requires air taxis to post counter signs at ticket sales locations. RAA noted that under the common law, carriers avoid unlimited liability only by giving effective notice of their liability limits. Thus, carriers have a strong incentive to give notice of their baggage liability limits.

RAA also pointed out that extension of the baggage rules to small-aircraft operators will require some amendments to § 298.30 of the Board's rules, which requires noncertificated operators of small aircraft to post counter signs regarding their baggage rules. If commuters are required to maintain the same levels as certificated carriers, they argued that there is no reason to subject them to requirements more extensive than other carriers. Similarly, RAA noted that some amendment of the rules may be necessary insofar as § 221.176 requires

certificated small-aircraft operators, but not noncertificated carriers, to post counter signs and ticket notices for international travel. The Board will consider these comments regarding special notice requirements in a separate proceeding. The RAA contentions concerning the level of liability limitation are discussed below under that heading.

The Board has decided to adopt the alternative proposal of applying the rule to all small-aircraft flight segments that are included on the same ticket as a large-aircraft segment. Most of the comments favored this course over a notice warning passengers of possible lower limits. The changes in domestic air transportation since the Deregulation Act of 1978 have prominently included a major increase in the extent of public travel by carriers using small aircraft, and in the importance of such aircraft to the transportation system. The shift to market-based allocation of resources has caused trunk airlines to drop many smaller routes that previously were subsidized by profits from long-haul routes, turning them over to commuter lines using small aircraft that are more efficient for such service. Many of the under-60-seat aircraft that are coming into use have amenities similar to those of larger craft, and passengers have reason to expect that, as integral parts of the air transportation system, their operators will be governed by similar Federal rules. Requiring all operations ticketed together with large aircraft to have the same liability limits will eliminate the possibility of passengers being misled by the liability figure printed on standard ticket stock.

As discussed below, the cost per passenger of baggage liability, evidently on the order of 10 cents, is not such as to raise the possibility of an unreasonable burden on small operators. The cost per passenger of this rule change will probably be far less than that, in actuality, since commuter airlines incur such liability now, albeit with lower limits in some cases. Furthermore, small airlines, with less necessity for highly mechanized baggage handling, should have even more ability than major carriers to minimize their baggage losses by careful handling operations.

Finally, this rule will prevent large aircraft operators from limiting their liability to the lower level set by carriers operating the small aircraft segment of an interline or connecting journey. IAPA stated that carriers often deny knowledge of whether the large or small aircraft operator was responsible for the loss, and therefore refuse to pay more than the lower limit of the two carriers.

Under this rule, all such segments included on the same ticket will be subject to a liability limitation not less than \$1250.

#### Excess Valuation Coverage

EDR-458 proposed to require carriers to offer passengers the opportunity to purchase excess valuation coverage, and to provide conspicuous notice that it is available.

ATA supported the proposal on grounds that the requirement would not be burdensome, and that it is generally offered by ATA's member carriers. ATA recommended, however, that the requirement not apply to curbside check-in, because it would undermine quick baggage handling. ATA argued that current curbside facilities are not equipped to sell excess valuation coverage, and introduction of money drawers could pose security problems. In addition, the personnel at curbside facilities frequently are contract personnel, not regular airline employees, so that the requirement might cause additional security problems. Finally, it stated that any passenger wishing to purchase excess valuation coverage could use the regular check-in procedures.

ACAP stated that there is no historic evidence that requiring carriers to provide excess valuation insurance coverage is or would be burdensome. In addition, it stated that the existence of expedited methods of boarding should not be used to justify abolishing the requirement, because any particular burden could be handled by granting an exemption. Finally, it argued that if the Board decides not to explicitly require excess valuation insurance, the Board should leave the question of whether airlines have an obligation to provide excess coverage to State law.

Mr. Dickerson noted that the availability of excess insurance coverage and knowledge of its existence are important not only to passengers but to carriers seeking to enforce liability limitations under the common law. He concluded that the proposed requirement would benefit both passengers and airlines.

People Express opposed the requirement on the grounds that most carriers offer the coverage voluntarily and that in any event, most passengers can easily obtain it. It warned that by requiring carriers to offer excess valuation coverage, the Board would soon find itself progressively more involved in insurance transactions.

RAA argued that the Board lacks statutory authority to regulate this subject area. RAA stated that charges for excess coverage constitute an

integral part of what the passenger pays for the transportation and that under the Airline Deregulation Act, the Board no longer has authority over domestic fares, rates and tariffs.

Transamerica opposed any requirement that carriers provide excess coverage on the grounds that carriers are not in the insurance business, and that they should be considered to be a source of such coverage only as a last resort. It stated that selling excess coverage would increase a carrier's costs and inconvenience other passengers.

The Board has decided not to specifically require airlines to provide excess valuation insurance. As noted by ATA, all or almost all carriers offer this insurance today without a detailed Board requirement. The Board has decided not to impose such a requirement without a more persuasive showing that regulatory intervention is needed.

It appears to be in the carrier's own interest to offer excess valuation insurance coverage, or at least to make sure that it is readily available. As noted in the *Baggage Liability Rules Case*, 45 CAB 182, 195, "it has long been held that a carrier may demand extra compensation for value in excess of what the passengers may reasonably ask to have transported as baggage. By providing a choice of rates with varying degrees of liability based on declared value, the basic limitation of liability is rendered legal, and is not considered an attempt by a carrier to free itself of responsibility for its own negligence. It is on this basis, therefore, that at common law, the carriers are enabled to limit their liability." Our rule is not intended to preempt state courts on the issue of excess valuation coverage.

#### The Level of Liability Limitation

EDR-458 requested detailed comment on whether to increase the minimum liability limitation from \$750 to \$1000 or to \$1250.

ACAP, IAPA, Dickerson, Natrona County, and two individuals argued that the limit should be raised to \$1250 because of the increases in the cost of consumer goods since the \$750 limit was set in 1976. They stated that the limit should be set high enough to encourage carriers to improve their baggage handling systems. One commenter noted that with the current \$750 limit, it is cheaper to simply pay the claims rather than institute anti-pilferage or security measures. Jewel Companies supported an increase that would reflect changes in the Consumer Price Index (CPI) since 1976 and suggested that the Board consider relating the limit to fluctuations

in the CPI on an annual or semi-annual basis.

ATA, RAA, People Express, Southwest, and Transamerica opposed any increase in the limit. ATA and Transamerica questioned the propriety of relying on the general CPI because much of the increase since 1977 was due to inflation in housing costs and fuel prices. They suggested that the Board rely on the CPI for apparel and commodities, which has risen considerably less. People Express, on the other hand, argued that the Board has failed to establish any correlation between the CPI and the value of articles in passengers' baggage.

ATA, People Express and RAA noted that their average settlement is well below the current \$750 limit. People Express stated that the bulk of its claims are below \$250, whereas RAA contended that the average settlement its members made in 1982 was \$295. ATA warned that raising the limit may encourage "irregular" claims, including overstated values.

ATA claimed that the problem of lost, damaged or delayed baggage is not severe. Industry-wide, its comment indicated that the ratio of lost to carried baggage in 1981 was only .00016. In addition, ATA stated that of the bags not delivered, 40% are not actually lost, but improperly identified so that they cannot be returned to their owners.

ATA and Transamerica stated that the Board's selection of a baggage liability level should reflect a reasonable level of protection and not one that will cover every passenger against every potential loss. In their view, passengers should be expected to protect themselves against major losses. Transamerica stated that it is unlikely that many passengers tender belongings having a value of more than \$1000, especially on domestic flights. Finally, Transamerica noted that passengers who fail to adequately protect themselves against loss or delay are passing on the costs of insuring their goods to all passengers.

RAA opposed any increase in the limit if Part 254 were extended to small-aircraft operators. It argued that fares in short-haul markets are already high and that the costs of providing a higher limit would have to be passed onto consumers. RAA argued that there is no need to increase the limit if passengers are given adequate notice of the limit and if the Board requires carriers to offer excess valuation coverage.

Southwest argued that the limit should be decreased to \$250, if excess valuation coverage is offered. Such a decrease would allow carriers to unbundle fares

so that passengers would only have to pay for whatever services they want or need. It noted that it offers such excess coverage up to \$2500.

The State of Hawaii asked the Board to clarify whether it intends to refer to replacement or depreciated value in establishing the minimum value. If the Board intended to require carriers to pay passengers the cost of replacing lost articles, it believed that the limit should be \$1250. However, if the Board intended only to require carriers to pay passengers the depreciated value of their lost belongings, it believed that \$1000 would be adequate.

Global asked the Board to permit charter carriers to establish their own minimum liability rates, provided that they are clearly stated and acknowledged by the passenger in writing. According to Global, it is often impossible for charter carriers to protect passengers' baggage because they must rely on outside baggage handling services. It argued that having the same liability limit as scheduled carriers would impose an unfair burden on charter carriers. It further noted that passengers that choose charter service pay a substantially lower fare, so that it is reasonable to expect a different quality of service.

Mr. Benjamin Ginsberg, a wholesale tour operator, suggested that charter passengers should be provided with a written explanation of their rights to relief for delayed or lost baggage. The Board notes in response that this rule will in fact apply to charter passengers, so that they must receive notice of the limit. Any contractual terms, such as times or methods of making claims for lost or damaged luggage, must appear in the written contract required to be furnished to charter passengers under 14 CFR Part 380. To the extent that Mr. Ginsberg would require any further explanations, the Board does not find justification for more regulatory protection for charter passengers than that provided to scheduled passengers.

The Board has decided to increase the limit to \$1250. In May 1977, when the \$750 level was adopted, the Consumer Price Index for all Urban Consumers (U.S. City Average: all items) (CPI) was 180.6. In September 1983, the index was 301.8. A proportionate increase in the baggage liability limit would be to \$1253.

The Board is aware that other price indices have risen less than the widely-used CPI. The Apparel-Commodities Index, for example, has risen 25 percent from May 1977 to September 1983. In contrast, ACAP in its comment devised a hypothetical packing list for a woman taking a 2-week vacation in Miami, and

set forth the list price from a major catalog retailer for those items in 1966, 1978, and 1983. It concluded from this study that a proper limit would be \$1280. In evaluating the ACAP study, however, the Board has not been made aware of any statistically verified data on the actual composition of checked baggage. In light of all the arguments presented, it concludes, therefore, that the \$1250 level is the most appropriate amount.

The Board is of the opinion, moreover, that the \$1250 level is in the public interest even if some specialized inflation indices point to a somewhat lower figure. The Board does not consider it feasible, as Jewel Companies suggested, to adjust the limit on an annual or semi-annual basis. Not only would this require a continuing regulatory effort, with possibly considerable controversy over the proper adjustment factors, but it would require airlines to change their liability notices frequently, imposing further costs. Granting that with imprecise data the level set by rule must contain an element of arbitrariness, the Board is of the opinion that a \$1250 baggage liability limitation is reasonable, especially in light of the possibility of future price movements.

In addition, while carriers have some market incentive to reduce the incidence of baggage mishandling, a greater potential liability for that mishandling will in turn increase their incentive. The Board has decided at an earlier stage of this proceeding that it would not be desirable to remove all restrictions on carrier liability limitations, with any limitation subject to common law and market pressures. The Board must thus provide a substitute for those market forces. In so doing, it must determine what is reasonable in the public interest. It must balance the need for economic incentives to be placed on the carrier with the need for protection for the traveler. Based on the experience in this matter, the Board believes that a Federal limitation of \$1250 combined with notice to the passenger provides that balance.

The Board does not find persuasive the arguments that average claims are below the current \$750 limit, or that baggage losses are relatively infrequent. Since claims would normally be not more than the maximum allowable, it is to be expected that the average would be below it. Furthermore, to the extent that a carrier is able to limit damage and loss to baggage, so that its claims frequency and level are low, the change in liability limit will have less effect on it. The liability should not be a measure of the "average amount of baggage" or the "average claim," but rather a figure set high enough to cover all but unusual

cases, while protecting carriers against extraordinary claims.

The offering of excess valuation insurance is not, as Southwest suggested, a sufficient justification for lowering the liability limit from its present figure. For one thing, excess valuation insurance has been offered by almost all airlines continuously. The vast majority of passengers do not purchase excess valuation insurance, and evidently assume that they will be covered by the airline's liability. Baggage liability is indeed a cost spread over all passengers, but it is an arrangement that the public has become very much accustomed to, and one that most probably could not be grossly altered without substantial misunderstanding, inconvenience, and hardship.

Southwest's suggestion that lower limits would allow carriers to "unbundle" fares is rendered less persuasive by the low order of magnitude of costs involved. Using ATA's figures (a loss rate of 0.00016), the overall cost to carriers of baggage liability is on the order of 10 cents per passenger. Unbundling has no meaning with costs at that level; they are lost in the rounding of fares to the nearest dollar that is common throughout the industry.

The same answer applies to RAA's point that small carriers should not have their costs raised by applying the higher limit. Actually, as discussed above, the effect on carrier costs of raising the liability limit is bound to be far smaller than the actual total cost of baggage liability—that is, far smaller than 10 cents per passenger. Furthermore, the Board considers it especially important that interline passengers not experience different limits when moving from one airline to another. Passengers often cannot prove which airline is responsible for a loss, when their baggage is to be transferred directly from one aircraft to another.

The Board finds a logical gap between Global's premise, that charter carriers must often use outside baggage handling services, and its conclusion, that the Board should relieve charter carriers of any required baggage liability limit. If the use of outside contractors by charter carriers means that charter passenger baggage is more likely to be lost, then those passengers are even more in need of adequate liability limits. If it does not mean that, then the burden for charter carriers is no greater than for scheduled carriers. The Board notes that charter passengers typically embark for relatively long and extended trips. Accordingly, they probably have a

larger amount of baggage, on the average, than the overall average of scheduled passengers, which includes a large number of short-haul passengers with no checked baggage at all. Granting that charter service is frequently a low-cost, "no-frills" type of transportation, the Board is not persuaded that compensation for loss of their baggage is one of the "frills" that charter passengers are willing to forgo.

With respect to the State of Hawaii's question as to replacement or depreciated value: the Board rule has no bearing on the method of valuation. How the carrier's liability is measured is a matter of law ultimately to be resolved by the courts. The rule only sets a lower limit on the dollar figure that the carrier may insert in the contract of carriage as the limit of its liability, however computed.

#### Miscellaneous

Although not within the scope of this proceeding, People Express, RAA, and Southwest urged the Board to consider deregulating the area of baggage liability. ATA noted in a footnote that Delta, American and USAir had favored this option in earlier proceedings and still maintained this position.

People Express argued that the proposed baggage rules are inconsistent with the Airline Deregulation Act, Executive Order 12291 and OMB's stated position that this area should be deregulated. The Board, People Express argued, has failed to justify its conclusion that domestic baggage liability limitations are a proper subject for regulation. People Express contended that market forces will operate to protect passengers sufficiently.

The basic question of whether there should be any Federal baggage liability rule at all was considered and discussed in ER-1305, 47 FR 52987, November 24, 1982. The Board finds that the conclusions drawn at that time continue to be valid.

This rule will be effective 60 days after publication in the **Federal Register**, to provide sufficient lead-time for carriers to prepare and distribute new notices. The Board is not adopting Transamerica's suggestion that the new requirements apply only to tickets printed after the effective date of the rule. Such a rule, based on the capricious factor of availability of each carrier's ticket stock, would be confusing for both consumers and the industry, and lack the evenhandedness that should characterize any such regulation.

#### Regulatory Flexibility Analysis

The Board concludes that this rule will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, Pub. L. 96-354.

One group affected are travel agents. There are about 20,000 travel agents, most of whom are small businesses. The effect of this rule will be to eliminate the burden of maintaining different ticket notices for each carrier for which they sell tickets. This represents a cost saving over the alternatives that involve specific notices for each carrier.

Secondly, this rule may have some economic impact on a number of small air carriers. The rule will impose significantly higher liability limitations, and correspondingly higher claims expenses for small carriers who interline with large carriers using the same tickets. There will be some compensating advantage for small carriers, however, in that their interlining with large carriers can take place easily, using the same ticket stock, with no need for the small carrier to furnish any documentation to ticket-selling locations. In addition, travel on the small carriers, in combination with larger ones, will be more attractive, and they may gain some business, to the extent that prospective passengers realize that any baggage losses will be as fully compensated as they are on large aircraft.

In the Board's judgment, the economic impact of this change will not be large, and the benefits to the public more than offset the costs to the small businesses involved. The alternative of continuing to allow a smaller liability limitation for small-aircraft operators, where a higher limit is shown on the ticket, presents a serious likelihood of misleading the public.

The need, objective, and legal basis for this rule and the reporting and recordkeeping requirements involved are described in more detail in the preceding Supplementary Information and the rule that follows. The rule does not duplicate, overlap, or conflict with other Federal rules.

#### McConnell, Vice Chairman, Concurring

I concur with the Board's decision in this amendment of the baggage liability rule. It is the least intrusive alternative. I question, however, whether there is a need for any rules in this area. Baggage handling, claims, and liability are areas that carriers could, and I believe would, use as a marketing tool. Absent Federal regulation, the carriers would have more of an incentive to improve those areas of service because of increased consumer

responsibility thus interest, and because the recourse for passengers would be through court action against the carrier. Innovation would thus be encouraged once Federal protection is removed.

For these reasons, I support the higher \$1250 limit in order to subject the carriers to at least some pressure of higher risk. In the absence of Federal rules, unreasonable carrier actions harming the consumer can be handled through court actions and market pressures.

Barbara E. McConnell

#### Morales, Member Concurring in Part and Dissenting in Part

I fully agree with the majority's decision not to require airlines to provide excess valuation insurance. I believe that this type of insurance will be available to those passengers who require it without the Board's regulatory intervention. The marketplace can, and in other areas of consumer need does, respond to such needs. Clearly, there is an entrepreneurial opportunity here which will be exploited without Board mandate. A Board mandate would more than merely "identify" such an opportunity. How could we require excess valuation insurance to be available and yet not require the airlines to provide it? The fact that airlines would not have to sell it cannot eliminate the burden of assuring that such insurance is in fact available. This type of insurance is almost universally available today; the Board knows of no problem with it; and, as a general rule, we should not impose detailed regulations without a demonstrated need.

I believe that raising the minimum baggage liability limitation to \$1250 is an excessive regulatory intrusion into an area that, in my opinion, clearly does not need our intervention.

While I have supported imposing a minimum baggage limitation, I cannot agree that the *minimum* necessary is more than \$750. I have carefully reviewed the history of this provision. It has become clear to me that even in the *hey-day* of regulation, the liability limit was viewed as a way to establish an amount below which carriers could not unreasonably limit the responsibility they assumed for passenger baggage. The minimum amount does not guarantee a monetary settlement. Consumers have always had and will continue to have to prove their damages to a carrier under these baggage rules. The question is whether the \$750 limit has prevented consumers who have proven actual losses from recovering a reasonable amount from the carrier

responsible for their loss. The answer to that question is clearly "no". While the record in this case shows that inflation and the consumer price index have fluctuated wildly upward in previous years, we do not have a record which show that \$750 is a figure which has been used as a carrier cut-off or excuse to avoid payment of valid consumer claims. The average settlements cited by commenters on this rule ranged between \$250 and \$300. Passage of time alone does not, in my opinion, justify raising a limit which seems to have protected the average person making and proving a baggage claim. I simply do not feel that we have the facts necessary to support raising this amount.

Diane K. Morales

#### Paperwork Reduction Act

This rule is not subject to OMB approval under the Paperwork Reduction Act of 1980. The Board anticipates that there will be fewer than 10 carriers providing carrier-specific notice. The Board expects that most carriers will use the Board-mandated notice, which is not subject to the Act.

#### List of Subjects in 14 CFR Part 254

Air carriers, Consumer protection, Freight.

Accordingly, the Civil Aeronautics Board amends 14 CFR Chapter II by reissuing and revising Part 254 so that it reads as follows:

#### PART 254—DOMESTIC BAGGAGE LIABILITY

Sec.

- 254.1 Purpose.
- 254.2 Applicability.
- 254.3 Definitions.
- 254.4 Carrier liability.
- 254.5 Notice requirement.

Authority: Secs. 204, 403, 404, and 411, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 760, 769; 49 U.S.C. 1324, 1373, 1374, 1381.

##### § 254.1 Purpose.

The purpose of this part is to establish rules for the carriage of baggage in interstate and overseas air transportation. The part sets permissible limitations of air carrier liability for loss, damage, or delay in the carriage of passenger baggage and requires air carriers to provide certain types of notice to passengers.

##### § 254.2 Applicability.

This part applies to any air carrier that provides charter or scheduled passenger service in interstate or overseas air transportation.

##### § 254.3 Definitions.

"Large aircraft" means any aircraft designed to have a maximum passenger capacity of more than 60 seats.

##### § 254.4 Carrier liability.

In any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than \$1250 for each passenger.

##### § 254.5 Notice requirement.

In any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket, either—

- (a) Notice of any monetary limitation on its baggage liability to passengers; or
- (b) The following notice: "Federal rules require any limit on an airline's baggage liability to be at least \$1250 per passenger."

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-3767 Filed 2-9-84; 8:45 am]

BILLING CODE 6320-01-M

#### SECURITIES AND EXCHANGE COMMISSION

##### 17 CFR Part 240

[Release No. 34-20625, File No. S7-950]

#### Exemption for Certain Over-the-Counter Options on Exempted Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

**SUMMARY:** The Commission is adopting Rule 3a12-7, which will designate as exempted securities under the Securities Exchange Act of 1934 (the "Exchange Act") over-the-counter options on government securities ("OTC government options") where (1) such options are traded otherwise than on a national securities exchange or an automated quotation system of a registered securities association; and (2) the options relate to securities representing obligations of \$250,000 or more. The rule will not affect the status

of any option with respect to the Securities Act of 1933.

**EFFECTIVE DATE:** February 10, 1984.

**FOR FURTHER INFORMATION CONTACT:** Kevin S. Fogarty, Esq., Branch of Options Regulation, Division of Market Regulation, (202) 272-7345.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

In Securities Exchange Act Release No. 19162 (October 20, 1982), 47 FR 49409 (November 1, 1982) ("Initial Proposing Release"), the Commission proposed Rule 3a12-7 for comment. The proposal was to establish as "exempted securities" under the Exchange Act options or privileges which relate to securities guaranteed by the U.S. government or issued by the government or government corporations, and which are exclusively traded otherwise than on a national securities exchange or an automated quotation system of a registered securities association.

As discussed in the Initial Proposing Release, the market in OTC government options is a modest one and is dominated by options on the Government National Mortgage Association's mortgage-backed pass-through securities ("GNMAs"). The market is primarily an institutional one, with government securities dealers ordinarily providing market making services and non-dealer participants trading for hedging or income-producing purposes. While the Commission staff has generally taken the position that OTC government options are securities separate from the exempt securities underlying them,<sup>1</sup> the Commission has not, as a general administrative matter, required registration of firms that limit their activities to government securities and OTC government options. As originally proposed, Rule 3a12-7 would have codified this informal practice and also made it clear that the options are not subject to the margin requirements of Section 7 or to any other provision of the Exchange Act that does not apply to "exempted securities." All the provisions of the Securities Act of 1933, including the registration requirements, would remain applicable. The rule's principal purpose is to accommodate market professionals and institutions that trade OTC government options incidentally to their primary business and who, but for their dealings in those

<sup>1</sup> This position has now been written into the securities statutes by virtue of the securities legislation implementing the SEC/CFTC Jurisdictional Accord. See, e.g., Securities Exchange Act of 1934, as amended, Section 3(a)(10), 15 U.S.C. 78c(a)(10).

options, would not be subject to registration and other requirements of the Exchange Act.

Comments opposing the proposal were submitted by the brokerage firm of Donaldson Lufkin & Jenrette and the Options and Derivative Products Committee of the Securities Industry Association. In particular, these commentators warned that a failure to regulate trading and the participants in this market might lead to some of the same irresponsible practices experienced in the late 1970's in the commodity options and GNMA securities markets. They stressed the importance of Commission rules in this market governing financial stability and recordkeeping, since the obligor on the OTC option contract (the "writer") is neither the government nor a well-financed clearing corporation.

As a result of this unexpected opposition to the proposed rule, the Commission resolicited comment<sup>2</sup> to learn more about the OTC government options market, the prospect for public investor participation in it, and the regulatory alternatives for dealing with it.

Six comment letters were received in response to the Resolicitation Release.<sup>3</sup> After the Commission staff had considered these comments and discussed with a number of the commentators the issues raised, the Commission repropose Rule 3a12-7 with a provision limiting its application to OTC government options relating to underlying securities representing obligations of \$250,000 or more. No further comments were received.

## II. Discussion

As noted above, the Commission, in the exercise of administrative discretion, has not sought to impose the expense of registration and associated reporting, recordkeeping and financial requirements upon firms otherwise exempt from these requirements but for an incidental involvement in OTC government options. The rule adopted today, in part, formalizes this policy, conforms with Congressional expectations of an exemption for these products<sup>4</sup> and, of course, does not

prevent the Commission from revisiting the exemption should problems arise in the future.

While some commentators warned that an exemption would leave few ways to assure or even to assess the good faith or financial responsibility of the obligor on the exempted options, others argued that this was no more true with respect to OTC government options than with respect to various other contractual arrangements relating to government securities, such as forward delivery contracts or dealer-financed cash purchases.<sup>5</sup>

In the Commission's view, the Exchange Act should not be applied comprehensively to firms doing business in government securities and OTC options on them without either evidence of abuse or specific Congressional direction. Such comprehensive regulation of OTC government options would more appropriately be considered as part of an overall review of the government securities market and not limited to a single product such as OTC government options.<sup>6</sup>

The Commission does, to some extent, share the concerns cited by commentators of potential selling practice abuses occurring in an unregulated trading environment for OTC government options. Therefore in order to help insure that the exemption is utilized only in the professional/institutional market it is aimed at, the Commission has limited the rule adopted today to options on debt instruments having aggregate principal amounts of \$250,000 or more. While this limitation cannot preclude the sale of OTC government options to individual investors, particularly options well out-of-the-money (which generally have smaller premiums), the limitations should at least inhibit such sales efforts and should do so at very little

Rep. No. 390, 97th Cong., 2d Sess. 5 n. 2 (1982); H.R. Rep. No. 626, Pt. 1, 97th Cong., 2d Sess. 9 and 12 (1982). It should be noted, however, that Congress has since taken some action on its own, exempting OTC options on Federal Home Loan Mortgage Corporation certificates. Pub. L. No. 98-35, 98th Cong., 1st Sess., Section 5.

<sup>2</sup> See Resolicitation Release and Modifying Release.

<sup>3</sup> Although the market in exchange-traded government options has been and will continue to be fully regulated, this was anticipated when the SEC/CFTC Accord legislation was enacted. Such an approach was based on the greater accessibility of the listed options markets to individual public investors and the perception that such markets would be more closely associated in the minds and expectations of investors with the Commission's traditional regulatory role. If, for example, OTC government options were to become standardized and substantial public trading activity were to develop, the Commission believes it might be appropriate to revisit this exemption. This development is not, however, a present prospect.

inconvenience to the professional/institutional type of business that currently characterizes the OTC government options market.<sup>7</sup>

For the reasons stated above, the Commission adopts Rule 3a12-7 as set out below.

## III. Regulatory Flexibility Act Considerations

The Chairman of the Commission certified in connection with the Proposing and Modifying Releases that Rule 3a12-7, if adopted, would not have a significant economic impact on a substantial number of small entities. None of the comments addressed the certification.

## IV. Effects on Competition and Other Findings

Section 23(a)(2) of the Act<sup>8</sup> requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered Rule 3a12-7 in light of the standards cited in Section 23(a)(2) and believes that adoption of Rule 3a12-7 will not impose any burden on competition not necessary or appropriate in furtherance of the Act. As stated herein, the rule is designed to prevent unnecessary burden to traders, and insofar as it contains limitations, they are designed to promote the purposes of the Act by protecting the public against unscrupulous or financially irresponsible persons.

The Commission finds, in accordance with the Administrative Procedure Act,<sup>9</sup> that the adoption of Rule 3a12-7 relieves statutory registration and other requirements and is exemptive in nature. Accordingly, the Commission has determined to make the foregoing action effective immediately upon publication in the Federal Register.

## List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

<sup>7</sup> As noted in the Modifying Release, \$250,000 was selected as a minimum because it represents the minimum principal amount for a mortgage package that can be guaranteed by GNMA. The Commission's understanding is that OTC government options generally are of substantially greater denominations, typically \$1 million or more.

The wording proposed in the Modifying Release has been slightly amended to make clear that the obligations underlying an exempted option must in total represent \$250,000 or more, rather than that the exempted option may relate only to at least one security individually representing a \$250,000 obligation.

<sup>8</sup> 15 U.S.C. 78w(a)(2).

<sup>9</sup> 5 U.S.C. 553(d).

<sup>2</sup> Securities Exchange Act Release No. 19512 (February 18, 1983) 48 FR 8291 (February 28, 1983) ("Resolicitation Release").

<sup>3</sup> For further discussion of these letters, see Securities Exchange Act Release No. 20080 (August 12, 1983), 48 FR 37430 (August 16, 1983) ("Modifying Release").

<sup>4</sup> In connection with the legislation enacting the SEC/CFTC Jurisdictional Accord, both the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce stated that they expected the Commission to define OTC government options as exempted securities. S.

**V. Statutory Basis**

Rule 3a12-7 is adopted under the Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 3(a)(12), 15(a)(2) and 23(a) [15 U.S.C. 78c(a)(12), 78o(a)(2) and 78w(a)].

**VI. Text of the Amendment****PART 240—[AMENDED]**

On the basis of the above discussion and analysis, the Commission amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by adding § 240.3a12-7 as follows:

**§ 240.3a12-7 Exemption for certain derivative securities traded otherwise than on a national securities exchange.**

Any put, call, straddle, option, or privilege traded exclusively otherwise than on a national securities exchange and for which quotations are not disseminated through an automated quotation system of a registered securities association, which relates to any securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States, or securities issued or guaranteed by a corporation in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury pursuant to section 3(a)(12) of the Act, shall be exempt from all provisions of the Act which by their terms do not apply to any "exempted security" or "exempted securities," provided that the securities underlying such put, call, straddle, option or privilege represent an obligation equal to or exceeding \$250,000 principal amount.

By the Commission.

Dated: February 6, 1984.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 84-3740 Filed 2-9-84; 8:45 am]

BILLING CODE 8010-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****18 CFR Part 8**

[Docket No. RM83-67-000]

**Revision of Licensed Hydropower Development Recreation Report: FERC Form 80**

Issued: February 6, 1984.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; notice of effective

date and OMB control number.

**SUMMARY:** On November 27, 1983 the Federal Energy Regulatory Commission issued a final rule in Docket No. RM83-67-000, 48 FR 53,090 (November 25, 1983), revising FERC Form 80, Licensed Hydropower Development Recreation Report. This document gives notice of the effective date and of the OMB control number for § 8.11 of the final rule.

**EFFECTIVE DATE:** This rule was effective January 24, 1984.

**FOR FURTHER INFORMATION CONTACT:** Karen Hurwitz, Rulemaking and Legislative Analysis Division, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033.

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (Supp. V 1981) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1983), require that OMB approve certain information collection requirements imposed by agency rule. On January 20, 1984, OMB approved the information collection requirements of § 8.11 and issued control number 1902-0106 for that section. The final rule in Docket No. RM83-67-000 was effective on January 24, 1984.

**§ 8.11 [Amended]**

1. Section 8.11 is amended by adding "(Approved by the Office of Management and Budget under control number 1902-0106)," to the end thereof.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 84-3561 Filed 2-9-84; 8:45 am]

BILLING CODE 6717-01-M

**18 CFR Part 35**

[Docket No. RM83-62-000]

**Treatment of Purchased Power in the Fuel Cost Adjustment Clause for Electric Utilities; Correction**

Issued: February 7, 1984.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of receipt of OMB approval and control number for final rule; corresponding correction.

**SUMMARY:** This document gives notice of receipt of approval by the Office of Management and Budget of the information collection provisions of a final rule issued by the Commission in

Docket No. RM83-62-000 (Order No. 352) on December 7, 1983, and of receipt of an OMB control for those provisions. The final rule, which will be effective on February 13, 1984, amends the Commission's regulations with respect to the treatment of purchased power costs in the fuel cost adjustment clause for electric utilities. This document also amends the final rule by adding the OMB control number to the Commission's regulations.

**DATE:** As provided for in Order 352, the rule is effective on February 13, 1984.

**FOR FURTHER INFORMATION CONTACT:** Wilbur Earley, (202) 357-8158 or Robert S. Angyal, (202) 357-8228, Office of Regulatory Analysis, Federal Energy Regulatory Commission, Room 3000, 825 North Capitol Street NE., Washington, D.C. 20426.

**SUPPLEMENTARY INFORMATION:** On December 7, 1983, the Commission issued a final rule amending its regulations on the treatment of purchased power costs in the fuel cost adjustment clause used by electric utilities. Order No. 352, Docket No. RM83-62-000, 25 FERC ¶ 61,378, 48 FR 55429 (December 13, 1983). Because certain provisions of the final rule appeared to be subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982), those provisions were submitted to the Office of Management and Budget for review, and for the assignment of a control number upon approval by OMB.

OMB has now notified the Commission that it has approved the provisions of the rule submitted to it for review. OMB has assigned those provisions the following control number: 1902-0096. Accordingly, by this document, the Commission is amending its final rule to incorporate the OMB control number. The effective date of the rule is February 13, 1984.

The following correction is made in FR Doc. 83-33009, appearing on page 55437 of the December 13, 1983 issue of the *Federal Register*:

**PART 35—[AMENDED]****§ 35.14 [Amended]**

1. § 35.14 is amended by removing the period at the end of that paragraph (a)(12)(v) and adding the following:

(OMB) control No. 1902-0096)

Kenneth F. Plumb,  
Secretary.

[FR Doc. 84-3669 Filed 2-9-84; 8:45 am]

BILLING CODE 6717-01-M

## 18 CFR Parts 154, 157, 375 and 381

[Docket No. RM 82-25-000; Order No. 360]

## Fees Applicable to Producer Matters Under the Natural Gas Act

Issued: February 6, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish fees for the services and benefits it provides to producers under the Natural Gas Act. This rule is the first of a series of rules to be issued on fees. These fees are authorized by the Independent Offices Appropriations Act. That Act provides for the collection of fees to make agencies "self-sustaining to the full extent possible."

**EFFECTIVE DATE:** This rule will become effective April 25, 1984.

**FOR FURTHER INFORMATION CONTACT:** Karen S. Hurwitz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8033.

## SUPPLEMENTARY INFORMATION:

## I. INTRODUCTION

The Federal Energy Regulatory Commission (Commission) is adding a new Part 381 to its regulations to establish fees for services and benefits provided to natural gas producers under the Natural Gas Act (NGA).<sup>1</sup> This rule establishes the following fees for producer matters: (1) Blanket certificate for a small producer, \$800; (2) producer certificate of public convenience and necessity, \$1600; and (3) changes in producer rate schedules, \$300. This rule is one part of the Commission's ongoing program to establish fair and equitable fees for the services and benefits provided to those entities subject to the Commission's regulatory jurisdiction. To establish Docket No. RM82-25-000 a major part of the fee structure for the Commission's NGA activities, this rule is being issued at the same time as the Commission's rule establishing fees for natural gas pipeline rate changes under the NGA (see companion Docket No. RM83-2-000).

## II. BACKGROUND

The Commission is authorized under the Independent Offices Appropriation Act of 1952 (IOAA) to establish fees for

services and benefits it provides.<sup>2</sup> The IOAA provides in pertinent part:

[A]ny work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency . . . to or for any person . . . shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation . . . to prescribe therefore such fee, charge, or price, if any, which he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration the direct and indirect costs to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amounts so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts . . .

The principal interpretation of the IOAA is Bureau of the Budget Circular A-25,<sup>3</sup> which states that a fee should be assessed for each measurable unit or amount of government service or property from which an identifiable recipient derives a special benefit.<sup>4</sup>

In accordance with the IOAA and authoritative interpretations of that statute,<sup>5</sup> the Commission, in establishing any fee, must:

<sup>2</sup> Act of Aug. 31, 1951, Ch. 376, Title v, 501, 65 Stat. 290, as codified, 31 U.S.C. 483(a) (1970).

<sup>3</sup> Bureau of the Budget Circular A-25 (September 23, 1959). This interpretation has been cited by the United States Supreme Court as "the proper construction of the act." *FPC v. New England Power Co.*, 415 U.S. 345, 351 (1974).

<sup>4</sup> Budget Circular A-25, at 1-2:  
*General Policy.* A reasonable charge . . . should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit . . . For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

a. Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (e.g., receiving a patent, crop insurance, or a license to carry on a specific business); or

b. Provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience for airline routes, or safety inspections of craft); . . .

c. Is performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public (e.g., receiving a passport, visa, airman's certificate, or an inspection after regular duty hours).

<sup>5</sup> See *National Cable Television Association, Inc. v. United States*, 415 U.S. 336 (1974); *FPC v. New England Power Co.*, 415 U.S. 345 (1974); *Mississippi Power & Light v. NRC*, 601 F.2d 223 (5th Cir. 1979); *National Cable Television Association, Inc. v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976); *Electronic Industries Association v. FCC*, 554 F.2d 1109 (D.C. Cir. 1976); *National Association of Broadcasters v. FCC*, 554 F.2d 1118 (D.C. Cir. 1976); *Capital Cities Communications, Inc. v. FCC*, 554 F.2d 1135 (D.C. Cir. 1976).

(a) Identify the service for which the fee is to be assessed;

(b) Explain why that particular service benefits an identifiable recipient more than it benefits the general public;

(c) Base the fee on as small a category of service as practical;

(d) Demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show that those costs are incurred in connection with the service rendered to the beneficiary; and

(e) Set a fair and equitable fee for the service.

For the reasons detailed below, the Commission believes that the fees set forth in this final rule meet these requirements of the IOAA.

## III. SUMMARY AND ANALYSIS OF COMMENTS

The services and benefits provided to producers under the NGA for which the Commission is instituting a fee are the following:

1. \$800 for Commission review of applications for blanket certificates for small producers under section 7(c) of the NGA, filed in accordance with 18 CFR 157.40(b).

2. \$1600 for Commission review of applications by producers for certificates of public convenience and necessity under section 7(c) of the NGA, filed in accordance with 18 CFR Part 157.

3. \$300 for Commission review of changes in producer rate schedules under section 4 of the NGA, filed in accordance with 18 CFR 154.94.

## A. Identification of Services

A small producer is an independent producer of natural gas who is not affiliated with a Class A natural gas pipeline company and whose total jurisdictional sales on a nationwide basis, together with such sales by affiliated producers, were not in excess of 10,000,000 Mcf at 1473 psia (60° F) during the preceding calendar year. To lessen the burden of filing requirements on small producers of gas, the Commission, under section 7(c) of the NGA, permits sales by small producers under a blanket certificate which covers all existing and future sales by the small producer subject to certain limitations.<sup>6</sup> The blanket certificate benefits the small producer in two important ways. First, it is a one time filing covering all existing and future jurisdictional small producer sales. This differs from large producers, who must secure a certificate for every new service. Second, the

<sup>1</sup> 15 U.S.C. 717-717w (1976 & Supp. V 1981).

<sup>6</sup> See 18 CFR 157.40.

blanket certificate holder does not need to file its rate schedules with the Commission, and thus, does not have the obligation of filing all of its changes in rate schedules like the large producer.

A large producer is a producer whose total jurisdictional sales are in excess of 10,000,000 Mcf. Large producers under the NGA are required under section 7(c) of the Act to obtain from the Commission a certificate of public convenience and necessity prior to commencing any sale of gas for resale in interstate commerce. In certain situations is where the natural gas involved was committed or dedicated to interstate commerce on or before November 8, 1978, producers are required to file for authority to commence new sales and to modify existing certificate authority where appropriate. A certificate of public convenience and necessity benefits an applicant by allowing the applicant to engage in the business of sale for resale of natural gas.

Applications for producer certificates of public convenience and necessity and blanket certificates for small producers are processed by the Office of Pipeline and Producer Regulation (OPPR). Each application is noticed in the *Federal Register* and is reviewed for conformity with the Commission's regulations. A draft order is prepared and reviewed by the Office of the General Counsel for legal sufficiency. In most cases, the Director of OPRP conducts an abridged statutory hearing required under 18 CFR 385, Subpart H, and issues a certificate under delegated authority pursuant to 18 CFR 375.307.

All large producers are required to file rate schedules with the Commission detailing the terms, conditions, and rates for each of their jurisdictional gas sales contracts. Changes in such schedules cannot be made without prior notice to the Commission and the public. The Commission, under section 4 of the NGA, reviews changes in rate schedules filed by producers. Each of these changes must be analyzed to determine whether it conforms to the Commission's rules and regulations.

Large producers file changes in their rate schedules under § 154.94 of the NGA. These changes are reviewed and analyzed by the Rate Filing Branch of OPRP for conformity with statutes, Commission regulations or orders, and contractual entitlement. This review and analysis ensures that the changes are in the public interest and are just and reasonable. Once this analysis is complete, a staff memorandum on whether to approve or disapprove is prepared and submitted to the Office of the General Counsel for review. Then,

the Director of OPRP reviews the staff memorandum and issues a letter of acceptance or rejection.

One commenter argues that there should not be a fee for changes in producer rate schedules because a rate increase is not always the subject of the change. While it is true that a rate increase is not always involved, Commission staff goes through the same procedure on all rate filings, whether or not a rate increase is involved, and must make a finding that the non-rate change filings conform to the Commission's rules and regulations as well. In addition, the Commission considers that it is reasonable to assume, for the purposes of this rule, that the majority of such filings will meet the standards for approval. Thus, the minor number of rejected filings should not control the application of a fee. Further, a producer can refile a change in rate schedule knowing what was found lacking on the first review. For these reasons, the Commission believes it reasonable to impose a fee for all filings for changes in producer rate schedules.

A number of commenters argue that the Commission should not include the costs associated with abandonments with the costs associated with certificates because the two are separate proceedings, and because an abandonment provides no benefit to a producer. The Commission has decided to exclude the costs of abandonments from the costs of certificates in devising its fees. The Commission agrees that an abandonment is not part of the same application or proceeding. Further, the Commission has decided not to charge a separate fee for applications for abandonment in this rule for two reasons. First, it believes that such fees could cause undue economic hardship on producers whose wells are no longer producing gas. And second, the Commission wants to encourage all producers to obtain the necessary abandonment authorization. However, the Commission has not concluded, as a final matter, that there is no benefit associated with an abandonment, and may consider instituting a fee for an abandonment in future rules.

A number of commenters state opposition to charging a fee for a certificate application filed to cover the sale of gas which is awaiting a jurisdictional agency determination under the NCPA that the gas will be produced from a new lease on the Outer Continental Shelf and, thus, ultimately exempted from NGA jurisdiction. Also, one commenter states that since no abandonment filing is required for sales from new OCS leases, the abandonment fee component should be removed from

any fees charged for gas which is ultimately removed from NGA jurisdiction.<sup>7</sup> While it may be true that some of the applicants initially subject to the NGA are ultimately exempted from that Act, not all are. Further, the Commission goes through the same procedure in processing those certificates that are ultimately exempted. Therefore, there will be no blanket exemption from fees in such cases.

One commenter argues the Commission should give separate treatment to hearings and interventions in its fee calculations. The Commission has not established a fee for hearings in the producer area. Such hearings in the producer NGA area are extremely rare, leaving the Commission without sufficient data to establish a fee. Furthermore, some producer hearings held under the NGA might benefit one identifiable recipient more than they protect the general public interest. Absent more data on the nature of producer hearings held under the NGA, the Commission has decided not to establish a fee for filings set for hearings in this final rule. Under other circumstances, however, the Commission may be able to reach a different conclusion on the issue of charging fees for hearings. Hence, the Commission does retain the right to directly bill [see III. H. below] an applicant for the costs associated with a hearing in the producer area where the hearing provides a private benefit to an identifiable recipient and where the filing requires an extraordinary amount of Commission time and effort to process.

One commenter says that the Commission should not charge a fee for petitions for rehearing. It states that the rehearing process is a prerequisite to judicial review, and the IOAA provides no authority for the Commission to impose economic barriers to judicial review.

The Commission has decided not to establish a fee for filing a petition for rehearing at this time. In those cases where the applicant petitions for rehearing seeking a private benefit, the Commission believes it could charge a fee for reviewing that petition. However, there are also cases where an entity petitions for rehearing in the public's interest. In those cases, the Commission does not believe it would be reasonable to impose a fee. Because of the large

<sup>7</sup> As noted above, the work-months associated with applications for abandonment will be separately recorded and will not be included with the work-months associated with certificate applications.

administrative burden involved in trying to segregate which rehearing petitions could be subject to a fee and because of our decision not to charge a fee for producer hearings, the Commission has also decided not to set a fee for a petition for rehearing at this time.

Another commenter says the Commission should not charge a fee for rulemakings. The Commission is not charging a fee for rulemakings in this rule. The Commission is also not charging a fee for a number of other actions it takes relating to gas producers under the NGA. Those actions include declaratory orders, preliminary and formal enforcement investigations, enforcement-related settlements and litigation, news releases and litigation in the courts. As for preliminary and formal enforcement investigations, enforcement-related settlements and litigation, news releases, and litigation in the courts, the Commission believes that these actions generally result in a benefit to the public at large, and do not manifest the necessary, identifiable benefit to an individual entity. This is especially true in enforcement-related matters. As for rulemakings and declaratory orders, while the Commission believes that these actions might warrant fees, the Commission has decided not to establish a separate fee category for these items as they pertain to NGA producer certificate and rate matters.<sup>8</sup>

### B. Special Benefits to Identifiable Recipients

In delineating the services or benefits for which agencies are permitted to charge under the terms of the IOAA, Budget Circular A-25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a Government service.<sup>9</sup> In addition, the circular states that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values than those which accrue to the general public."<sup>10</sup>

A number of commenters state that in order to be classified as an allowable "fee" under the IOAA, a particular charge must be incident to a voluntary act. Changes in producer rate schedules and certificate applications, they say, are not voluntary acts but are required by the NGA and the Commission's regulations. This type of argument has

<sup>8</sup> The Commission is considering, in other rulemakings, both fees for declaratory orders under all of its jurisdictional statutes and fees to recover the costs of certain rulemakings. In those cases, the Commission believes that there are special benefits provided to identifiable recipients.

<sup>9</sup> Budget Circular A-25, at 1-2.

<sup>10</sup> *Id.* at 2.

previously been rejected in *National Cable Television Association, Inc. v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976), and *Mississippi Power & Light v. NRC*, 601 F.2d 223 (5th Cir. 1979).

In response to the argument put forth by cable television operators that they receive no benefit from an FCC license because the cable television industry would have developed better without FCC regulation, the D.C. Circuit in *National Cable Television* said "[a]ll that may be true, but these distinctions have no relevance here. The fact is that the FCC has undertaken to regulate this industry and has so far been sustained by the Supreme Court in this endeavor, with the result that a certificate of compliance has become a necessary and therefore valuable license."<sup>11</sup> The Fifth Circuit in *Mississippi Power & Light* similarly held that since a license from the NRC is an absolute prerequisite to operating a nuclear facility, that license is a benefit not shared by other members of society.<sup>12</sup> Hence, the Commission believes this issue has been settled by the courts and need not be the subject of further discussion in this rule.

Many commenters argue that the proposed rule fails to explain how producers receive a greater benefit from the Commission's regulations than the general public. They claim that the Commission's regulations offer no greater benefit than the authorization to price and sell natural gas in interstate commerce in conformity with a regulatory scheme which benefits only the general public. Other commenters raise related arguments. That the Commission's regulation of producer prices and actions is not a benefit but a detriment to producers; that consumers are the real beneficiaries of producer regulation; that the courts have held the purpose of the entire natural gas regulatory scheme is to keep consumer natural gas prices low; and that the Commission itself has recognized that NGA certificate and rate review functions primarily benefit consumers.

While consumers may be ultimate beneficiaries from the regulation of natural gas, that is not determinative of the Commission's right to charge fees under the IOAA. The IOAA provides for the collection of fees for any "work, service, publication, document benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility."<sup>13</sup>

<sup>11</sup> 554 F.2d at 1101-02.

<sup>12</sup> 601 F.2d at 229.

<sup>13</sup> 31 U.S.C. 483(a) (1979).

Processing producer applications and rate schedule filings are the types of services for which the IOAA expressly authorizes the collection of fees. Not only is the statute clear on its face, but the D.C. Circuit has held that a fee otherwise authorized by the IOAA is not rendered invalid because the public may also enjoy downstream benefits.<sup>14</sup>

Furthermore, while it is true that in 1965 the Federal Power Commission (FPC) took an opposite approach toward fees, that approach does not prevent this successor Commission from adopting a different policy. Not until the 1970's did the courts begin reviewing fee structures of various agencies. It was after those cases were decided that the law became sufficiently clear, the Commission now believes that it can reasonably charge fees for the services and benefits provided to specific applicants.

### C. Smallest Practical Unit

In designing a fee schedule, the Commission should establish fees on the smallest unit or category of service that is practical. In remanding fees established by the FCC, the United States Court of Appeals for the D.C. Circuit set forth the most authoritative interpretation of this IOAA requirement as follows:

[W]e interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical. In most cases, we expect this unit will be classes of carriers or applicants or grantees or services which the Commission has already singled out for separate treatment in its 1975 fee schedule. Classification is always a difficult problem, involving as it does the drawing of lines; but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.<sup>15</sup>

<sup>14</sup> *Electronic Industries Association v. FCC*, 554 F.2d 1109, 1115 (D.C. Cir. 1976). In that case, petitioners argued that fees should not be assessed for tariff filings or equipment testing and approval. The court answered that even though both activities were required by statute, the FCC was entitled to charge for services which assisted a person in complying with his statutory duties. Such services, the court said, create an independent private benefit since they provide a means for the carrier to obtain its revenues and to regulate subscriber use of its facilities. The court concluded that although the statute was enacted in order to protect the public against excessive or unreasonably discriminating or preferential charges, that result in only an incidental benefit from the service which is rendered by the agency, *i.e.*, providing the means for carriers to comply with the statute.

<sup>15</sup> *Electronic Industries Association v. FCC*, 554 F.2d 1109, 1116-17 (D.C. Cir. 1976).

Further, Budget Circular A-25 states that "costs shall be determined or estimated from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose."<sup>16</sup>

The Commission, in keeping with Budget Circular A-25, is classifying its fees by types of applications or proceedings. The Commission has calculated its fees from its Management Information Systems (MIS). The MIS is an agency system established to track workload. This MIS tracks time, by work-months, based on types of applications or proceedings. The Commission is establishing one fee for an entire application or proceeding because that application or proceeding is the smallest unit practical for the Commission to develop fees.<sup>17</sup>

#### D. Basis of Cost Recovery

##### 1. Direct and Indirect Costs Included

The Commission's fee schedule is designed to account for all types of recoverable costs associated with the processing of the specified applications and filings under the NGA. The costs attributable to a particular Commission service are not merely the salaries of the employees who review the applications or filings. The attributable costs include the direct salary costs as well as the substantial amount of indirect costs which the Commission expends in its reviews. As the Fifth Circuit has stated, employees

... must be supplied with working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that ... [they are] hired, paid on a regular basis and provided specialized training courses. Those and other costs such as depreciation and interest on plant and capital equipment are all necessarily incurred in the process of reviewing an application.<sup>18</sup>

Accordingly, the Commission has included in its identification of costs the following items: salaries and benefits; travel; transportation of things; rents; communications and utilities; printing; other support services; supplies; and equipment.

##### 2. Methodology

###### (a) Underlying Considerations

The Commission's calculation of the costs of providing each of the services represented by a fee category is directly

related to the amount of time the Commission spends providing each of the services. The fees in this rule are based on information obtained through the Commission's Management Information System (MIS), which provides the amount of time spent on all Commission functions. The functions are grouped into categories which represent the Commission's various programs, including gas wellhead pricing, gas pipeline rates, gas pipeline certificates, gas producer certificates, gas producer rates, oil pipeline regulation, hydropower regulation, and electric power regulation. The MIS workload data is recorded on a monthly basis.

With respect to each function, the supervisor records for the MIS the number of projects initiated (receipts) and completed (completions) in a particular time period. Most Commission functions can be measured in terms of the number of projects initiated and completed. In accordance with Commission practice, these projects are generally assigned docket numbers and, for purposes of this discussion, will be referred to as "docketed activities". The supervisor in each organization unit reports to the MIS the amount of time spent by staff on each functional category in terms of work-months. A "work-month" is the unit of work represented by one employee's devotion of 100% of his or her time for one month. Time sheets are coded by functional categories and are filled out Commission wide every two weeks. The supervisor checks employee time sheets for accuracy in coding.

Support functions regularly undertaken, with respect to any program, are not docketed and may not be measured in terms of receipts and completions. The nature of these functions makes impractical any measurements in terms of receipts and completions, but these functions are nevertheless essential to the completion of any docketed activity. This time is also allotted and reported by unit supervisors in terms of work-months.

Only those support activities that are related to providing a benefit are included in the calculations. These support functions will be referred to as "support activities" and can be divided into three categories. First, there are support activities that involve general supervision, personnel management, and routine administrative functions such as maintenance of time and leave records, the handling of property and supplies, staff meetings, and the planning and organizing of leave. This category can be labeled as "administrative services" and is included in the fee structure

because it is essential to the FERC's ability to complete docketed activities.

Second, support staff responds to requests for information that may not contribute directly to the completion of a docketed activity. Examples include requests for information from the public, from the Congress, from the General Accounting Office, and from other governmental agencies. The Commission has excluded from its calculation of fees the work-months associated with this second category of "inquiries and internal communications" because this type of support activity is not involved in completing docketed activities.

Third, support staff establishes or reviews certain Commission operations and procedures. This is "technical management and operations." These activities include work on the FERC budget, management information systems, and program development functions such as special studies or briefings on relevant subjects, but which are not identified with just one docketed activity. This category is therefore an integral part of completing docketed activities.

The comments indicate confusion as to the difference between indirect costs and support functions. While both are types of indirect costs, they are channeled into the cost calculation at different times. Direct and indirect costs (such as physical plant overhead) are added together to come up with an average monthly cost per Commission employee of (\$4,770.67). That figure is multiplied by the time (in work-months) taken to review a type of application. Support activities represent work-months expended which cannot be allocated directly to each individually tracked, docketed activity. Therefore, the work-months used in the fee calculation consist both of time actually spent reviewing a particular type of application and also a pro-rata share of the time spent on support activities associated with reviewing that type of application.

###### (b) Calculation of Fee Amounts

For purposes of this rule, the Commission has used the following methodology to determine the cost of providing any service or benefit. First, the work-months reported for a class of docketed activity are added to a pro-rata share of the work-months reported for the relevant support activities for that activity. This figure, representing the total number of work-months dedicated to a class of docketed activity for a year, is divided by the number of completions for that year for the given activity. The resulting quotient

<sup>16</sup> Budget Circular A-25, at 3.

<sup>17</sup> The Commission has recently updated the MIS by starting to track its workload on a new system (Time Distribution Reporting System) which may provide an even greater degree of accuracy of Commission workload. At this time, however, the Commission does not have a year's worth of data to develop actual fees from the new system.

<sup>18</sup> *Miss. Power & Light v. NRC*, 601 F.2d at 232.

represents the average number of work-months required to complete one proceeding in that given class of docketed activity.

Second, the Commission used the following data provided by its Office of Program Management to figure the average cost of a work-month, based on the Commission's fiscal year 1983 actual costs.

Salaries and benefits <sup>1</sup> .....	\$46,228
Travel.....	726
Transportation of things.....	7
Rents, communications and utilities.....	3,165
Printing.....	1,899
Other Services—excludes direct program contracts.....	4,684
Supplies.....	477
Equipment.....	42
<b>Total.....</b>	<b>57,248</b>

<sup>1</sup>Based on year and payroll data and benefits at 26 percent.

The total was divided by 12 to yield an average work-month cost of \$4,770.67.

Third, in order to determine the cost of an activity, the Commission multiplied the average cost per work-month by the average number of work-months required to complete the activity.<sup>19</sup>

There were numerous complaints about the cost methodology proposed in the Notice of Proposed Rulemaking, such as inadequate information to verify the costs, calculations based on salary and overhead from one year and time per project from another year, use of budgeted figures as opposed to actual figures, use of average work-month costs rather than median or mode, and use of only one year for determining fees.

As for what costs are permissible for inclusion, the IOAA provides for the collection of fees which include both direct and indirect costs to the Government. Thus, there is no reason to exclude any item except for support functions relating to inquiries and internal communications, as discussed above. Second, in devising its fee schedule, the Commission is authorized to "determine or estimate [its costs] from the best available records in the agency."<sup>20</sup> For this Commission, that means the MIS.

The Notice of Proposed Rulemaking (NOPR), 47 FR 20621 (May 13, 1982) used 1982 budgeted figures to determine its costs, and 1981 actual completions and work-months in the fee calculation.

<sup>19</sup> Updated data sheets have been placed in the Commission's Public File Room detailing the calculations.

<sup>20</sup> Budget Circular A-25, at 3.

Further, the method of updating the fees was tied to 1981. Each subsequent year was to be adjusted by the change in costs between the base year and the year in consideration. Many commenters argue that 1981 may not be a typical year for completions and work-months, and thus, should not be the base year. The Commission agrees with this argument, and believes it is much more accurate to calculate fees from actual completions and work-months, as well as actual costs. The Commission has decided to use actual fiscal year figures in this rule as well as in updating the fees in subsequent years (see section III E. below). This approach keeps data more current and is more representative of what actual fees should be. Therefore, the Commission has calculated the fees in this rule from actual fiscal year 1983 direct and indirect costs, completions, and work-months. This eliminates any inaccuracies which could arise from using budgeted figures.

Finally, a number of commenters claim that the Commission should not use an agency-wide figure for determining its direct costs. Instead, they maintain that the Commission should determine producer fees based on the salary of only those employees processing producer filings. As permitted under the requirements of Budget Circular A-25, since the Commission's accounting system employs an agency-wide figure, the Commission has used an agency-wide figure as the basis for its costs.

One commenter claims that the Commission gives no consideration to the number of staff personnel actually involved in a specific activity, but rather the commenter says the Commission assumes it will operate with a full staff. The Commission's MIS calculates work-months for every office at the end of each month, based on the number of full time employees actually working at the time of calculation. Thus, no assumptions are involved at all.

**E. Actual Fees Established and Procedure for Updating Fees**

The following table summarizes for 1983 the total number of work-months, and completions, and the average cost per completion in rendering the producer services for which the Commission is establishing fees in this final rule.

Service	Total WM's in 1983	Total completions in 1983	Average number WM's per completion in 1983	Average cost per completion in 1983
Review of applications for blanket certificates for small producers.....	32.7	179	.18	\$858.72
Review of applications for producer certificates of public convenience and necessity.....	152.75	434	.35	1,669.73
Review of producer changes in rate schedules.....	249.4	3,472	.07	333.94

The following fees are therefore established:<sup>21</sup>

Services	Fee
Review of application for a blanket certificate for a small producer.....	\$800
Review of application for a producer certificate of public convenience and necessity.....	1,600
Review of filing establishing a change in producer rate schedule.....	300

The Commission will update its fees each year to reflect the most current Commission costs. An updated fee schedule will be published annually in the *Federal Register*, after the close of the preceding fiscal year. The updated fees will be based on actual completions, work-months and costs from the preceding fiscal year. In this way, the fees will reflect, using the most current data available, the benefits to the recipients.

**F. Exceptions to Full Cost Recovery**

**1. Reductions in Fee Amounts by Category**

The Commission has established in this rule fees which include all the recoverable costs associated with the particular benefits and services provided. The Commission, based on its expertise, recognizes that there may be instances in the future in which establishing full cost recovery fees would have an adverse effect on applicants, or would undermine Commission activities. In such cases, the Commission may exercise discretion to reduce fees to less than full cost

<sup>21</sup> Fees are established by taking actual costs and rounding down to:

(1) The nearest \$5 increment, if the total cost is \$100 or less; and

(2) The nearest \$100 increment, if the total cost is more than \$100.

recovery in order to prevent a disproportionate economic impact or for other good cause. Good cause would include situations where the Commission wishes to encourage use of a service, where less Commission time is required than staff time, or where there is a reduction in the amount of time required to process a filing. Any reduction in a fee would be initiated only by the Commission by rulemaking. The same percentage of reduction would carry over to subsequent years unless further notice was given by the Commission that it was altering that reduction.

Two commenters say that the Commission needs more specific guidelines in this area, particularly to include undue economic hardship as a standard. The Commission believes that the standards enumerated are sufficiently specific, particularly since any categorical reductions in fee amounts will be done by means of a rulemaking. Moreover, any determination on whether to establish a fee at less than full cost recovery amount would take into account economic hardship, as discussed above, if it applies to a class of applicants. This is to be distinguished from the situation where an individual producer can demonstrate severe economic hardship and qualify for a waiver, as discussed below.

## 2. Case-by-Case Waiver Procedure

The Commission also realizes that a different situation could arise in which an individual applicant is unable to pay fees as set by the Commission due to severe economic hardship. The Commission does not expect this to happen often in the producer areas covered by this rule. If an applicant is suffering from a period of severe economic hardship, the applicant will have the burden of presenting evidence, such as a financial statement, to the Commission showing that the applicant is either economically unable to pay the fee, or that if the applicant does pay the fee, it will place the applicant in a state of financial distress or emergency. As stated by the D.C. Circuit:

The applicant for waiver must articulate a specific pleading, and adduce concrete support, preferably documentary.<sup>22</sup> This material must be included with the petition for waiver at the time of filing the application. The Commission, or its designee, will analyze petitions for waiver to determine whether the standards for waiver have been met. The Commission will notify the

applicant as to whether the petition for waiver has been denied or accepted.

## G. Procedures for Paying Fees

The Commission's notice states that fees must be submitted by certified check, made payable to the United States Treasury. A number of commenters argue that there is no reason to require certified checks. They state that a corporate check should be sufficient.

The Commission has decided to delete the certified check requirement. However, a check made payable to the United States Treasury must still be included with the filing or application, unless a petition for waiver is submitted in lieu of the fee. The check must indicate for what the fee is being submitted, e.g., producer certificate of public convenience and necessity. This may be written on the bottom of the check. If the filing or application is not accompanied by either the appropriate fee or a petition for waiver, it will be considered deficient and will not be processed.

Two commenters complain of the Commission's decision to exclude the possibility of fee refunds. They argue that the Commission should include a provision in the final rule whereby an applicant could receive a refund if the application was rejected on grounds other than nonpayment of fees, or if the Commission did not respond within a reasonable amount of time. One commenter also argues the Commission must provide for refunds so that Commission business can continue while the proposed fees are undergoing judicial review.

The Commission's decision not to allow refunds is consistent with the policy behind the IOAA. That statute authorizes and orders Government agencies to become self-sustaining to the fullest extent possible. To do so, the agency is to collect fees for services and benefits it provides. The Congress gave this Commission the duty of carrying out the Natural Gas Act, part of which is to administer producer certificates and to review rate schedules. These are the services for which the IOAA authorizes the collection of fees. The service is reviewing the application or the rate change, not guaranteeing the issuance of a certificate or an increase in rates. The Commission reviews every application or rate change equally. Some are accepted, some are not, but the vast majority are accepted. The Commission's fees cover the time and cost of providing these services. It does not cost the Commission any less when it rejects an application or a rate change. Furthermore, the Commission's decision not to allow refunds is

consistent with its current policy of no refunds of fees and annual charges under the NGA under Part 159 of the Commission's regulations.

## H. Direct Billing

The methodology used to establish the fees in this rule is based on the actual time of processing filings and the actual agency-wide costs involved with this processing. The Commission takes the actual work-months associated with a class of docketed activity and divides it by the number of completions in that class to arrive at an average number of work-months per completion. That figure is then multiplied by the average cost per work-month to arrive at the fee.

However, the Commission occasionally receives filings which are not average. These filings may be extensive in scope and present factual, legal, or policy issues of such complexity that the Commission may devote an extraordinary amount of time and effort to processing them. The standard fees established in this rule bear no reasonable relationship to the actual cost of processing those extraordinary filings. Moreover, if the costs of processing extraordinary filings are included in the costs associated with average filings, persons submitting average filings would be subsidizing those submitting the extraordinary filings. Therefore, in the case of an extraordinary filing, the Commission reserves the option of ordering a direct billing procedure at the beginning of processing the filing or at any time up to one year after receiving a complete filing. While the Commission does not expect direct billings to be used often in the fee areas covered by this rule, it is necessary to allow this degree of flexibility. Also, direct billings may prove to be useful in other fee areas.

Under the direct billing procedure, the Commission will periodically bill the entity that submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing, unless a lesser amount is determined to be fair and equitable. If the decision to bill a lesser amount is based upon the presence of intervenors in a proceeding, the Commission is retaining the discretion to determine whether some of the costs not directly billed to an applicant should instead be billed to the intervenors. The Commission doubts this will occur frequently since intervenors in many instances are raising issues oriented toward protecting the public interest as opposed to a private interest. Any decision to directly bill intervenors will be made on a case-by-case basis when a hearing is actually held in the NGA producer area.

<sup>22</sup> United Gas Pipe Line Company v. FERC, 707 F.2d 1507, 1511 (D.C. Cir. 1983).

The staff resources devoted to processing a filing resulting in a direct billing will be separately recorded and will not be included in the work-months associated with processing average filings. This final rule also requires the Commission to credit an applicant whose filing becomes subject to direct billing with any fee paid under this fee system.

Seven commenters address this issue and each state that the direct billing procedure is entirely too vague. These commenters object to this direct billing method because they claim that the complexity of a filing might result simply from the participation of intervenors, that it is impossible to know beforehand if a matter will be complex, and that a proceeding may be complex because it contains important public policy issues where the potential benefit to the applicant is secondary to that of the public or to other industry members. A suggestion has been made that if the Commission does require direct billings in complex cases, it should allocate the fees among the intervenors as well as the applicant since the intervenors receive the same benefit as the original applicant. The Commission recognizes the points made by these commenters but, as indicated above, there is no reason to determine this issue generically in light of the Commission's decision not to establish a fee for filings set for hearings. The possible allocation of some costs to intervenors in direct billing situations will be handled on a case-by-case basis.

Also, a commenter requests that the Commission itemize all direct billings so that there will be a means of appealing the billed amount. Finally, one commenter suggests that, in the case of unsuccessful staff contests of filings, there be no additional direct billing costs.

Almost all of the filings in the producer areas covered by this rule are average in complexity and time spent. As noted above, it is rare to have an application go to hearing. Therefore, the number of times that the Commission expects to have direct billings of these producer fees is small. Where there is a direct billing, the Commission will itemize, to the best degree of accuracy under the MIS, the costs involved in the direct billing. There is no way the Commission can estimate in advance what the costs will be, but once the party is advised that direct billing will be used, it can then decide whether or not to pursue the matter in the filed application.

#### IV. SUMMARY OF FINAL RULE

This final rule establishes fees for services and benefits provided by the Commission to producers under the NGA in new Part 381 of Chapter 1, Title 18 of the Code of Federal Regulations.

Section 381.101 states the purpose of Part 381.

Section 381.102 provides the definition of "person", "work year cost", "work-month", and "filing".

Section 381.103 provides that each filing must be accompanied either by the proper fee or petition for waiver, or the filing will be considered deficient.

Section 381.103 also provides that if a filing for one service or benefit could be considered as falling within two or more fee categories, the higher or highest of the respective fees is the applicable fee.

Section 381.104 requires the publication of an updated fee schedule each year to reflect the most current Commission costs and the resulting NGA producer fees.

Section 381.105 provides the appropriate method of payment of fees.

Section 381.106 provides that the Commission, or its designee, may in the case of severe economic hardship waive a fee for an individual applicant. Such a waiver depends on the individual applicant providing the Commission with evidence that the applicant is either unable to pay the fee, or, that if the applicant does pay the fee, the applicant will be placed in a state of financial distress or emergency. Such evidence would include a financial statement, and must be submitted at the time of filing the application. The Commission, or its designee, will notify the applicant as to whether the waiver has been denied or accepted. If the petition is denied, the applicant has 30 days from date of the notification of denial to submit the appropriate fee.

Section 381.107 provides that the Commission may order any filing, the processing of which requires an extraordinary amount of time and staff resources, to be subject to fees based upon a direct billing procedure. Any fees paid under Part 381 upon submission of the filing would be credited against the direct billings.

Section 381.201 establishes a \$800 fee payable upon the submission of an application for a blanket certificate for a small producer under section 7(c) of the NGA.

Section 381.202 establishes a \$1,600 fee payable upon submission of an application for a producer certificate of public convenience and necessity under section 7(c) of the NGA.

Section 381.203 establishes a \$300 fee payable upon the filing of a producer

change in rate schedule under section 4 of the NGA.

In addition, this rule makes a number of technical, conforming amendments to the Commission's regulations. These conforming amendments address the above-mentioned categories of service and ensure that the requirement for each producer to file the proper fee with the application or rate schedule filing is clearly stated in the appropriate sections of Parts 154, 157, and 375.

#### V. FINAL REGULATORY FLEXIBILITY ANALYSIS

When an agency promulgates a final rule under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, after being required by that section or any other law to publish a notice of proposed rulemaking, a final regulatory flexibility analysis may be appropriate under the Regulatory Flexibility Act of 1980. Each final regulatory flexibility analysis must contain (1) a statement of need for the rule, (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, and the agency response to those comments, and (3) a description of alternatives to the rule consistent with the stated objectives of the applicable statute which the agency considered and ultimately rejected.

In this preamble, the Commission has already detailed its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes a schedule of fees to be paid to the Commission for certain benefits it provides, in accordance with the IOAA and Budget Circular A-25.

This rule affects natural gas producers. There are approximately 10,000 natural gas producers in the United States. The Small Business Administration's (SBA) regulations do not establish size standards for producers.<sup>23</sup> However, some producers would probably be classified as small businesses. Therefore, this rule may have some degree of economic impact on a number of small producers. But, there is no reason to expect that this impact will be significant for a substantial number of those small producers. Further, in the case of blanket certificates for small producers, there is only a one time fee for all small

<sup>23</sup> 5 U.S.C. 601(3) citing to section 3 of the Small Business Act, 15 U.S.C. 632 (Supp. V 1981). 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 or operation. See also SBA's Small Business Size Standards, 13 CFR Part 121 (1983).

producer sales, after which the small producer, unlike a large producer, is not required to file rate changes, and therefore will not incur any additional fees.

Only one commenter discusses the Initial Regulatory Flexibility Analysis. The commenter simply states that the Commission's analysis is inadequate, and that the Commission does not consider the possibility of not imposing fees.

The Commission believes it followed the requirements of the Regulatory Flexibility Act in its notice of proposed rulemaking. Further, while the Commission has operated for a long time without charging fees for these categories of filings, its adoption of this fee schedule is authorized by statute.

Concerning the impacts on producers, and in particular small producers the final rule addresses those cases where there is either a disproportionate economic burden or severe economic hardship on a producer. The rule contains a provision for waiver of fees for an individual applicant which could protect small producers from undue economic hardship. However, the Commission is also required to satisfy the IOAA's statutory directive to be "self sustaining to the full extent possible." Hence, there is no blanket exemption for small entities. The Commission believes the rule as now promulgated represents a fair balance between the purposes of both the IOAA and the Regulatory Flexibility Act.

#### VI. PAPERWORK REDUCTION ACT STATEMENT AND EFFECTIVE DATE

The information collection provisions in § 381.106(b) of this rule will be submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501-3520 (Supp. V 1981), and OMB's regulations, 5 CFR Part 1320 (1983). Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC., 20426 (Attention: Karen Hurwitz, (202) 357-8033). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

This rule will become effective April 25, 1984. If OMB's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date.

#### List of Subjects

##### 18 CFR Parts 154 and 157

Natural gas.

##### 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

##### 18 CFR Part 381

Natural gas, General fees.

In consideration of the foregoing the Commission is amending Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Kenneth F. Plumb.

Secretary.

#### PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 is revised to read as follows:

**Authority:** Natural Gas Act, 15 U.S.C. 717-717z (1976 & Supp. V 1981); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (Supp. V 1981); Executive Order 12009, 3 CFR 142 (1978).

2. In § 154.94, a new sentence is added at the end of paragraph (a) to read as follows:

##### § 154.94 Changes in rate schedules.

(a) \* \* \* Each filing of a change in rate schedule must be accompanied by the appropriate fee prescribed in § 381.203 of this chapter, unless a petition for waiver is submitted in lieu thereof under § 381.106 of this chapter.

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

3. The authority citation for Part 157 is revised to read as follows:

**Authority:** Secs. 7, 16, 52 Stat. 824, as amended, 830; 15 U.S.C. 717f, 717g; Executive Order 12009, 3 CFR 442 (1978); Independent Offices Appropriations Act, 31 U.S.C. 483a (1970), unless otherwise noted.

4. In § 157.24, a new paragraph (c) is added at the end thereof to read as follows:

##### § 157.24 Contents of application.

(c) Each application for a certificate of public convenience and necessity required under § 157.23 must be accompanied by the appropriate fee prescribed in § 381.202 of this chapter,

unless a petition for waiver is submitted in lieu thereof under § 381.106 of this chapter.

5. In § 157.40, a new paragraph (b)(7) is added to read as follows:

##### § 157.40 Exemption of small producers from certain filing requirements.

(b) \* \* \*

(7) Each application for a blanket certificate by a small producer must be accompanied by the appropriate fee prescribed in § 381.201 of this chapter, unless a petition for waiver is submitted in lieu thereof under § 381.106 of this chapter.

#### PART 375—THE COMMISSION

6. The authority citation for Part 375 is revised to read as follows:

**Authority:** Department of Energy Organization Act, 42 U.S.C. 7101-7352 (Supp. V 1981); Executive Order 12009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1976 & Supp. V 1981).

7. In § 375.307, new paragraph (u) is added at the end thereof to read as follows:

##### § 375.307 Delegation to the Director of the Office of Pipeline and Producer Regulation.

(u) Deny or accept, in whole or in part, petitions for waiver of the fees prescribed in §§ 381.201, 381.202, and 381.203 of this chapter, in accordance with § 381.106(b) of this chapter.

8. In Part 375, a new § 375.313 is added to read as follows:

##### Subpart C—Delegations

##### § 375.313 Delegations to the Executive Director.

The Commission authorizes the Executive Director or the Executive Director's designee to prescribe the updated fees for §§ 381.201, 381.202, and 381.203 of this chapter, in accordance with § 381.104 of this chapter.

9. In Subchapter W, a new Part 381 is added to read as follows:

#### SUBCHAPTER W—REVISED GENERAL RULES

#### PART 381—FEES

##### Subpart A—General Provisions

Sec.  
381.101 Purpose.  
381.102 Definitions.  
381.103 Filings.

- Sec.  
 381.104 Annual adjustment of fees.  
 381.105 Method of payment.  
 381.106 Waivers.  
 381.107 Direct billing.

**Subpart B—Fees Applicable To The Natural Gas Act And Related Authorities**

- 381.201 Blanket certificates for small producers.  
 381.202 Producer certificates of public convenience and necessity.  
 381.203 Changes in producer rate schedules.

**Subpart C—Fees Applicable To General Functions [Reserved]**

**Subpart D—Fees Applicable to the Natural Gas Policy Act of 1978 [Reserved]**

**Subpart E—Fees Applicable to the Federal Power Act [Reserved]**

**Subpart F—Fees Applicable to the Public Utility Regulatory Policies Act of 1978 [Reserved]**

**Subpart G—Fees Applicable to the Interstate Commerce Act and Related Authorities [Reserved]**

Authority: Department of Energy Organization Act 42 U.S.C. 7102-7352 (Supp. V 1981); E.O. 12,009, 3 CFR 442 (1978); Independent Offices Appropriations Act, 31 U.S.C. 483a (1970); Natural Gas Act, 15 U.S.C. 717-717z (1976 and Supp. V 1981); Federal Power Act, 16 U.S.C. 791a-828c (1976 & Supp. V 1981); Natural Gas Policy Act, 15 U.S.C. 3301-3432 (Supp. V 1981); Public Utility Regulatory Policies Act, Pub. L. 95-617, 92 Stat. 3117 (1978), Interstate Commerce Act, 49 U.S.C. 1-27 (1976), unless otherwise noted.

**Subpart A—General Provisions**

**§ 381.101 Purpose.**

The purpose of this part is to set forth the fees charged by the Commission for services and benefits provided by the Commission.

**§ 381.102 Definitions.**

For purposes of this part, the following definitions apply.

(a) "Person" means any person, group, association, organization, partnership, corporation, or business, except those authorized to engage in the transaction of official business for the United States Government.

(b) "Work year cost" means the ratio of the Commission's budgeted expenses during any given fiscal year to the authorized staff level for that fiscal year.

(c) "Work-month" means the amount of work represented by one employee's devotion of 100 percent of his or her time for one month.

(d) "Filing" means any application, tariff or rate filing, intervention, complaint, petition, request, or motion submitted to the Commission in connection with any of the services or benefits for which a fee is established in this part.

**§ 381.103 Filings.**

(a) *Submission of fees.* Except as provided in § 381.106(b), a fee in the amount set forth in this part shall accompany each filing for which a fee has been established.

(b) *Deficiencies.* (1) Any filing that is not accompanied by either the fee established for that filing or a petition for waiver in accordance with § 381.106(b) is deficient.

(2) The Secretary will inform any person submitting a deficient filing that:

(i) Such filing will be rejected unless the appropriate fee is submitted within a time specified by the Secretary;

(ii) The Commission will not process any filing that is deficient under this paragraph; and

(iii) The date of filing is the date on which the Commission receives the appropriate fee.

(3) This provision does not preclude a determination that a filing is deficient for any other reason.

(c) *Choice of two or more fees.* If a filing for one service or benefit may be considered as falling within two or more categories or services for which a fee is established, that filing must be accompanied by the higher or highest of the applicable fees.

**§ 381.104 Annual adjustment of fees.**

(a) *Update and publication.* The Commission, by its designee the Executive Director, will update its fees each fiscal year according to the formula in paragraph (c) of this section. The Executive Director will publish the fees in the *Federal Register*.

(b) *Payment of updated fees.* Any person who submits a filing for which a fee is established in this part must pay the currently effective fee unless a waiver is granted.

(c) *Formula.* The formula for determining each fee is the actual work-months dedicated to a given fee category for the previous fiscal year divided by the number of actual completions in the previous fiscal year multiplied by the average cost per work-month in the previous fiscal year. The fee is rounded down to the nearest \$5 increment if the fee is \$100 or less, and the nearest \$100 increment if the fee is more than \$100.

(d) *Effective date of fee.* Any fee updated under this section is effective on the thirtieth day after publication in the *Federal Register* of the revised sections in this part, unless otherwise specified in the *Federal Register* notice.

**§ 381.105 Method of payment.**

Fee payment shall be made by check or money order payable to the Treasurer of the United States. The check should

state the nature of the filing and the docket number where applicable so that the fee category for which the check is being submitted is clearly identifiable.

**§ 381.106 Waivers.**

(a) *Filing of petition.* If an applicant is suffering from severe economic hardship at the time of filing an application which makes the applicant economically unable to pay the appropriate fee for the application, rate change, tariff, petition, request or other filing requiring a fee, the applicant may submit a petition for waiver with the application in lieu of the applicable fee. The petition for waiver must include evidence, such as a financial statement, clearly showing either that the applicant does not have the money to pay all or part of the fee, or that if the applicant does pay the fee, the applicant will be placed in financial distress or emergency.

(b) *Decision on petition.* The Commission or its designee will analyze each petition to determine whether the applicant has met the standards for waiver and then will notify the applicant of its grant or denial, in whole or in part. If the petition is denied, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee to the Commission.

**§ 381.107 Direct billing.**

(a) *Applicability.* If a filing presents an issue of fact law, or policy, procedural difficulty, or technical complexity, which requires an extraordinary amount of Commission time and effort to process the filing, the Commission will institute a direct billing procedure for the direct and indirect costs of processing that filing. The Commission will make a direct billing determination under this paragraph not later than one year after receiving a complete filing from an applicant. Fees assessed by a direct billing procedure in accordance with this section will supersede the fees otherwise established in this part for the category of service involved.

(b) *Procedures.* (1) Direct billing will not be instituted with respect to any filing until the person who submitted the filing is notified that direct billing will be applied to the filing in lieu of the fees established under this part.

(2) Any fee submitted with the filing will be applied, as a credit, to the amount billed directly for processing costs. The Secretary will thereafter periodically bill the person who submitted the filing for the actual direct and indirect costs of processing the filing.

(3) If the Commission institutes a direct billing for the costs of a hearing and reduces the fee to the applicant to less than full cost recovery due to the presence of intervenors, the Commission will consider, on a case-by-case basis, direct billing the intervenors for all or part of the reduced portion.

#### Subpart B—Fees Applicable to the Natural Gas Act and Related Authorities

##### § 381.201 Blanket certificates for small producers.

The fee established for an application for a blanket certificate for a small producer is \$800.00. This fee must be submitted in accordance with Subpart A of this part and § 157.40(b).

##### § 381.202 Producer certificates of public convenience and necessity.

The fee established for an application for a producer certificate of public convenience and necessity is \$1,600.00. This fee must be submitted in accordance with Subpart A of this part and § 157.24.

##### § 381.203 Producer changes in rate schedules.

The fee established for filing producer changes in rate schedules is \$300.00. This fee must be submitted in accordance with Subpart A of this part and § 154.94.

#### Subpart C—Fees Applicable to General Functions [Reserved]

#### Subpart D—Fees Applicable to the Natural Gas Policy Act of 1978 [Reserved]

#### Subpart E—Fees Applicable to the Federal Power Act [Reserved]

#### Subpart F—Fees Applicable to the Public Utility Regulatory Policies Act of 1978 [Reserved]

#### Subpart G—Fees Applicable to the Interstate Commerce Act and Related Authorities [Reserved]

[FR Doc. 84-3587 Filed 2-9-84; 8:45 am]  
BILLING CODE 6717-01-M

### 18 CFR Parts 154 and 381

[Docket No. RM83-2-000; Order No. 361]

#### Fees Applicable to Natural Gas Pipeline Rate Matters

Issued: February 6, 1984.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission is amending its regulations to establish fees for the services and benefits it provides

pipelines with regard to pipeline rate matters under the Natural Gas Act. This is the second of a series of rules to be issued on fees. These fees are authorized by the Independent Offices Appropriations Act. That Act provides for the collection of fees to make agencies "self-sustaining to the full extent possible."

**EFFECTIVE DATE:** This rule will become effective April 25, 1984.

**FOR FURTHER INFORMATION CONTACT:** Karen S. Hurwitz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-8033.

#### SUPPLEMENTARY INFORMATION:

#### I. INTRODUCTION

The Federal Energy Regulatory Commission (Commission) is adding a new Part 381 to its regulations to establish fees for services and benefits provided to natural gas pipelines under the Natural Gas Act (NGA) and related authorities.<sup>1</sup> This rule establishes the following fees for pipeline rate matters: (1) Tariff filings for general changes in rates and for changes other than in rates, \$2,000; (2) tariff filings that track certain changes in costs, \$2,300; and (3) petitions seeking advance approval of rate treatment of research, development, and demonstration expenditures, directly billed.

This rule is the companion rule to Docket No. RM83-2-000, which sets the fees for NGA producer matters. Together, these rules establish a major part of the Commission's fee structure for activities under the NGA, and are key parts of the Commission's ongoing program to establish fair and equitable fees for the services and benefits provided to those entities subject to the Commission's regulatory jurisdiction.

#### II. BACKGROUND

The Commission is authorized under the Independent Offices Appropriation Act of 1952 (IOAA) to establish fees for services and benefits it provides.<sup>2</sup> The IOAA provides in pertinent part:

[A]ny work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal

<sup>1</sup> 15 U.S.C. 717-717z (1976 & Supp. V 1981). The Natural Gas Policy Act (NGPA), 15 U.S.C. 3301-3432 (1976 and Supp. V 1981) relates to the fees in this rule with respect to the Commission's jurisdiction over costs associated with purchase gas adjustments, incrementally priced gas, and transactions under section 311 of the NGPA.

<sup>2</sup> Act of Aug. 31, 1951, Ch. 376, Title V, 501, 65 Stat. 290, as codified, 31 U.S.C. 483(a) (1970).

agency . . . to or for any person . . . shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation . . . to prescribe therefore such fee, charge, or price, if any, which he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration the direct and indirect costs to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amounts so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts . . .

The principal interpretation of the IOAA is Bureau of the Budget Circular A-25,<sup>3</sup> which states that a fee should be assessed for each measurable unit or amount of government service or property from which an identifiable recipient derives a special benefit.<sup>4</sup>

In accordance with the IOAA and authoritative interpretations of that statute,<sup>5</sup> the Commission, in establishing any fee, must:

- Identify the service for which the fee is to be assessed;
- Explain why that particular service benefits an identifiable recipient more than it benefits the general public;
- Base the fee on as small a category of service as practical;
- Demonstrate what direct and indirect costs are incurred by the

<sup>3</sup> Bureau of the Budget Circular A-25 (September 23, 1959). This interpretation has been cited by the United States Supreme Court as "the proper construction of the act." *FPC v. New England Power Co.*, 415 U.S. 345, 351 (1974).

<sup>4</sup> Budget Circular A-25, at 1-2.

*General Policy.* A reasonable charge . . . should be made to each identifiable for a measurable unit or amount of Government service or property from which he derives a special benefit . . . For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

- Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (e.g., receiving a patent, crop insurance, or a license to carry on a specific business); or
- Provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience for airline routes, or safety inspections of craft) . . .

c. Is performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public (e.g., receiving a passport, visa, airman's certificates, or an inspection after regular duty hours).

<sup>5</sup> See National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1974); *FPC v. New England Power Co.*, 415 U.S. 345 (1974); *Mississippi Power & Light v. NRC*, 601 F.2d 223 (5th Cir. 1979); *National Cable Television Association, Inc. v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976); *Electronic Industries Association v. FCC*, 554 F.2d 1109 (D.C. Cir. 1976); *National Association of Broadcasters v. FCC*, 554 F.2d 1118 (D.C. Cir. 1976); *Capital Cities Communications, Inc. v. FCC*, 554 F.2d 1135 (D.C. Cir. 1976).

Commission in rendering the service, and show that those costs are incurred in connection with the service rendered to the beneficiary; and

(e) Set a fair and equitable fee for the service.

For the reasons detailed below, the Commission believes that the fees set forth in this final rule meet these requirements of the IOAA.

### III. SUMMARY AND ANALYSIS OF COMMENTS

The services and benefits provided to pipelines under the NGA for which the Commission is instituting a fee are the following:

1. \$2,000 for Commission review of pipeline tariff filings for general changes in rates and for changes other than in rates under section 4 or section 5 of the NGA, filed in accordance with 18 CFR 154.63.

2. \$2,300 for Commission review of pipeline tariff filings that track certain changes in costs under section 4 or section 5 of the NGA, filed in accordance with 18 CFR 154.38 or pursuant to approved tariff provisions, orders of the Commission or settlement agreements with the Commission.

3. Direct billings for Commission review of petitions seeking advance Commission approval of rate treatment of research, development, and demonstration expenditures filed in accordance with 18 CFR 154.38(d)(5).

#### A. Description and Identification of Services Related to Pipeline Filings

At the outset, the Commission can identify a variety of services and activities that provide direct benefits to the applicant involved, as required under the IOAA and Budget Circular A-25. Without the performance of these services, the applicants would not be able to transport and sell gas. Therefore, the applicants involved are the recipients of special benefits that have more immediate value than those which accrue to the general public.

##### 1. Tariff Filings

Commission acceptance of tariff filings that involve general changes in rates permits the pipeline to make the following changes<sup>6</sup> in rates: (1) General rate changes (increases or decreases) that affect the level for most, if not all, of the services provided by the pipeline and will enable it to recover its costs and earn a fair rate of return on jurisdictional sales;<sup>7</sup> and (2) minor rate

increases that usually relate to a few rate schedules and are designed to bring them into harmony with general tariff policy, to eliminate inequities, or to achieve other formal adjustment. A pipeline must submit any change in its rates to the Commission for its review and acceptance.

Commission acceptance of tariff filings for changes other than in rates allows the pipeline to amend an existing gas tariff to change the terms and conditions of service. Such filings, if accepted by the Commission, permit changes in the general terms and conditions of the tariff, rate schedules, service agreements and other miscellaneous tariff provisions, none of which changes any rate level or generates a change in annual revenues.<sup>8</sup> A pipeline must submit any change in its gas tariff to the Commission for its review and acceptance.

Natural gas pipeline tariff filings are processed principally by the Office of Pipeline and Producer Regulation (OPPR) and the Office of General Counsel (OGC). A notice of the filing is published in the *Federal Register*. The filing is analyzed from a legal and technical standpoint to determine whether the proposed changes comply with the Commission's requirements for natural gas pipeline tariff filings, and, in the case of tariff filings that involve general changes in rates, whether the changes are consistent with the statutory "just and reasonable" standard.

If the filing is determined to comply with all statutory and regulatory requirements and is uncontested, the Commission staff prepares a letter order accepting the changes, together with a memorandum in which the staff summarizes the filing and the responses to the public notice, analyzes the filing, and makes a recommendation to accept the changes. The letter order and memorandum are sent either to the Commission or to the Director of OPR for consideration. If the recommendations of staff are accepted, the letter order is issued by the Commission or by the Director of OPR pursuant to delegated authority.

If the changes are found not to comply fully with applicable statutory and regulatory requirements, staff prepares a memorandum to the Commission in which staff summarizes the filing and

the responses to the public notice, analyzes the filing, and makes recommendations whether to suspend the filing and set the matter for hearing. If the Commission does not set the matter for hearing, a letter order accepting the changes is issued either by the Commission or by the Director of OPR pursuant to delegated authority.

In those cases where the Commission agrees with the staff recommendation to set the matter for hearing or determines that a genuine issue of material fact exists, the tariff filing is suspended and the case is set for hearing before an administrative law judge.

##### 2. Tracking Filings

Another category of tariff filings permits the pipeline to adjust its rates for certain costs without the need to support the level of all other costs. These so-called "tracking filings" are treated separately for purposes of fees. Natural gas pipelines pass through certain "tracked costs" (such as for purchased gas) to their customers on the basis of the costs incurred.<sup>9</sup> The pipelines are reimbursed dollar-for-dollar for these tracked costs. Although the pipelines make no profit from pass-through of these costs, they avoid the attrition in earnings that would otherwise occur without tracking authority. In permitting pipelines to track certain costs for pass-through, the Commission has found that the nature of these costs is sufficiently distinguishable from other costs so that they can be tracked without jeopardizing the overall relationship between costs and revenues. Even so, this relationship is subject to periodic review. *See, e.g.*, 18 CFR 154.38(d)(4)(vi) (1983). The tracking filings themselves are subject to thorough review and analysis to ensure that only the proper costs are being tracked.

Tracking filings are also processed principally by OPR and OGC. A notice of the filing is published in the *Federal Register*. The filing is also analyzed from a legal and technical standpoint to determine both if it meets the Commission's filing requirements and if it comports with the provisions of any approved tariff Commission order or settlement agreement which the tracking filing is intended to implement.

If the filing is determined to comply with all the above requirements and is

<sup>6</sup> The Commission has incorporated into the proposed fees for pipeline certificate applications the costs incurred in reviewing tariff filings that relate directly to a natural gas pipeline certificate authorization or amendment thereto. Therefore, the Commission is not, in this rulemaking, assessing a separate fee for tariff filings submitted in connection with a pipeline certificate application.

<sup>7</sup> 18 CFR 154.63(a)(2)-(4) (1983).

<sup>8</sup> Sections 4 and 5 of the NGA, 15 U.S.C. 717c, 717d (1976 & Supp. V 1981).

<sup>9</sup> The Commission has the responsibility under sections 4 and 5 of the NGA to ensure that all rates charged by pipelines for the interstate transportation and sale of natural gas are just and reasonable, regardless of whether these rates are established by general rate change filings or by tracking filings.

uncontested, the Commission staff prepares a letter order accepting the tracking filing, together with a memorandum in which staff summarizes the filing and makes a recommendation to accept the tracking filing. The letter order and memorandum are sent either to the Commission or to the Director of OPR. If the recommendations of staff are accepted, the letter order is issued either by the Commission or by the director of OPR pursuant to delegated authority.

If the tracking filing is found not to comply fully with applicable statutory and regulatory requirements or not to implement properly the provisions of approved tariff provisions, Commission orders, or settlement agreements, the staff prepares a memorandum to the Commission in which the staff summarizes the filing and the responses to the public notice, analyzes the filing, and makes a recommendation whether to suspend the filing and set the matter for hearing. If the Commission decides not to set the matter for hearing, a letter order accepting the tracking filing is issued either by the Commission or by the Director of OPR pursuant to delegated authority. In those cases where the Commission agrees with the staff recommendation to set the matter for hearing or determines that a genuine issue of material fact exists, the tracking filing is suspended and the case is set for hearing before an administrative law judge.

The NOPR proposed to recover the Commission costs associated with audits and refunds as they relate to tracking filings. However, the Commission now believes that it cannot reasonably find a particular identifiable benefit to the applicant in these services. For that reason, the Commission has excluded these costs from the calculation of the fee for tracking filings.

### 3. Research, Development, and Demonstration Expenses

Petitions that are filed by the pipelines, groups of pipelines, or entities acting on behalf of pipelines to obtain advance Commission approval for pass-through of research, development, and demonstration expenditures are processed by OPR. A notice of the filing is published in the Federal Register.

The staff reviews the proposed projects and submits a memorandum to the Commission examining whether the expenditures are "valid, justifiable, and reasonable"<sup>10</sup> and, therefore, should be

allowed to be passed through to the pipeline's jurisdictional customers. The Commission then considers the matter and issues an order either accepting or rejecting the petition, in whole or in part.

The Gas Research Institute, acting on behalf of its member pipelines, regularly files petitions to obtain advance Commission approval of its research, development, and demonstration expenditures. When the Gas Research Institute files such a petition, the Commission follows a special procedural schedule. The staff prepares a report in which it summarizes the proposed projects and discusses whether the expenditures are "valid, justifiable, and reasonable" and whether pass-through of the costs should be allowed. The report is sent to all intervenors.<sup>11</sup> Reply comments on the report from intervenors and final comments from the Gas Research Institute are then submitted to the Commission. The Commission then issues an order either accepting or rejecting the Gas Research Institute's petition, in whole or in part.

### 4. Hearings

The Notice of Proposed Rulemaking (NOPR), 47 FR 57943 (December 29, 1982), also proposed a fee structure that included charging for hearings held in connection with the categories of services involved in this rule—tariff filings that involve general rate changes, tariff filings for changes other than in rates, and tariff filings that track changes in costs. For several reasons, the Commission has decided not to charge fees to recover the costs of hearings related to the fee categories established in this rule.

First, a number of commenters contend that if the Commission chooses to charge a fee for tariff filings that are set for hearing, the Commission should charge a portion of that fee to parties which intervene. It is true that, in some instances, the intervenors raise issues related directly to their own welfare and not so related to overall public interest considerations. At other times, intervenors may be protecting the public interest to a greater extent than any identifiable recipient. Thus, it might be appropriate to charge intervenors, but only if the Commission expends the effort to distinguish between these two situations. This administrative obstacle complicates considerably the ability of the Commission to establish fee categories that include recovery of hearing costs.

<sup>11</sup> All state public utility commissions and all members of the Gas Research Institute automatically are made intervenors.

Second, the Commission customarily does not track the time it spends on hearings on a case-by-case basis. Thus, it is not possible under the present circumstances to determine precisely how much of each hearing fee would be related directly to intervenors.

Third, the Commission believes that the range of complexity among hearings is so great that an "average hearing fee" might be viewed as unduly burdensome on many parties. If hearing costs are tracked more closely on a case-by-case or type-by-type basis, any potential inequity from an averaging approach can be avoided.

The above reasons outline the administrative and practical problems for the Commission to charge for hearings in the present circumstances. Even though the Commission could elect to charge for fees in this rule, the Commission, in its discretion, has decided not to do so at this time.

Therefore, this rule does not include a separate hearing fee category and does not include costs associated with hearings in any of the fee categories that are specified in this rule. The Commission may in the future reconsider its position on this point. Meanwhile, the Commission does retain the right to directly bill [see Section III.H below] an applicant for the costs associated with a hearing in the pipeline area where the hearing provides a private benefit to an identifiable recipient and where the hearing requires an extraordinary amount of Commission time and effort to process.

### 5. Other Considerations

The Commission is not establishing in this rulemaking fees for a number of other activities related to natural gas pipeline rate matters. Those actions include rehearings, declaratory orders, rulemakings, preliminary and formal enforcement investigations, enforcement-related settlements and litigation, news releases, and litigation in the courts. As for preliminary and formal enforcement investigations, enforcement-related settlements and litigation, news releases, and litigation in the courts, the Commission believes that these actions generally result in a benefit to the public at large, and do not manifest the necessary, identifiable benefit to an individual entity. This is especially true in enforcement related matters.

As for rulemakings and declaratory orders, while the Commission believes that these actions might warrant fees, the Commission has decided not to establish a separate fee category for these items as they pertain to NGA

<sup>10</sup> 18 CFR 154.38(d)(5)(1983).

pipeline rate matters.<sup>12</sup> Finally, as for rehearings, in those cases where a petitioner for rehearing is seeking a private benefit, the Commission believes that it could charge a fee for reviewing that petition. However, there are also cases where an entity's petition for rehearing raises issues that are primarily in the public's interest. In those cases, the Commission does not believe it would be reasonable to impose a fee. Due to the administrative burden that would be involved in trying to segregate which petitions could be charged, the Commission has decided not to set a fee for petitions for rehearing or to include the costs associated with rehearings into the fee categories established in this rule.

### B. Special Benefits to Identifiable Recipients

In delineating the services or benefits for which agencies are permitted to charge under the terms of the IOAA, Budget Circular A-25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a Government service.<sup>13</sup> In addition, the circular states that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values than those which accrue to the general public."<sup>14</sup>

All of the commenters argue that there are no special benefits to natural gas pipelines that will substantiate a fee. Furthermore, many claim it is the public that receives the benefits of these filings. And, they say, it is the Commission's responsibility under the IOAA to show that the pipelines are receiving the benefits of these Commission services.

These arguments have previously been rejected in *National Cable Television Association, Inc. v. FCC*, 554 F. 2d 1094 (D.C. Cir. 1976), and *Mississippi Power & Light v. NRC*, 601 F. 2d 223 (5th Cir. 1979). In response to the argument put forth by cable television operators that they receive no benefit from an FCC license because the cable television industry would have developed better without FCC regulation, the D.C. Circuit in *National Cable Television* said "[a]ll that may be true, but these distinctions have no relevance here. The fact is that the FCC has undertaken to regulate this industry and has so far been sustained by the

Supreme Court in this endeavor, with the result that a certificate of compliance has become a necessary and therefore valuable license."<sup>15</sup> The Fifth Circuit in *Mississippi Power & Light* similarly held that since a license from the NRC is an absolute prerequisite to operating a nuclear facility, that license is a benefit not shared by other members of society.<sup>16</sup> Hence, the Commission believes this issue has been settled by the courts and need not be the subject of further discussion in this rule.

In a similar vein, two commenters contrast the Commission's fees to those of the NRC. These commenters contend that while an NRC licensee receives a special benefit (for example, the ability to construct and operate a nuclear facility), a pipeline filing a tariff or rate change does not receive any similar benefit. Instead, the commenters claim a ratemaking proceeding under the NGA primarily protects the public's interest.

While consumers may be ultimate beneficiaries from the regulation of natural gas, that is not determinative of the Commission's right to charge fees under the IOAA. The IOAA provides for the collection of fees for any "work, service, publication, document benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility."<sup>17</sup> Processing pipeline rate filings is the type of service for which the IOAA expressly authorizes the collection of fees. Not only is the statute clear on its face, but the D.C. Circuit has held that a fee otherwise authorized by the IOAA is not rendered invalid because the public may also enjoy downstream benefits.<sup>18</sup>

Furthermore, while it is true that in 1965 the Federal Power Commission took an opposite approach toward fees,<sup>19</sup> that approach does not prevent this successor Commission from adopting a different policy. Not until the 1970's did the courts begin reviewing fee

systems of various agencies. Since those cases were decided and the law became sufficiently clear, the Commission now believes that it can reasonably charge fees for the services and benefits provided to specific applicants.

### C. Smallest Practical Unit

In designing a fee schedule, the Commission should establish fees on the smallest unit or category of service that is practical. In remanding fees established by the FCC, the United States Court of Appeals for the D.C. Circuit set forth the most authoritative interpretation of this IOAA requirement as follows:

[W]e interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical. In most cases, we expect this unit will be classes of carriers or applicants or grantees or services which the Commission has already singled out for separate treatment in its 1975 fee schedule. Classification is always a difficult problem, involving as it does the drawing of lines; but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.<sup>20</sup>

Further, Budget Circular A-25 states that "costs shall be determined or estimated from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose."<sup>21</sup>

The Commission, in keeping with Budget Circular A-25, is classifying its fees by types of applications or filings. The Commission has calculated its fees from its Management Information Systems (MIS). The MIS is an agency system established to track workload. The MIS tracks time, by work-months, based on types of applications or proceedings. The Commission is establishing one fee for an entire filing or proceeding because that filing or proceeding is the smallest unit practical for the Commission to develop fees.<sup>22</sup> In the NOPR in this docket, the Commission stated that it anticipated establishing two separate fee categories for tariff filings for general changes in rates and for tariffs filings for changes

<sup>12</sup> 554 F. 2d at 1101-02.

<sup>13</sup> 601 F. 2d at 229.

<sup>14</sup> 31 U.S.C. 483(a) (1970).

<sup>15</sup> *Electronics Industries Ass'n v. FCC*, 554 F.2d 1109, 1115 (D.C. Cir. 1976). In that case, petitioners argued that fees should not be assessed for tariff filings or equipment testing and approval. The court answered that even though both activities were required by statute, the FCC was entitled to charge for services which assisted a person in complying with his statutory duties. Such services, the court said, create an independent private benefit since they provide a means for the carrier to obtain its revenues and to regulate subscriber use of its facilities. The court concluded that although the statute was enacted in order to protect the public against excessive or unreasonably discriminating or preferential charges, that result is only an incidental benefit from the service which is rendered by the agency, i.e. providing the means for carriers to comply with the statute.

<sup>16</sup> 30 FR 12,077 (Sept. 15, 1965).

<sup>20</sup> *Electronic Industries Association v. FCC*, 554 F.2d 1109, 1116-17 (D.C. Cir. 1976).

<sup>21</sup> Budget Circular A-25, at 3.

<sup>22</sup> The Commission has recently updated the MIS by starting to track its workload on a new system (Time Distribution Reporting System) which may provide an even greater degree of accuracy of Commission workload. At this time, however, the Commission does not have a year's worth of data to develop actual fees from the new system.

<sup>12</sup> The Commission is considering, in other rulemakings, both fees for declaratory orders under all of its jurisdictional statutes and fees to recover the costs of certain rulemakings. In those cases, the Commission believes that there are special benefits provided to identifiable recipients.

<sup>13</sup> Budget Circular A-25, at 1-2.

<sup>14</sup> *Id.* at 2.

other than in rates. After calculating the time spent on these two areas and the resulting fees, the Commission found the fees to be so nearly identical that, for logical and administrative efficiency reasons, only one fee category for both activities is being established. The Commission will continue to monitor these two subparts of the single category, however, and will establish two different fees if necessary in the future.

#### D. Basis of Cost Recovery

##### 1. Direct and Indirect Costs Included

The Commission's fee schedule is designed to account for all types of recoverable costs associated with the processing of the specified applications or filings under the NGA. The costs attributable to a particular Commission service are not merely the salaries of the employees who review the applications or filings. The attributable costs include the direct salary costs as well as the substantial amount of indirect costs which the Commission expends in its reviews. As the Fifth Circuit has stated, employees

... must be supplied with working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that . . . [they are] hired, paid on a regular basis and provided specialized training courses. Those and other costs such as depreciation and interest on plant and capital equipment are all necessarily incurred in the process of reviewing an application.<sup>23</sup>

Accordingly, the Commission has included in its identification of costs the following items: salaries and benefits; travel; transportation of things; rents; communications and utilities; printing; other support services; supplies; and equipment.

##### 2. Methodology

###### (a) Underlying Considerations

The Commission's calculation of the costs of providing each of the services represented by a fee category is directly related to the amount of time the Commission spends providing each of the services. The fees in this rule are based on information obtained through the Commission's Management Information System (MIS), which provides the amount of time spent on all Commission functions. The functions are grouped into categories which represent the Commission's various programs, including gas wellhead pricing, gas pipeline rates, gas pipeline certificates, gas producer certificates, gas producer rates, oil pipeline regulation, hydropower regulation, and electric

power regulation. The MIS workload data is recorded on a monthly basis.

With respect to each function, the supervisor in that area records for the MIS the number of projects initiated (receipts) and completed (completions) in a particular time period. Most Commission functions can be measured in terms of the number of projects initiated and completed. In accordance with Commission practice, these projects are generally assigned docket numbers and, for purposes of this discussion, will be referred to as "docketed activities". The supervisor in each organization unit reports to the MIS the amount of time spent by staff on each functional category in terms of work-months. A "work-month" is the unit of work represented by one employee's devotion of 100 percent of his or her time for one month. Time sheets are coded by functional activity and are filled out Commission-wide every two weeks. The supervisor merely checks employee time sheets for accuracy in coding.

Support functions regularly undertaken, with respect to any program, are not docketed and may not be measured in terms of receipts and completions. The nature of these functions makes impractical any measurements in terms of receipts and completions, but these functions are nevertheless essential to the completion of any docketed activity. This time is also allotted and reported by unit supervisors in terms of work-months.

Only those support activities that are related to providing a benefit are included in the calculations. These support functions will be referred to as "support activities" and can be divided into three categories. First, there are support activities that involve general supervision, personnel management, and routine administrative functions such as maintenance of time and leave records, the handling of property and supplies, staff meetings, and the planning and organizing of leave. This category can be labeled as "administrative services" and is included for fee recovery because it is essential to the FERC's ability to complete docketed activities.

Second, support staff responds to requests for information that may not contribute directly to the completion of a docketed activity. Examples include requests for information from the public, from the Congress, from the General Accounting Office, and from other governmental agencies. The Commission has excluded from its calculation of fees the work-months associated with this second category of "inquiries and

internal communications" because this type of support activity is not involved in completing docketed activities.

Third, support staff establishes or reviews certain Commission operations and procedures. This is "technical management and operations." These activities include work on the FERC budget, management information systems, and program development functions such as special studies or briefings on relevant subjects, but which are not identified with just one docketed activity. This category is therefore an integral part of completing docketed activities.

###### (b) Calculation of Fee Amounts

For purposes of this rule, the Commission has used the following methodology to determine the cost of providing any service or benefit. First, the work-months reported for a class of docketed activity are added to a pro-rata share of the work-months reported for the relevant support activities for that activity. This figure, representing the total number of work-months dedicated to a class of docketed activity for a year, is divided by the number of completions for that year for the given activity. The resulting quotient represents the average number of work-months required to complete one proceeding in that given class of docketed activity.

Second, the Commission used the following data provided by its Office of Program Management to figure the average cost of a work-month, based on the Commission's fiscal year 1983 actual costs.

Salaries and benefits based on year and payroll data and benefits at 26 percent	\$46,228
Travel	726
Transportation of things	7
Rents, communications and utilities	3,185
Printing	1,899
Other services—excludes direct program contracts	4,684
Supplies	477
Equipment	42
Total	57,248

The total was divided by 12 to yield an average work-month cost of \$4,770.67.

Third, in order to determine the cost of an activity, the Commission multiplied the average cost per work-month by the average number of work-months required to complete the activity.<sup>24</sup>

<sup>24</sup> Updated data sheets have been placed in the Commission's Public File Room detailing the calculations.

<sup>23</sup> *Miss. Power & Light v. NRC*, 601 F.2d at 232.

There were numerous complaints about the cost methodology proposed in the Notice of Proposed Rulemaking, such as inadequate information to verify the costs, calculations based on salary and overhead from one year and time per project from another year, use of budgeted figures as opposed to actual figures, use of average work month costs; use of only one year for determining fees, and use of number of completions per year to determine the fees.

As for what costs are permissible for inclusion, the IOAA provides for the collection of fees which include both direct and indirect costs to the Government. Thus, there is no reason to exclude any item except for support functions relating to inquiries and internal communications, as discussed above. Second, in devising its fee schedule, the Commission is authorized to "determine or estimate [its costs] from the best available records in the agency."<sup>25</sup> For this Commission, that means the MIS.

The Notice of Proposed Rulemaking used 1982 budgeted figures to determine its costs, and 1981 actual completions and work-months in the fee calculation. Further, the method of updating the fees was tied to 1981. Each subsequent year was to be adjusted by the change in costs between the base year and the year in consideration. Many commenters argue that 1981 may not be a typical year for completions and work-months, and thus, should not be the base year. The Commission agrees with this argument, and believes it is much more accurate to calculate fees from actual completions and work-months, as well as actual costs. The Commission has decided to use actual fiscal year figures in this rule as well as in updating the fees in subsequent years (see section III

E. below). This approach keeps data more current, and is more representative of what actual fees should be. Therefore, the Commission has calculated the fees in this rule from actual fiscal year 1983 direct and indirect costs, completions, and work-months. This is in keeping with the Commission's statement in the NOPR that it would use the most accurate and representative base year data available to establish fees. Furthermore, this approach eliminates any inaccuracies which could arise from using budgeted figures, as was done in the NOPR.

One commenter claims that the Commission should not use an agency-wide figure for determining its direct costs. Instead, it maintains, the Commission should determine pipeline fees based on the salaries of only those employees processing pipeline filings. As permitted under the requirements of Budget Circular A-25, since the Commission's accounting system employs an agency-wide figure, the Commission has used an agency-wide figure as the basis for its costs.

Two commenters claim that "number of completions" is insufficient for determining accurate fees. They argue that the Commission should also include cases in progress; otherwise, one commenter claims the fees will exceed the costs associated with completions. By using "number of completions," the Commission is attempting to recover the full amount it spends on any filing at the time the filing is submitted. While it is true that the fee in any one year is tied to an average based on completions in the immediately preceding year, those completions are the best and most current data available on the workload of the Commission. While an unusually high or low number of completions in any given year will raise or lower the fee in the succeeding year, these completions are a reasonable barometer of where the Commission is spending its

resources. Since the workload in the gas pipeline rate area is not expected to fluctuate widely, the use of completions in a year is appropriate. Furthermore, if there is an unusual number of completions in a year, that number may reflect a future trend for which the succeeding year's fees should rise or fall accordingly. Finally, this approach will not overcharge any one applicant because it is assumed that most applications are worked on in more than one year. In other words, a filing might be filed at the end of 1982, and be completed in 1983. Rather than charge two fees (one for each year that the review of the filing is in progress), the Commission is able to charge one fee at the time of filing. Nevertheless, should a fee result, which the Commission views as being abnormally high, it may elect to use statistical averaging techniques to bring the fees to a more reasonable level.

Finally, one commenter objects to supervisors' monitoring the time spent by staff that is ultimately used to calculate Commission work-months. As was explained above, the role of the supervisor is only to check for accuracy in filling out time reporting forms. Commission employees fill out their own time reports, listing how their time was spent. This approach, which has been in operation for a little over a year, is different from that used at the NOPR stage. The Commission believes that actual time reporting by each employee is as accurate an account of how time is spent by this Commission as can be feasibly implemented.

#### E. Actual Fees Established and Procedures for Updating Fees

The following table summarizes for 1983 the total number of work-months, and completions, and the average cost per completion in rendering the pipeline services for which the Commission is establishing fees in this final rule.

Service	Total WM's in 1983	Total completions in 1983	Average number WM's per completion in 1983	Average cost per completion in 1983
Review of tariff filings for changes other than in rates, and general changes in rates	118.20	279	0.42	\$2,003.68
Review of tariff filings that track changes in costs (tracking filings)	136.35	277	.49	2,337.63

The Commission uses the standard methodology set forth in this and other fees rulemakings to determine all of the fees for natural gas pipeline rates matters, except the fee for petitions seeking advance Commission approval

of rate treatment of research, development, and demonstration expenditures. Rather than devise a single fee for reviewing these petitions, the Commission will use the direct billing procedure to recover these costs

(see section III. H. below) for the following reasons. Most of the Commission time spent in reviewing these petitions is spent reviewing petitions filed by the Gas Research Institute (GRI). However, pipelines,

groups of pipelines, and entities acting on behalf of pipelines also file petitions seeking advance Commission approval of expenditures for their own projects. The projects are usually much smaller than GRI projects and require much less Commission time to review. If the Commission were to determine a fee based on the average cost per petition seeking advance approval of research, development, and demonstration expenditures, the result might be inequitable from two standpoints. On the one hand, the more lengthy GRI proceedings would tend to increase the fee for other pipeline petitions. On the other hand, the time spent on the pipeline petitions would tend to lessen the fee for GRI with the result that the other pipeline fees might be a subsidy for the cost of reviewing GRI's petitions. Therefore, the Commission will directly bill, by means of the procedures set forth in § 381.107,<sup>26</sup> for the costs of processing any petition seeking advance approval of rate treatment of research, development, and demonstration expenditures.

The following fees are therefore established:<sup>27</sup>

Services	Fee
Tariff filings for general changes in rates and for changes other than in rates.	\$2,000
Tariff filings that track changes in costs.....	\$2,300
Petitions seeking advance approval of rate treatment of research, development, and demonstration expenditures.	Direct billing.

The Commission will update its fees each year to reflect the most current Commission costs. An updated fee schedule will be published annually in the *Federal Register* after the close of the preceding fiscal year. The updated fees will be based on actual completions, work-months, and costs from the preceding fiscal year. In this way, the fees will reflect, using the most current data available, the benefits to the recipients.

Many commenters contend that the fees in the NOPR would be too high for small pipelines. They also claim that the customers of small pipelines will be hurt much more than those of the larger companies, who can spread their fees among many more customers.

<sup>26</sup> These general procedures for direct billing are discussed and promulgated in the companion final rule for NGA producer fees (Docket No. RM82-25-000).

<sup>27</sup> Fees are established by taking actual costs and rounding down to:

(1) The nearest \$5 increment, if the total cost is \$100 or less; and

(2) The nearest \$100 increment, if the total cost is more than \$100.

The Commission is required under the Regulatory Flexibility Act<sup>28</sup> to consider the degree of economic effect of its rules on small businesses and other small entities. The Commission has concern over a small pipeline's ability to pay for filings that include the costs of hearings (e.g., \$46,000 as proposed in the NOPR for the hearing phase of tariff filings involving general changes in rates). As is discussed above, the Commission has decided not to establish fees to recover hearing costs in this rule. The Commission believes in light of that decision, small pipelines will not be overly or unfairly burdened by the fees established in this rule. Nevertheless, the final rule does provide for a waiver in the case of severe economic hardship (see section F.2, *infra*).

#### F. Exceptions to Full Cost Recovery

##### 1. Reductions in Fee Amounts by Category

The Commission has established in this rule fees which include all the recoverable costs associated with the particular benefits and services provided. The Commission, based on its expertise, recognizes that there may be instances in the future in which establishing full cost recovery fees would have an adverse effect on applicants, or would undermine Commission activities. In such cases, the Commission may exercise discretion to reduce fees to less than full cost recovery in order to prevent a disproportionate economic impact or for other good cause. Good cause would include situations where the Commission wishes to encourage use of a service, where less Commission time is required than staff time, or where there is a reduction in the amount of time required to process a filing. Any reduction in a fee would be initiated only by the Commission by rulemaking. The same percentage of reduction would carry over to subsequent years unless further notice was given by the Commission that it was altering that reduction.

A number of commenters say that the Commission's guidelines on making reductions are too vague. The Commission believes that the standards enumerated are sufficiently specific, particularly since any categorical reductions in fee amounts will be done by means of a rulemaking. In addition, economic hardship to a class of applicants will be taken into account; this factor is as specific as possible given the degree of flexibility the

Commission needs in determining good cause for a categorical reduction.

##### 2. Case-by-Case Waiver Procedure

The Commission also realizes that a different situation could arise in which an individual applicant is unable to pay fees as set by the Commission due to severe economic hardship. The Commission does not expect this to happen often in the gas pipeline rate area since the Commission has reduced the fees significantly as a result of excluding any recovery of hearing costs. If an applicant is suffering from a period of severe economic hardship, the applicant will have the burden of presenting evidence, such as a financial statement, to the Commission showing that the applicant is either economically unable to pay the fee, or that if the applicant does pay the fee, it will place the applicant in a state of financial distress or emergency. As stated by the D.C. Circuit:

The applicant for waiver must articulate a specific pleading, and adduce concrete support, preferably documentary.<sup>29</sup>

This material must be included with the petition for waiver at the time of filing the application. The Commission, or its designee, will analyze petitions for waiver to determine whether the standards for waiver have been met. The Commission will notify the applicant as to whether the petition for waiver has been denied or accepted.

##### G. Procedures for Paying Fees

The Commission's NOPR states that fees must be submitted by certified check, made payable to the United States Treasury. A number of commenters argue that there is no reason to require certified checks. They state that a corporate check should be sufficient.

The Commission has decided to delete the certified check requirement. However, a check made payable to the United States Treasury must still be included with the filing or application, unless a petition for waiver is submitted in lieu of the fee. The check must indicate for what the fee is being submitted, e.g., tariff filing, general change in rates. This may be written on the bottom of the check. If the filing or application is not accompanied by either the appropriate fee or a petition for waiver, it will be considered deficient and will not be processed.<sup>30</sup>

<sup>29</sup> *United Gas Pipe Line Company v. FERC*, 707 F.2d 1507, 1511 (D.C. Cir. 1983).

<sup>30</sup> The fees categories established in this final rule are designed on the assumption that

<sup>28</sup> 5 U.S.C. 601-612 (Supp. V 1981).

A few commenters question the Commission's decision to exclude the possibility of fee refunds. The Commission's decision not to allow refunds is consistent with the policy behind the IOAA. That statute authorizes and orders Government agencies to become self-sustaining to the fullest extent possible. To do so, the agency is to collect fees for services and benefits it provides. The Congress gave this Commission the duty of carrying out the Natural Gas Act, part of which is to review and regulate pipeline rates. These are services for which the IOAA authorizes the collection of fees. The service is reviewing the tariff filing, not guaranteeing the acceptance of the filing or the desired increase in rates. The Commission reviews every tariff filing and rate change equally. Some are accepted, some are not, but the vast majority are accepted. The Commission's fees cover the time and cost of providing these services. It does not cost the Commission any less when it disallows a rate increase or a change in rate schedule or PGA clause. Furthermore, the Commission's decision not to allow refunds is consistent with the current policy of no refunds of fees and annual charges under the NGA under Part 159 of the Commission's regulations.

#### H. Direct Billing

The methodology used to establish the fees in this rule is based on the actual time of processing filings and the actual agency-wide costs involved with this processing. The Commission takes the actual work-months associated with a class of docketed activity and divides it by the number of completions in that class to arrive at an average number of work-months per completion. That figure is then multiplied by the average cost per work-month to arrive at the fee.

However, the Commission occasionally receives filings which are not average. These filings may be extensive in scope and present factual, legal, or policy issues of such complexity that the Commission may devote an extraordinary amount of time and effort to processing them. In addition, there may not be a truly

jurisdictional entities will continue to submit filings and applications in the same manner as in the past. Although this fee schedule is designed to collect a separate fee for each discrete service or benefit provided, the Commission recognizes that the potential exists, in some cases, for jurisdictional entities to combine filings in order to avoid the assessment of fees. If the implementation of this fee schedule causes jurisdictional entities to alter their reporting practices, the Commission will consider additional means to ensure that the Commission does not recover all of the costs it incurs in providing these services.

representative average due to the small number of filings in a particular area.

The standard fees established in this rule bear no reasonable relationship to the actual cost of processing those extraordinary and atypical filings. Moreover, if the costs of processing extraordinary filings are included in the costs associated with average filings, persons submitting average filings would be subsidizing those submitting the extraordinary filings. Therefore, in the case of an extraordinary filing, the Commission reserves the option of ordering a direct billing procedure at the beginning of processing the filing or at any time up to one year after receiving a complete filing. As discussed above, in the case of petitions seeking advance Commission approval of rate treatment of research, development, and demonstration expenditures, the Commission has decided to use direct billing for the entire fee category due to the unavailability of reliable data to establish an average fee.

Under the direct billing procedure, the Commission will periodically bill the entity that submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing, unless a lesser amount is determined to be fair and equitable. The staff resources devoted to processing a filing resulting in a direct billing will be separately recorded and will not be included in the work-months associated with processing average filings. This final rule also requires the Commission to credit an applicant whose filing becomes subject to direct billing with any fee paid under this fee system.

Four commenters address this issue and each state that the direct billing procedure is entirely too vague. These commenters object to this direct billing method because they claim that the complexity of a filing might result simply from the participation of intervenors, or because it contains important public policy issues where the potential benefit to the applicant is secondary to that of the public or to other industry members. The Commission recognizes the points made by these commenters but, as indicated above, there is no reason to determine this issue generically in light of the Commission's decision not to establish fees to recover the costs associated with hearings in NGA pipeline rate matters. The possible allocation of some costs to intervenors in direct billing situations will be handled on a case-by-case basis.

#### IV. FINAL REGULATORY FLEXIBILITY ANALYSIS

When an agency promulgates a final rule under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, after being required by that section or any other law to publish a notice of proposed rulemaking, a final regulatory flexibility analysis may be appropriate under the Regulatory Flexibility Act of 1980. Each final regulatory flexibility analysis must contain (1) a statement of need for the rule, (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, and the agency response to those comments, and (3) a description of alternatives to the rule consistent with the stated objectives of the applicable statute which the agency considered and ultimately rejected.

In this preamble, the Commission has already detailed its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes a schedule of fees to be paid to the Commission for certain benefits it provides, in accordance with the IOAA and Budget Circular A-25.

This rule affects natural gas pipelines subject to Commission jurisdiction under the NGA and the NGPA as well as non-jurisdictional entities seeking advance Commission approval of rate treatment of research, development, and demonstration expenditures. There are approximately 150 interstate natural gas pipelines in the United States. The Small Business Administration's (SBA) regulations do not establish specific size standards for natural gas pipelines. (See 13 CFR Part 121). However, natural gas pipelines, especially interstate pipelines, are large businesses. Only about 40 interstate natural gas pipelines possibly could be classified as small entities.<sup>31</sup> Petitioners seeking advance Commission approval of rate treatment of research, development, and demonstration expenditures are pipelines groups of pipelines, or entities owned or controlled by pipelines and,

<sup>31</sup> Generally, the Commission considers small pipelines to be those pipelines classified as Class C or Class D natural gas companies, that is, companies earning \$25,000 or more per year, but less than \$1,000,000. (See 18 CFR Parts 201, 204, Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act.) In addition, the Commission considers small entity pipelines to include those companies earning less than \$25,000 a year or those that are so new that they cannot yet be classified. The proposed change in nomenclature for these small pipelines in Docket No. RM 83-66-000, 48 Fed Reg. 46361 (October 12, 1983), does not affect in a significant way the conclusions reached herein.

therefore, usually are either large businesses or are owned and controlled by large businesses. Therefore, this rule may have some degree of economic impact on a number of small pipelines. But, there is no reason to expect that this impact will be significant for a substantial number of those pipelines. Furthermore, the fees established in this final rule are much lower than the fees proposed in the NOPR. This will assuage any potentially significant economic effect.

Concerning the impacts on pipelines, and in particular small pipelines, the final rule addresses those cases where there is either a disproportionate economic burden or severe economic hardship on a pipeline. The rule contains a provision for waiver of fees for an individual applicant which could protect small pipelines from undue economic hardship. However, the Commission is also required to satisfy the IOAA's statutory directive to be "self sustaining to the full extent possible." Hence, there is no blanket exemption for small entities. The Commission believes the rule as now promulgated represents a fair balance between the purposes of both the IOAA and the Regulatory Flexibility Act.

#### V. PAPERWORK REDUCTION ACT STATEMENT AND EFFECTIVE DATE

This rule does not contain any information collection provisions and therefore is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501-3520 (Supp. V 1981). However, this rule is companion to RM82-25-000, which does contain information collection provisions. Since the information collection provisions in RM82-25-000 are the general procedures for collecting fees and are integral to the administration of this final rule, the effective date for this rule will be the same as that for RM82-25-000. Therefore, this rule will become effective April 25, 1984. If OMB's approval and control number have not been received for RM82-25-000 by this effective date, the Commission will issue a notice temporarily suspending the effective date of this final rule.

#### List of Subjects

##### 18 CFR Part 154

Natural gas.

##### 18 CFR Part 381

Natural gas, General fees.

In consideration of the foregoing, the Commission is amending Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.  
Kenneth F. Plumb,  
Secretary.

#### PART 154—[AMENDED]

1. The authority citation for Part 154 is revised to read as follows:

**Authority:** Natural Gas Act, 15 U.S.C. 717-717z (1976 & Supp. V 1981); Department of Energy Organization Act, 42 U.S.C. 7102-7352 (Supp. V 1981); Executive Order 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 483a (1970).

##### § 154.24 [Amended]

2. In Part 154, § 154.24 is amended by inserting at the end of the current text, following the word "part", the phrase " \* \* \* or is not accompanied with the fee prescribed in Part 381, unless a petition for waiver is submitted in lieu thereof under § 381.106 of this chapter."

3. In Part 154, § 154.63 is amended by adding a new paragraph (b)(1)(iii) to read as follows:

##### § 154.63 Changes in a tariff, executed service agreement or part thereof.

(b) \* \* \*

(1) \* \* \*

(iii) A fee in the amount prescribed in Part 381 of this chapter, unless a petition for waiver is submitted in lieu thereof under § 381.106 of this chapter.

#### PART 375—[AMENDED]

4. The authority citation for Part 375 continues to read as follows:

**Authority:** Department of Energy Organization Act, 42 U.S.C. 7101-7352 (Supp. V 1981); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1976 & Supp. V 1981).

5. In § 375.307, paragraph (u) is revised to read as follows:

##### § 375.307 Delegation to the Director of the Office of Pipeline and Producer Regulation.

(u) Deny or accept in whole or in part, petitions for waiver of the fees prescribed in §§ 381.201, 381.202, 381.203, 381.204, 381.205, 381.206 of this chapter in accordance with § 381.106(b) of this chapter.

#### PART 381—[AMENDED]

6. The authority citation for Part 381 reads as follows:

**Authority:** Department of Energy Organization Act, 42 U.S.C. 7101-7352 (Supp. V 1981); Executive Order 12,009, 3 CFR 422 (1978); Independent Offices Appropriations Act, 31 U.S.C. 483a (1970); Natural Gas Act, 15 U.S.C. 717-717z (1976 and Supp. V 1981); Federal Power Act, 16 U.S.C. 791a-828c (1976

& Supp. V 1981); Natural Gas Policy Act, 15 U.S.C. 3301-3432 (Supp. V 1981); Public Utility Regulatory Policies Act, Pub. L. 95-617, 92 Stat. 3117 (1978); Interstate Commerce Act, 49 U.S.C. 1-27 (1976).

7. In Part 381, Subpart B is amended by adding §§ 381.204 through 381.206 to read as follows:

#### Subpart B—Fees Applicable to the Natural Gas Act and Related Authorities

##### § 381.204 Pipeline tariff filings for general changes in rates and for changes other than in rates.

The fee established for a tariff filing for general changes in rates and for changes other than rates is \$2,000.

##### § 381.205 Pipeline tariff filings that track certain costs.

The fee established for a tariff filing that tracks costs is \$2,300.

##### § 381.206 Petitions for advance approval of rate treatment of research, development, and demonstration expenditures.

The fee for a petition seeking advance Commission approval of rate treatment of research, development, and demonstration expenditures will be determined and billed according to the procedures for direct billing set forth under § 381.107 of this chapter.

[FR Doc. 84-3586 Filed 2-9-84; 8:45 am]

BILLING CODE 6717-01-M

#### 18 CFR Part 271

[Docket No. RM79-76-219 (Colorado—1 Amdt. II); Order No. 357]

#### High-Cost Gas Produced From Tight Formations; Colorado

Issued: February 6, 1984.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determined that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission

recommendations of areas for designation as tight formations. This final order adopts the recommendation of the State of Colorado Oil and Gas Conservation Commission that an additional area of the Wattenberg J Sand Formation previously adopted by the Federal Energy Regulatory Commission, located in Weld County, Colorado, be designated as a tight formation under § 271.703(d).

**EFFECTIVE DATE:** This rule is effective March 7, 1984.

**FOR FURTHER INFORMATION CONTACT:** Steven Ross, (202) 357-8571, or Victor H. Zabel, (202) 357-8616.

**SUPPLEMENTARY INFORMATION:**

**Final Rule**

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

In the matter of High-Cost Gas Produced from Tight Formations; Docket No. RM79-76-219 (Colorado—1 Amendment II), Order No. 357.

Issued: February 6, 1984.

The Commission hereby amends § 271.703(d) of its regulations (18 CFR 271.703(d) (1983)) to include additional acreage in the Wattenberg J Sand Formation as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued November 14, 1983 (48 FR 52594, November 21, 1983)<sup>1</sup> based on a recommendation by the State of Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703, that an additional area of the Wattenberg J Sand Formation located in Weld County, Colorado be designated as a tight formation.

On January 23, 1983, in Order No. 124<sup>2</sup> the Commission adopted in part Colorado's recommendation that portions of the Wattenberg J Sand Formation located in Larimer, Weld, Adams and Boulder Counties, Colorado, be designated as a tight formation. Certain areas within the recommended area were not included in the designation pursuant to § 271.703(c)-(2)(i)(D) because these areas had been subject to infill drilling.<sup>3</sup> In the instant

recommendation, Colorado requested that Order No. 124 be amended to include acreage that had incorrectly been identified as areas that were subject to infill drilling.

Evidence submitted by Colorado supports the assertion that the additional area of the Wattenberg J Sand Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the recommendation.

This amendment shall become effective March 7, 1984.

**List of Subjects in 18 CFR Part 271**

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission,  
Kenneth F. Plumb,  
Secretary.

**PART 271—[AMENDED]**

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

**Authority:** Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

**§ 271.703 [Amended]**

2. Section 271.703(d)(11)(i)(A) is amended by adding the following description to the end thereof:

Township 2 North, Range 68 West, 6th P.M., Sec. 13 W/2.

[FR Doc. 84-3562 Filed 2-9-84; 8:45 am]

**BILLING CODE 6717-01-M**

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 101**

[T.D. 84-39]

**Customs Regulations Amendment Relating to the Customs Field Organization**

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations relating to the field organization of the Customs Service by changing the status of the Customs district of Bridgeport, Connecticut. This change will not impair services to area businesses or the general public. The change is consistent with the Customs

objective to effectively carry out its management responsibilities. This change will not disturb the present level of service at Bridgeport.

**EFFECTIVE DATE:** June 1, 1984.

**FOR FURTHER INFORMATION CONTACT:** Renee DeAtley, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8157).

**SUPPLEMENTARY INFORMATION:**

**Background**

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, by a notice published in the *Federal Register* on May 26, 1982, (47 FR 22964), Customs proposed to change the status of the Providence, Rhode Island, and Bridgeport, Connecticut, Customs districts.

Prior to publication of this notice Customs completed a survey of staffing and workload for the Providence and Bridgeport districts and, based on its findings, determined that the workload and manpower requirements do not warrant separate district organizations.

**Discussion of Comments**

In response to the notice, 100 comments were received from individuals, members of Congress, state governments, municipalities, customhouse brokers, shippers, banks, accounting firms, insurance companies, a college, a business council, a state representative, the Department of Commerce, and trade associations.

The majority of the comments were from the Providence and Bridgeport business communities and were in opposition to the proposal. There were some letters in favor of the change.

Those in favor believed that the change in status made good business sense, were pleased with the ability for licensed brokers to transact business within the Boston-Providence-Bridgeport areas interchangeably, and felt that the Boston district could handle any increase in workload adequately.

Those opposed to the change raised these issues most frequently: the area will suffer economic hardship by the loss of jobs to the business community; loss of business will minimize Government savings; effects on revitalization efforts and growth potential; and increased costs and delays of processing imports resulting in an overall deterioration of service.

It is Customs position that any change in district status will have no bearing on the services provided to the general

<sup>1</sup> Comments on the proposed rule were invited and none were received. No party requested a public hearing and no hearing was held.

<sup>2</sup> Docket No. RM79-76 (Colorado—1), issued January 23, 1981, 46 FR 9921 (January 30, 1981).

<sup>3</sup> See Order No. 270, Docket No. RM79-128 (Colorado—1 Amendment), issued November 22, 1982, 21 FERC ¶ 61,097 wherein the Commission adopted a similar recommendation of Colorado.

public or business communities involved. There will be a continuance of the full range of Customs services at all ports of entry and no changes in the way the commercial community enters and clears importations.

One concern raised by commenters is that if the current level of imports cannot be increased, or at least maintained, revenues obtained through Customs duties will be decreased, thereby minimizing savings to the Government. They contend that this would make the proposal counterproductive. Customs maintains that no gain or loss of revenue as a result of such a change is expected.

Another concern expressed by the local business community seemed to be that of the revitalization and growth potential of the area. Specifically mentioned are upgrading harbor facilities, cargo container operations, return of cruise ships, modernization of airport facilities, and a pending application for a Foreign Trade Zone (FTZ) for Providence.

The change in the status should not interfere with any revitalization plans and, in fact, Customs would encourage this type of activity which would certainly attract new business to the area and ensure that current businesses remain. The existing FTZ in Bridgeport will not be affected by this change.

#### Change in Status

After consideration of the numerous comments received in response to the notice and further review of the matter, it has been determined to proceed with the change in the status of the Bridgeport district. No action will be taken in regard to the Providence district until further study.

It should be noted that brokers currently licensed to transact business in Bridgeport will be considered licensed in Boston. Likewise those brokers currently licensed to transact business in Boston also could do business in Bridgeport. Thus, licensed brokers will be allowed to transact business interchangeably in Boston and Bridgeport.

The change will place the Bridgeport port of entry under the Boston district. Also, the ports of entry currently under the jurisdiction of the Bridgeport district will be placed under the Boston district. Those ports are as follows: Bridgeport, Hartford, New Haven, and New London, Connecticut.

Another concern raised by area businesses is that unnecessary expense will be incurred when the need arises to deal directly with the Boston district. The Boston District Director will hold local meetings each month with brokers,

importers, and transportation companies, to ensure that there will be no adverse impact on the trade community as a result of the change. Also a toll-free 800 telephone number will be installed for the benefit of the trade community.

Customs believes that the change in status of the Bridgeport district will result in more economical and efficient use of its personnel and resources in carrying out the Customs mission. As stated, there will be no reduction in Customs service to the general public or to those organizations conducting business in the Bridgeport district. In addition, Customs will be better able to meet the present needs and growth potential of the area.

Accordingly, Customs has determined that it is in the public interest to change the status of the Bridgeport, Connecticut, district.

#### Change in the Customs Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449), the Customs district of Bridgeport, Connecticut, is placed under the Boston, Massachusetts, district. The limits of the amended district include all of the territory currently in the Boston, Massachusetts, and Bridgeport, Connecticut, districts.

#### List of Subjects in 19 CFR Part 101

Organization and functions (Government agencies).

#### Amendments to the Regulations

#### PART 101—[AMENDED]

##### § 101.3 [Amended]

1. To reflect this change, the list of Customs regions, districts, and ports of entry, in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by removing: "Bridgeport, Conn." directly below "Providence, R.I." under the column headed "Name and headquarters"; "The State of Connecticut" under the column headed "Area"; and references to Bridgeport, Hartford, New Haven, and New London under the column headed "Ports of entry".

2. Section 101.3(b) is further amended by revising the listing for the Boston, Massachusetts, district to read as follows:

Name and headquarters	Area	Ports of entry
Boston, Mass.	The States of Massachusetts and Connecticut. (T.D. 84-39)	Boston, Mass. including territory and waters adjacent thereto described in T.D. 56493 Bridgeport, Conn. including territory described in T.D. 68-224 Fall River, Mass., including territory described in T.D. 54476 Gloucester, Mass. Hartford, Conn., including territory described in T.D. 68-224 Lawrence, Mass., including territory described in T.D. 71-12 (E.O. 5444, Sept. 16, 1930); (E.O. 10088, Dec. 3, 1949, 14 FR 7287) New Bedford, Mass. New Haven, Conn. including territory described in T.D. 68-224 New London, Conn., including territory described in T.D. 68-224 Plymouth, Mass. Salem, Mass. including Beverly, Marblehead, Lynn, and Peabody, Mass. (E.O. 9207, July 27, 1942) Springfield, Mass. (T.D. 69-189) Worcester, Mass.

#### Executive Order 12291

Because this will not result in a "major rule" as defined in section 1(b) of E.O. 12291, the regulatory impact analysis and review prescribed by section 3 of the E.O. is not required.

#### Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et. seq.), it is certified that the regulation set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulation is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Customs routinely establishes, expands and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this amendment may have a limited effect upon some small entities in the Bridgeport, Connecticut, area, it is not expected to be significant because similar changes in the Customs field organization have not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act.

#### Drafting Information

The principal author of this document was James S. Demb, Regulation Control Branch, U.S. Customs Service. However,

personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: January 24, 1984.

John W. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-3707 Filed 2-9-84; 8:45 am]

BILLING CODE 4820-02-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 5

#### Delegations of Authority and Organization; Director, National Center for Drugs and Biologics, et al.

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations for delegations of authority on drug and biological product matters to add new delegations to National Center for Drugs and Biologics' officials. The new delegations of authority will expedite the administrative handling of certain routine actions.

**EFFECTIVE DATE:** February 10, 1984.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

**SUPPLEMENTARY INFORMATION:** In § 5.31 (21 CFR 5.31), new paragraph (e)(3) is added delegating to the Director and Scientific Director, National Center for Drugs and Biologics (NCDB), the authority to issue 180-day tentative responses to citizen petitions on drug and biological product matters under § 10.30(e)(2)(iii) (21 CFR 10.30(e)(2)(iii)).

Also in § 5.31, paragraph (f) is being revised to delegate authority to the Director and the Scientific Director, NCDB, to issue final responses to citizen petitions in specific program areas for which the Director and Scientific Director already have final approval authority. The Director, NCDB, will refer to the Office of the Commissioner for signature any document involving a highly visible, controversial, or sensitive issue and any document that in the Director's judgment should be signed by the Commissioner, even though it is within the authority delegated to the Center.

The Office of the General Counsel will continue to review tentative and final

responses to citizen petitions before issuance.

#### List of Subjects in 21 CFR Part 5

#### PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended in § 5.31 by adding new paragraph (e)(3) and by revising paragraph (f) to read as follows:

#### § 5.31 Petitions under Part 10.

\* \* \* \* \*

(e) \* \* \*  
(3) The Director and Scientific Director, NCDB, are authorized to issue 180-day tentative responses to citizen petitions on drug and biological product matters under § 10.30(e)(2)(iii) of this chapter that relate to the assigned functions of that Center.

(f)(1) The Director and Scientific Director, NCDB, are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter on drug and biological product matters in program areas where they have been delegated final approval authority in the following sections of this part: (i) section 5.68 *Issuance and revocation of licenses for the propagation or manufacture and preparation of biological products*; (ii) § 5.69 *Notification of release for distribution of biological products*; (iii) § 5.70 *Issuance of notices implementing the provisions of the Drug Amendments of 1982 (DESI)*; (iv) § 5.71 *Termination of exemptions for new drugs for investigational use in human beings or in animals*; (v) § 5.73 *Certification of insulin*; (vi) § 5.74 *Issuance, amendment, or repeal of regulations pertaining to drugs containing insulin*; (vii) § 5.75 *Designation of official master and working standards for antibiotic drugs*; (viii) § 5.76 *Certification of antibiotic drugs*; (ix) § 5.78 *Issuance, amendment, or repeal of regulations pertaining to antibiotic drugs*; (x) § 5.79 *Issuance, amendment, or repeal of regulations establishing bioequivalence requirements for drug products for human use*; (xi) § 5.80 *Approval of new drug applications and their supplements*; and (xii) § 5.82 *Issuance of notices relating to proposals to refuse approval or to withdraw approval of new drug applications and their supplements*.

(2) The Director, Office of Drugs, NCDB, is authorized to issue responses

to citizen petitions submitted under § 10.30 of this chapter seeking a determination of the suitability of an abbreviated new drug application for a drug product.

**Effective date.** This regulation shall become effective February 10, 1984.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: February 3, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-3652 Filed 2-9-84; 8:45 am]

BILLING CODE 4160-01-M

#### 21 CFR Part 73

[Docket No. 83C-0179]

#### Listing of Color Additives for Coloring Contact Lenses; Correction

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting the final rule that amended the color additive regulations to provide for the safe use in coloring contact lenses of the colored polymeric reaction products formed by chemically bonding certain dyes, used singly or in combination, with poly(hydroxyethyl methacrylate).

**DATE:** Effective February 6, 1984.

**FOR FURTHER INFORMATION CONTACT:** John L. Herrman, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 84-81 appearing at page 372 in the *Federal Register* of Wednesday, January 4, 1984, the following corrections are made:

1. In the left column on page 372, the first sentence in the "Summary" is corrected by changing the words "color polymeric reaction products" to read "colored polymeric reaction products".

2. In the center column on page 372, the first sentence of the first full paragraph is corrected by changing the words "that are subject of this petition" to read "that are the subject of this petition".

3. In the left column on page 373, the last sentence in the first paragraph is corrected by changing the words "color additive" to read "color additives".

4. In the center column on page 373, in § 73.3121 *Poly(hydroxyethyl methacrylate)-dye copolymers*:

a. The second sentence in paragraph (a) is corrected to read "The dyes are (1) Reactive Black 5 [2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-3,6-bis[(4-((2-

(sulfoxy)ethyl)sulfonyl)phenyl)azo)-tetrasodium salt] [CAS Reg. No. 17095-24-8]; (2) Reactive Blue 21 [copper, (29H,31H-phthalocyaninato(2-)-N<sup>29</sup>,N<sup>30</sup>,N<sup>31</sup>,N<sup>32</sup>)-, sulfo(4-((2-sulfoxy)ethyl)sulfonyl)phenyl)amino)sulfonyl derivs] [CAS Reg. No. 73049-92-0]; (3) Reactive Orange 78 [2-naphthalenesulfonic acid, 7-(acetilamino)-4-hydroxy-3-((4-((2-sulfoxy)ethyl)sulfonyl)phenyl)azo)-] [CAS Reg. No. 68189-39-9]; and (4) Reactive Yellow 15 [benzenesulfonic acid, 4-(4,5-dihydro-4-((2-methoxy-5-methyl-4-((2-sulfoxy)ethyl)sulfonyl)phenyl)azo)-3-methyl-5-oxo-1H-pyrazol-1-yl)-] [CAS Reg. No. 60958-41-0]."

b. The second sentence in paragraph (b)(3) is corrected by changing the word "copolymers" to read "copolymer".

c. The words "color additive" in paragraph (c) are corrected to read "color additives".

d. Paragraph (d) is corrected to read "(d) Exemption from certification. Certification of these color additives is not necessary for the protection of the public health, and therefore these color additives are exempt from the certification requirements of section 706(c) of the act."

Dated: February 2, 1984.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 84-3051 Filed 2-9-84; 8:45 am]  
BILLING CODE 4160-01-M

## 21 CFR Part 74

[Docket No. 83C-0130]

### [Phthalocyaninato(2-)]Copper; Listing as a Color Additive for Coloring Contact Lenses; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of September 2, 1983, for a regulation listing [phthalocyaninato(2-)]copper as a color additive for coloring contact lenses. This action responds to a petition filed by Wilsa, Inc.

Effective date: September 2, 1983.

**FOR FURTHER INFORMATION CONTACT:** Geraldine E. Harris, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In a final rule published in the Federal Register of August 2, 1983 (48 FR 34946), FDA amended the color additive regulations

to provide for the safe use of [phthalocyaninato(2-)]copper as a color additive for coloring contact lenses. This color additive had been listed for use in polypropylene sutures used in general and ophthalmic surgery (21 CFR 74.1045). However, to reflect the fact that sutures, which were regulated as drugs before the passage of the Medical Device Amendments of 1976, are now regulated as medical devices, the final rule removed § 74.1045 and incorporated the provisions of that section in new § 74.3045 (21 CFR 74.3045). Additionally, the agency revised the restriction that appeared in § 74.1045(c) (now § 74.3045(c)(3)) to state that the medical devices in which this color additive is used (including sutures) are subject to the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act instead of section 505. In the final rule FDA gave interested persons until September 1, 1983, to file objections.

The agency received one letter in response to the final rule. This letter, which was from the Wesley-Jessen Division of the Schering Corp., is on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, under the docket number found in the heading of this document. The agency is treating this letter as a comment, rather than as an objection, because it did not object to any of the provisions of the final rule. Instead, the comment requested that the agency increase the limit on the use of [phthalocyaninato(2-)]copper in contact lenses from 0.01 percent by weight (as it is in the final rule) to 0.10 percent by weight and submitted citations of toxicology studies that purportedly document that the additive may be safely used at the higher level. However, the comment did not include any of the details of studies.

The agency has completed its evaluation of the comment. FDA finds that in the absence of the details of the studies cited in the comment, it cannot determine whether the increased use level is safe. Thus, the agency concludes that the comment is not adequate to justify modification of the regulation listing [phthalocyaninato(2-)]copper as a color additive. Further, the agency notes that the type of modification suggested by the comment should be the subject of a color additive petition rather than of a comment.

No requests for a hearing were received in response to the listing regulation. Therefore, this document confirms the effective date as September 2, 1983, for the regulation listing [phthalocyaninato(2-)]copper.

## List of Subjects in 21 CFR Part 74

Color additives, Color additives subject to certification, Cosmetics, Drugs, Medical devices.

### PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for hearing were filed in response to the August 2, 1983 final rule. Accordingly, the amendments promulgated thereby became effective September 2, 1983.

Dated: February 2, 1984.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 84-3053 Filed 2-9-84; 8:45 am]  
BILLING CODE 4160-01-M

21 CFR Parts 430, 436, 440, 442, 444, 450, and 452

[Docket No. 84N-0013]

### Antibiotic Drugs; Updating and Technical Changes

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by making corrections, updatings, and minor noncontroversial technical changes in certain regulations providing for accepted standards of antibiotic and antibiotic-containing drugs for human use. These changes will result in more accurate and up-to-date regulations.

**DATES:** Effective February 10, 1984. Comments, notice of participation, and request for hearing by March 12, 1984. Data, information, and analyses to justify a hearing by April 10, 1984.

**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:** Joan M. Eckert, National Center for Drugs and Biologics (HFN-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

**SUPPLEMENTARY INFORMATION:** FDA is amending the antibiotic drug regulations

by making corrections, updates, and minor noncontroversial technical changes in certain regulations that provide for accepted standards of antibiotic and antibiotic-containing drugs intended for human use. In two instances, the need for a change was called to FDA's attention by industry representatives. To aid in understanding the types of changes included in this document, the changes have been grouped into three general classes for discussion in this preamble: monograph corrections, updates, and technical changes.

#### Monograph Corrections

1. In § 440.49(b)(5), the word "200-milliliter" in the third sentence is corrected to read "200-millimeter."
2. In § 442.225c, paragraph (b)(1)(i) is corrected as follows:
  - a. In the third sentence, "1.0 percent potassium phosphate buffer," is corrected to read "1 percent potassium phosphate buffer,"; and
  - b. In the fourth sentence, "1.0 potassium phosphate buffer," is corrected to read "1 percent potassium phosphate buffer,".

#### Updates

1. In § 440.107c, paragraph (a)(1)(iii) and (iv) is removed. These drug product formulations are no longer manufactured.
2. In § 440.236, paragraphs (a)(1) and (b)(5) are revised to remove provisions for the drug product containing EDTA, which is no longer manufactured, and to provide standards for the drug product without preservatives.
3. In §§ 452.310(b)(1) and 452.510a(b)(1), the sample preparation method for determining the potency of erythromycin ophthalmic ointment is revised to delete the size of the separatory funnel to reflect the official method.

#### Technical Changes

1. In §§ 430.4(a)(24), 430.5(a)(38) and (b)(38), 430.6(b)(41), 436.35, 436.105(a) and (b), 450.40, and 450.240, the name "Mithramycin" is changed to read "Plicamycin" to be in agreement with the United States Adopted Names (USAN) designation.
2. In § 444.342d(a)(1), the pH range for neomycin sulfate-polymyxin B sulfate-hydrocortisone ophthalmic suspension (5.0 to 7.0) is changed to read 4.1 to 7.0. The sole manufacturer has submitted adequate stability data to support the lower limit.  
The agency has determined pursuant to 21 CFR 25.24(b)(22) (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 environmental assessment nor an environmental impact statement is required.

#### List of Subjects

- 21 CFR Part 430  
Administrative practice and procedure, Antibiotics.
- 21 CFR Part 436  
Antibiotics.
- 21 CFR Part 440  
Antibiotics, penicillin.
- 21 CFR Part 442  
Antibiotics, cepha.
- 21 CFR Part 444  
Antibiotics, oligosaccharide.
- 21 CFR Part 450  
Antibiotics, antitumor.
- 21 CFR Part 452  
Antibiotics, macrolide.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 430, 436, 440, 442, 444, 450, and 452 are amended as follows:

#### PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended:
- § 430.4 [Amended]
- a. In § 430.4 *Definitions of antibiotic substances*, paragraph (a)(24), by changing the name "Mithramycin" to read "Plicamycin" wherever it appears.
- § 430.5 [Amended]
- b. In § 430.5 *Definitions of master and working standards*, paragraphs (a)(38) and (b)(38), by changing the name "Mithramycin" to read "Plicamycin" wherever it appears.
- § 430.6 [Amended]
- c. In § 430.6 *Definitions of the term "unit" and "microgram" as applied to antibiotic substances*, paragraph (b)(41), by changing the name "Mithramycin" to read "Plicamycin" wherever it appears.

#### PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended:

#### § 436.35 [Amended]

a. In § 436.35 *Depressor substances test*, in the table by changing the name "Mithramycin" to read "Plicamycin".

#### § 436.105 [Amended]

b. In § 436.105 *Microbiological agar diffusion assay*, the table in paragraphs (a) and (b), by changing the name "Mithramycin" to read "Plicamycin".

#### PART 440—PENICILLIN ANTIBIOTIC DRUGS

3. Part 440 is amended:
  - a. In § 440.49(b)(5) by revising the third sentence to read as follows:

#### § 440.49 Oxacillin sodium monohydrate.

(b) \* \* \*

(5) \* \* \* Pipette a 5.0-milliliter aliquot of the sample solution into a 22- by 200-millimeter test tube, and add 5 milliliters of 10N NaOH. \* \* \*

#### § 440.107c [Amended]

B. In § 440.107c *Ampicillin trihydrate for oral suspension* by removing paragraph (a)(1) (iii) and (iv).

c. In § 440.236 by revising paragraphs (a)(1) and (b)(5) to read as follows:

#### § 440.236 Methicillin sodium monohydrate for injection.

(a) \* \* \*

(1) *Standards of identity, strength, quality, and purity.* Methicillin sodium monohydrate for injection is methicillin sodium monohydrate with or without one or more suitable and harmless preservatives and the buffer sodium citrate in a quantity not less than 4 percent and not more than 5 percent by weight of its total solids (such sodium citrate conforms to the standards prescribed therefor by the U.S.P.). Its potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of methicillin that it is represented to contain. It is sterile. It is nonpyrogenic. It passes the safety test. Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 6.0 and not more than 8.5. Its moisture content is not more than 6.0 percent. The methicillin sodium monohydrate used conforms to the standards prescribed by § 440.36a(a)(1).

(b) \* \* \*

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

**PART 442—CEPHA ANTIBIOTIC DRUGS**

4. Part 442 is amended in § 442.225c(b)(1)(i) by revising the third and fourth sentences to read as follows:

**§ 442.225c Cephalothin sodium for injection.**

(b) \* \* \*

(1) *Content; potency*—(i) *Sample preparation.* \* \* \* Dilute with 1 percent potassium phosphate buffer, pH 6.0 (solution 1), for the microbiological agar diffusion assay or distilled water for the hydroxylamine colorimetric assay to obtain a stock solution of convenient concentration. In addition, if the cephalothin sodium is not isolated, dissolve an accurately weighed sample in sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), for the microbiological agar diffusion assay or distilled water for the hydroxylamine colorimetric assay to obtain a stock solution of convenient concentration. \* \* \*

**PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS**

5. Part 444 is amended in § 444.342d(a)(1) by revising the fourth sentence to read as follows:

§ 444.342d *Neomycin sulfate-polymyxin B sulfate ophthalmic suspension (the blank being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section).*

(a) \* \* \*

(1) \* \* \* Its pH is not less than 5.0 and not more than 7.0; except if it contains 10 milligrams per milliliter of hydro-cortisone, its pH is not less than 4.1 and not more than 7.0. \* \* \*

**PART 450—ANTITUMOR ANTIBIOTIC DRUGS**

6. Part 450 is amended:

**§ 450.40 [Amended]**

a. In § 450.40 *Mithramycin* by changing the name "Mithramycin" to read "Plicamycin" Wherever it appears.

**§ 450.240 [Amended]**

b. In § 450.240 *Mithramycin for injection* by changing the name "Mithramycin" to read "Plicamycin" Wherever it appears.

**PART 452—MACROLIDE ANTIBIOTIC DRUGS**

7. Part 452 is amended:

a. In § 452.310(b)(1) by revising the first sentence to read as follows:

**§ 452.310 Erythromycin ophthalmic ointment.**

(b) \* \* \*

(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the ointment in a separatory funnel containing 50 milliliters of reagent-grade petroleum ether. \* \* \*

b. In § 452.510a by revising the first sentence in paragraph (b)(1) to read as follows:

**§ 452.510a Erythromycin ointment.**

(b) \* \* \*

(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the ointment in a separatory funnel containing 50 milliliters of reagent-grade petroleum ether. \* \* \*

These amendments institute changes that are corrective, editorial, or of a minor substantive nature. Because the amendments are not controversial and because when effective they provide notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. The amendments, therefore, may become effective February 10, 1984. However, interested persons may, on or before March 12, 1984, submit written comments on this regulation to the Dockets Management Branch (address above). 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. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before March 12, 1984, a written notice of participation and request for hearing, and (2) on or before April 10, 1984, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing

that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the hearing of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

*Effective date.* This regulation shall be effective February 10, 1984.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)).)

Dated: February 6, 1984.

**Philip L. Paquin,**

*Acting Associate Director for Regulatory Affairs.*

[FR Doc. 84-3649 Filed 2-9-84; 8:45 am]

BILLING CODE 4160-01-M

**21 CFR Part 449**

[Docket No. 84N-0019]

**Antibiotic Drugs; Nystatin**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new use of nystatin. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

**DATES:** Effective February 10, 1984, comments, notice of participation, and request for hearing by March 12, 1984, data, information, and analyses to justify a hearing by April 10, 1984.

**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:**

Joan M. Eckert, National Center for Drugs and Biologics (HFN-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

**SUPPLEMENTARY INFORMATION:** FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new use (packaged for extemporaneous preparation of oral suspensions) of nystatin. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Part 449 (21 CFR Part 449) to provide for the new use of this product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (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 environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 449**

Antibiotics, antifungal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), § 449.50 is amended by revising paragraphs (a) (1)(i) and (3)(i) and by adding paragraphs (a)(1) (vi) and (vii) and (b) (6) and (7) to read as follows:

**PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS**

**§ 449.50 Nystatin.**

(a) \* \* \*

(1) \* \* \*

(i) Its potency is not less than 4,400 units of nystatin per milligram; except, if it is packaged for extemporaneous preparation of oral suspensions, its potency is not less than 5,000 units of nystatin per milligram.

(vi) If it is packaged for extemporaneous preparation of oral

suspensions, it passes the suspendibility test.

(vii) If it is packaged for extemporaneous preparation of oral suspensions, it is crystalline.

(3) \* \* \*

(i) Results of tests and assays on the batch for potency, safety, loss on drying, pH, and identity. In addition, if it is packaged for extemporaneous preparation of oral suspensions, results of tests and assays on the batch for suspendibility and crystallinity.

(b) \* \* \*

(6) *Suspendibility test.* Transfer 200 milligrams of the sample into a 250-milliliter beaker containing 200 milliliters of water. Swirl the suspension gently with a stirring rod. Allow the beaker to remain still for 2 minutes and observe the bottom. It passes the test if the powder remains in suspension. If a significant amount of sediment is observed, withdraw an accurately measured aliquot of the undisturbed suspension and assay as directed in § 449.150c(b)(1) of this chapter. It passes the test if the suspension contains not less than 90 percent of the number of units of nystatin that it is represented to contain.

(7) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective February 10, 1984. However, interested persons may, on or before March 12, 1984, submit written comments to the Dockets Management Branch (address above). 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 in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before March 12, 1984, a written notice of participation and request for hearing, and (2) on or before April 10, 1984, the data, information, and

analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date, February 10, 1984.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: February 6, 1984.

Philip L. Paquin,

Acting Associate Director for Regulatory Affairs.

[FR Doc. 84-3648 Filed 2-9-84; 8:45 am]

BILLING CODE 4160-01-M

**21 CFR Part 520**

**Oral Dosage Form New Animal Drugs Not Subject to Certification; Diethylcarbamazine Citrate Capsules**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Happy Jack, Inc., to revise the labeling to provide more specific directions for use of diethylcarbamazine citrate capsules

for prevention of heartworm disease in dogs.

**EFFECTIVE DATE:** February 10, 1984.

**FOR FURTHER INFORMATION CONTACT:** Bob G. Griffith, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

**SUPPLEMENTARY INFORMATION:** Happy Jack, Inc., Snow Hill, NC 28580, filed a supplement to NADA 125-137 which covers use of 12.5-, 50-, 200-, and 400-milligram diethylcarbamazine citrate capsules for prevention of heartworm disease (*Dirofilaria immitis*) in dogs. The supplement provides for adding a statement to the label: "Capsules may be administered to the dog directly or added to the daily ration." Approval of this application does not change the approved use of the drug. The previously approved labeling provided for oral use of the drug, and the new statement merely provides more specific directions for use. The supplement is approved and the regulations are amended to reflect the approval.

NADA 125-137 was originally approved by a final rule published in the Federal Register of October 17, 1983 (48 FR 46979). The freedom of information summary made available under the provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), which consisted of a summary of safety and effectiveness data and information submitted to support approval of the original application, applies also to this supplemental application and may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (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 environmental assessment nor an environmental impact statement is required.

#### List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner

of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.622d by adding a sentence at the beginning of paragraph (b)(3)(ii) to read as follows:

#### PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

##### § 520.622d Diethylcarbamazine citrate capsules.

(b) \* \* \*

(3) \* \* \*

(ii) *Limitations.* Capsules may be administered to the dog directly or added to the daily ration. \* \* \*

*Effective date.* February 10, 1984.

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

Dated: February 1, 1984.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-3654 Filed 2-9-84; 8:45 am]

BILLING CODE 4160-01-M

#### 21 CFR Part 522

##### Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Cloprostenol Sodium

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Bayvet Division of Miles Laboratories, Inc., providing for use of a lower concentration cloprostenol sodium injection as an abortifacient (an agent that induces abortion) in pregnant feedlot heifers.

**EFFECTIVE DATE:** February 10, 1984.

**FOR FURTHER INFORMATION CONTACT:** Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

**SUPPLEMENTARY INFORMATION:** Bayvet Division of Miles Laboratories, Inc., P.O. Box 390, Shawnee Mission, KS 66201, filed supplemental NADA 113-645 providing for intramuscular (IM) use of an additional concentration of 125 micrograms ( $\mu$ g) of cloprostenol (as cloprostenol sodium) per milliliter (mL) of injection solution. The drug product is indicated for inducing abortion in

pregnant feedlot heifers from 1 week after mating until 4½ months of gestation. Bayvet has an existing approval for IM use of a 250- $\mu$ g/mL cloprostenol solution in beef and dairy cattle for scheduling estrus, terminating unwanted pregnancies from mismatings, or treating unobserved (nondetected) estrus, mummified fetus, and luteal cysts. The additional lower concentration solution (i.e., 125  $\mu$ g/mL cloprostenol) is limited to use as an abortifacient and is administered as a single injection of 375  $\mu$ g. When the existing drug product is used as an abortifacient, it is also administered as a single injection but the dose is 500  $\mu$ g. The supplemental NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary referred to below.

In addition, the current regulations do not specify the number of drug injections for the indications listed, therefore, the regulations are further amended to specify that treatment involves a single injection for all indications.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)), may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

#### List of Subjects in 21 CFR Part 522

Animal drugs, injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner

of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 522 is amended in § 522.460 by redesignating existing paragraphs (a), (b), and (c) (1), (2) (i) (a), (b), (ii), (3), (4), and (5) as paragraph (a) (1), (2), (3) (i), (ii) (a) (1), (2), (b), (iii), (iv), and (v), respectively; by revising redesignated paragraph (a) (3) (ii) (b); and adding new paragraph (b) to read as follows:

**PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION**

§ 522.460 Cloprostenol sodium.

(a)(1) *Specifications.* \* \* \*

(2) *Sponsor.* \* \* \*

(3) *Conditions of use.* \* \* \*

(i) *Amount.* \* \* \*

(ii) *Indications.* (a) \* \* \*

(1) \* \* \*

(2) \* \* \*

(b) Single cloprostenol injection for terminating unwanted pregnancies from mismatings from 1 week after mating until 5 months after conception, or for treating unobserved (nondetected) estrus, mummified fetus, and luteal cysts.

(iii) \* \* \*

(iv) \* \* \*

(v) \* \* \*

(b)(1) *Specifications.* Each milliliter of sterile aqueous solution contains 131.5 micrograms of cloprostenol sodium (equivalent to 125 micrograms of cloprostenol).

(2) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(3) *Special considerations.* Labeling shall bear the statements prescribed in paragraph (a)(3) (iii) and (iv) of this section.

(4) *Conditions of use—(i) Amount.* 3 milliliters (equivalent to 375 micrograms of cloprostenol) intramuscularly per animal as a single dose.

(ii) *Indications for use.* To induce abortion in pregnant feedlot heifers from 1 week after mating until 4½ months of gestation.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

*Effective date.* February 10, 1984.

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

Dated: February 2, 1984.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 84-3650 Filed 2-9-84; 8:45 am]

BILLING CODE 4160-01-M

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Secretary**

**24 CFR Part 51**

[Docket No. R-84-709; FR-935]

**Environmental Criteria and Standards; Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature**

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides standards for the safe siting of HUD-assisted projects near hazardous operations handling petroleum products or chemicals of an explosive or flammable nature. The rule establishes standards and methods for calculating the acceptable separation distance of a proposed HUD-assisted project from such hazardous operations, and describes mitigating measures which can be taken to modify the application of the acceptable separation distance requirements.

**EFFECTIVE DATE:** March 22, 1984.

**FOR FURTHER INFORMATION CONTACT:** James L. Christopolus, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number 202-755-7225 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:**

**I. Proposed Rule**

A Notice of Proposed Rulemaking was published August 19, 1980 (45 FR 55223) that proposed a new regulation establishing Departmental standards, requirements and guidelines for siting HUD-assisted projects near hazardous operations which store or process petroleum products or chemicals of an explosive or fire prone nature. The proposed rule would have established blast (overpressure) and thermal radiation (fire) safety standards. The effect of these standards would have been to withhold HUD assistance for projects located within a prescribed acceptable separation distance from specific hazardous operations.

The standards set forth in § 51.203 of the proposed rule and carried over into the final rule are:

	Thermal radiation	Blast overpressure
Amount of acceptable exposure allowed for building structures.	10,000 BTU/ft <sup>2</sup> /hr.	0.5 psi.
Amount of acceptable exposure allowed for people in open areas.	450 BTU/ft <sup>2</sup> /hr.	0.5 psi.

The standards are based on the findings of two studies conducted for the Department: "Safety Consideration in Siting Housing Projects," prepared by Arthur D. Little, Inc. published in December, 1975 by the Office of Policy Development and Research, HUD, and "Urban Development Siting with Respect to Hazardous Commercial/Industrial Facilities," by Rolf Jensen and Associates, Inc., submitted April 2, 1982. A summary of these studies follows:

(a) *Thermal Radiation*

Flammable products stored in above-ground containers represent a definite, potential threat to human life and structures in the event of fire. The resulting flame from a fire emits thermal radiation which is absorbed by the surroundings. Combustible structures, such as wooden houses, may be ignited by the thermal radiation being emitted. The radiation can cause severe burn injuries and even death to exposed persons some distance away from the site of the fire.

Wooden buildings, window drapes and trees generally ignite spontaneously when exposed for a relatively long period of time to thermal radiation flux levels of approximately 10,000 BTU/hr. sq. ft. It will take 15 to 20 minutes for a building to ignite at the degree of thermal intensity. Since the reasonable response time for fire fighting units in urbanized areas is approximately five to ten minutes, a standard of 10,000 BTU/hr. sq. ft. is considered an acceptable level of thermal radiation for buildings.

People in outdoor areas exposed to a thermal radiation level of approximately 1,500 BTU/ft<sup>2</sup>/hr will suffer intolerable pain after 15 seconds. Longer exposure causes blistering, permanent skin damage, and even death. Since it is assumed that children and the elderly could not take refuge behind walls or run away from the thermal effect of the fire within the 15 seconds before skin blistering occurs, unprotected (outdoor) areas, such as playgrounds, parks, yards, school grounds, etc., must be placed at such a distance from potential fire locations so that the radiation flux level is well below 1500 BTU/ft<sup>2</sup>/hr. An acceptable flux level, particularly for elderly people and children, is 450 BTU/ft<sup>2</sup>/hr. The skin can be exposed to this degree of thermal radiation for a prolonged period of time with no serious detrimental effect. The effects at this exposure would be the same as a bad sunburn. Therefore, the standard for areas in which there will be people in exposed settings (e.g., outdoor recreation areas such as playgrounds and parks) will not exceed 450 BTU/hr.

sq. ft. Areas covered also include open space ancillary to residential structures, such as yard areas and vehicle parking areas.

(b) *Blast Overpressure*

The range of sensitivity of the explosion tolerance of a material and the magnitude of the violent sudden release of energy can vary widely from one material to another. Therefore, for the sake of simplicity, the blast effect of an explosive material is compared to TNT, whose blast energies are well known. This method of comparison is known as "TNT Equivalent." The term "TNT Equivalent" ( $TNT_{eq}$ ) refers to the amount of material (other than TNT) it would take to have the same blast effect as one pound of TNT.

The Acceptable Separation Distance (ASD) for people and structures from materials prone to explosion is dependent upon the resultant blast measured in pounds per square inch (psi) overpressure. The military services have determined that 0.5 psi in the acceptable level of blast overpressure for both buildings and occupants, because a frame structure can normally withstand the level of external exertion with no serious structural damage and it is unlikely that human beings inside the building would normally suffer any serious injury. Using this standard and after determining the TNT equivalent for the material concerned, the ASD can be computed by determining the distance at which the blast overpressure will be 0.5 psi. The Arthur D. Little and the Rolf Jensen reports both corroborate 0.5 psi as the acceptable level of blast overpressure for both buildings and occupants. Therefore, HUD has adopted this standard.

The Acceptable Separation Distances for buildings, which are computed for fire and blast overpressure, delineate separate identifiable danger zones for each potential accident source. For some materials the fire danger zone will have the greatest radius, and cover the largest area, while for others the explosion danger zone will be the greatest. For example, conventional petroleum fuel products stored in unpressurized tanks do not emit blast overpressure of dangerous levels when ignited. In most cases, hazardous substances will be stored in pressurized containers. The resulting blast overpressure will be experienced at a greater distance than the resulting thermal flux at the standards set in this rule. The hazard requiring the greatest separation distance will govern in determining the location of HUD-assisted projects.

Appendix II to this rule provides an illustration of how this rule is applied.

Procedures for calculating the ASD are described. A fuller treatment of the subject is included in a HUD guidebook entitled "Urban Development Siting With Respect to Hazardous Commercial/Industrial Facilities," which will be issued for use with this rule.

II. Public Comments

The following discussion summarizes changes that were to the final rule based upon significant comments received. Thirteen comment letters were received, and all comments were evaluated and given due consideration. The discussion is organized by section of the proposed rule.

1. *Proposed § 51.200, Purpose*, has been revised to indicate that the general purpose of the rule is to establish standards for the location of proposed HUD-assisted projects near hazardous operations handling chemicals of an explosive or fire prone nature, in order to minimize the possibility of loss of life and substantial property loss from such hazards.

The reasoned basis for this new regulation was not fully set forth in the proposed rule. HUD policy has been to consider the location of HUD-assisted projects near hazardous operations as part of its environmental assessment. No regulatory standards, however, were published. The policy took cognizance of the fact that projects and their occupants may be placed at an unacceptable risk located too near a hazardous operation containing substances of an explosive or fire prone nature. For example, in 1975, during the environmental review process, the Department learned about the proposed construction of 1,250 units of public housing which were to be located within 120 feet of a public utility facility containing forty 60,000 gallon liquid propane storage tanks. An engineering analysis determined that an explosion of just one of the tanks would emit a force capable of destroying 60 percent of the project.

HUD policy was to approve projects to be located near hazardous operations if appropriate measures to mitigate the effects of unacceptable thermal radiation and blast overpressure conditions were used. For example, a high-rise housing facility for Senior Citizens was to be constructed within 282 feet of two 30,000 gallon liquid propane tanks. However, the safe separation distance, based on explosion and thermal radiation computations was determined to be 660 feet. Since there was no other economically acceptable site in the area, compliance with the safe separation distance computations

would have meant cancellation of the project. After an engineer field analysis, it was determined that erection of an 18 foot high reinforced concrete wall, between the project and the tanks, designed to withstand 1.5 psi overpressure would contain the anticipated blast in event of an incident. Design changes to the upper portion of the structure that could withstand an anticipated thermal radiation flux level of 12,000 Btu per sq. ft. per hr. in the event of a fireball, were also recommended. These recommendations were incorporated into the project and the facility is now complete and occupied. The wall is effectively camouflaged with shrubbery and vines so that it is not discernible as a concrete wall.

More systematic data are available as to the need for limited regulation. The National Fire Protection Association (NFPA), an organization dedicated to promote the science and improve the methods of fire protection, reports that there are an average of approximately 3,000 incidents (nationwide) of fire/explosion per year, involving stationary chemical and petrochemical facilities. This report was corroborated by the United States Fire Administration, an adjunct of the Federal Emergency Management Administration (FEMA). FEMA reported 3,197 and 3,358 fire/explosion incidents for the years 1980 and 1981 respectively, as outlined below. FEMA data demonstrate that fires and explosions of the type relevant to this rule occur with resulting property damages to buildings and death and injuries to persons off the premises. These data show that the event, when it occurs, carries significant dangers; however, the incidence of such damage is infrequent. Therefore any regulation in this area needs to focus on those circumstances of potential adverse effects and not impose burdens on interested parties where there is little likelihood of adverse effects.

FIRE/EXPLOSION AT STATIONARY CHEMICAL-PETROCHEMICAL FACILITIES

Total	Damage off-premises
1980:	
3,197 incidents.....	7 deaths.
20 deaths.....	198 injuries.
444 injuries.....	\$15,800,000 property loss
\$39,637,000 property loss.....	
1981:	
3,358 incidents.....	4 deaths.
10 deaths.....	225 injuries.
445 injuries.....	\$23,200,000 property loss
\$51,126,799 property loss.....	

2. *Proposed § 51.201, Definitions*, has been condensed to remove unnecessary language. The definition of "HUD-

assisted project" has been amended to indicate that the terms "rehabilitation" and "modernization" refer only to such repairs and renovation of a building or buildings as will result in an increased number of people being exposed to hazards by: (1) increasing residential densities; (2) converting the type of use of a building to habitation; or (3) making a vacant building habitable. This qualification was, in substantial part, contained in § 51.202(c)(2) of the proposed rule.

The broad definition of "Hazard" in § 51.201 has been revised to exempt from the definition containers with a storage capacity of 100 gallons or less when they contain common liquid industrial fuels, such as gasoline, fuel oil, kerosene, jet fuel or crude oil. The ASD from 100 gallons of common industrial liquid fuels is only 15 feet. Therefore, this threshold level was included in the definition on the basis of the Department's conclusion that common liquid industrial fuels in quantities of 100 gallons or less would generally pose no danger in terms of thermal radiation or blast overpressure consequences to a project, and that it is therefore unnecessary to calculate acceptable separation distances for such facilities. Also excepted are facilities which are shielded from a proposed HUD project by the topography, because these topographic features effectively provide a mitigating measure already in place. The regulation clarifies that the term "hazard" does not apply to pipelines for the transmission of hazardous substances if such pipelines are located underground or if they comply with applicable Federal, State and local safety standards.

3. *Proposed § 51.202, Policy.* Section 51.202(a) has been added to make clear that HUD will not approve applications for assistance if a project fails to satisfy the § 51.203 standards. In addition, the requirement in paragraph (d) of the proposed rule—grantees or sponsors of projects which have received HUD approval must notify the Department if they hear of any planned hazard to be located near the project, so that HUD could advise the appropriate local government on hazard implications and remedial measures—has been deleted as vague and without effect. Section 51.202 of the final rule authorizes HUD, in cases when HUD knows that operations involving hazardous substances are proposed to be built within the acceptable separation distance of the project, to require mitigating measures as a condition of approval of the project.

4. *Proposed § 51.203, Safety Standards.* has been revised by deleting

explanatory information now contained in the appendix and in other sections of the final rule. The fire and explosion safety standards themselves have been retained. Clarification was necessary as to the applicability of the standards to Gas Transmission Pipelines and liquid natural gas (LNG) facilities. Of the 13 comments received, nine expressed concern that the proposed standards would be applicable to high pressure gas transmission lines. This is not the intent, and language appearing in the regulation has been changed to make it clear that the standards are only applicable to stationary storage facilities. Existing Department of Transportation Regulations and HUD Minimum Property Standards (MPS) govern proximity of structures to high pressure gas transmission lines.

Several of the reviewers questioned the necessity for the HUD regulation in view of the existing Federal Fire Safety Standards for Liquefied Natural Gas (LNG) Facilities, 49 CFR Part 193, developed by the Materials Transportation Bureau (Department of Transportation). The DOT regulation establishes thermal radiation standards which are applicable *only* to LNG facilities, not to other petroleum products or chemicals of an explosive or fire prone nature. The HUD regulation establishes explosion and thermal radiation (fire) standards, both of which are applicable to 53 commonly encountered chemicals or petrochemicals of an explosive and/or fire prone nature, in addition to LNG. While the DOT standards may affect the location of proposed LNG facilities relative to existing projects, they do not govern the placement of HUD-assisted projects near existing LNG facilities.

5. *Proposed § 51.204, Responsibilities.* has been deleted. General implementation responsibilities are now found in § 51.206 of the final rule. The specific responsibilities applicable to HUD staff for carrying out the regulation will be continued in the HUD guidebook, "Urban Development Siting With Respect to Hazardous Commercial/Industrial Facilities."

6. *Proposed § 51.205, Exceptions.* has been deleted as redundant. The inclusion of the 100 gallon container and other exceptions in the final § 51.201 makes unnecessary the proposed section.

7. *Proposed § 51.206, Mitigating Measures.* has been renumbered § 51.205. One of the reviewers suggested that additional mitigation factors be listed. The final section on mitigating measures (§ 51.205) has accordingly been revised. The HUD field

representative will determine whether an existing intervening structure can serve as an effective barrier against blast and thermal radiation.

8. A new § 51.206, *Implementation*, has been added. It provides that the regulation shall be implemented for each proposed HUD-assisted project by the Departmental official responsible for environmental review of the project. In the case of HUD-assisted projects for which the Department's project selection criteria at 24 CFR § 200.700 *et seq.* are applicable, § 51.206 indicates that the regulation shall be implemented by the Departmental official responsible for determining compliance with such criteria.

9. A *New Appendix I* has been added which lists the most common hazardous substances. The preamble to the proposed rule provided illustrations—kerosene, gasoline, naphtha, liquid propane, liquid butane, and liquefied natural gas—of hazardous substances which triggered the regulatory requirement. The proposed rule, however, did not define hazardous substance creating ambiguity as to the coverage of the rule. The definition of hazardous substance in § 51.201 and Appendix I clarify this point. The list is based on a study prepared for the Department by Rolf Jensen and Associates, Inc., entitled "Urban Development Siting with respect to Hazardous Commercial/Industrial Facilities," dated April 2, 1982.

10. A new § 51.207 is added to prescribe the procedures for modifying the list of substances defined as hazardous under this Part. Paragraphs "a" and "b" allow the Secretary to act quickly either on a case-by-case basis or more generally when the facts warrant the enforcement of the policy with regard to the substance. The hazardous nature of the substance justifies expeditious application of the rule without the time consuming requirements of notice and comment. In cases where a substance is added to Appendix 1, notice in the **Federal Register** is required. The notice is to provide the basis for the action. Interested parties may petition changes to Appendix 1 pursuant to 24 CFR 15.20, the HUD procedure for issuing, amending or repealing a rule.

11. The material contained in parts one and two of the Appendix of the proposed rule has been retained without substantial revision to Appendix II of the rule.

#### *Other Supplementary Information*

The Department finds that based on the criteria set out in Executive Order

12291, this regulation is not a major rule in that it will not:

(a) Have an annual effect on the economy of \$100 million or more;

(b) Cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

(c) Have significant adverse effects 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.

The basic benefit of the regulation will be to assure that people and property are not unreasonably and unnecessarily exposed to potential explosion and thermal radiation hazards caused by hazardous substances.

The proposed regulation does not require action by, or generate direct costs to, local government, private enterprises, or individuals. It may, however, generate some indirect costs, or reduce expected profits in that it could limit the types of development that would occur with HUD assistance in areas near hazardous operations. The regulation may, for instance, preclude a local government from using cheaper land for some types of projects using HUD assistance, or it may prevent a private landowner from developing his/her land with HUD assistance for the use with the highest possible return.

However, based upon the Department's experience over the past several years, application of safety standards together with mitigating measures (where appropriate) have not imposed an undue burden on interested parties. The definitional exceptions to the term hazard and the use of mitigating measures minimizes the imposition of unjustified costs.

Pursuant to Section 605(b) of 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. The rule will affect only a small number of projects.

In evaluating the need for this regulation, the Department considered alternative approaches reliance on other standards and insurance coverage.

The Department surveyed professional societies, regulatory agencies, the National Fire Protection Association, Safety Councils and Boards, other Federal agencies, State and local entities, and The Insurance Information Institute, and found that the only extensive explosion and thermal radiation safety standards are as follows:

1. Explosion safety standards developed by the U.S. Air Force for liquid propelled Atlas "D," "E" and "F," and Titan I and II Inter Continental Ballistic Missiles (ICBM's). These standards were developed specifically for establishing safety easements around liquid propelled ICBM sites; they are predicated upon the TNT equivalent of the propellants used in the respective ICBM systems, and cannot be applied to HUD's purpose.

2. LNG thermal radiation standards developed by the Department of Transportation (DOT), discussed above.

3. National Fire Protection Association (NFPA) fire standards. These standards are limited to fire hazards, and are for the specific use of industry in determining the internal configuration of petrochemical facilities, rather than determining acceptable separation distances from such facilities.

Reliance on State and local controls would be an unsatisfactory alternative; few localities have extensive standards governing the siting of residences near hazardous operations. Moreover, the data on the incidence of off-premises damage caused by fires and explosions at stationary chemical and petrochemical facilities indicate that safety standards for storage tanks do not themselves provide sufficient protection against damage to nearby dwellings. Insurance was also rejected. While high insurance costs might deter many project sponsors from locating a project near a hazardous operations site, this result is not always the case. The potential outcome of personal injury and death are sufficient reasons for prohibiting the location of projects within dangerous proximity of hazardous operations.

As an alternative to issuing a regulation, the Department also considered issuing a handbook with guidelines. However, the Department determined that compulsory standards are necessary in order to ensure that residents of proposed HUD-assisted projects are sufficiently protected against hazardous operations.

The regulation will not create any new reporting or recordkeeping requirements for either HUD personnel or for local governments, private industries, or individuals. All procedures necessary to implement the regulation are already part of existing site and/or environmental review procedures currently followed by HUD personnel.

The Department determined that the regulation may affect the quality of the human environment. Therefore, a Draft Environmental Impact Statement (EIS) was prepared and circulated for agency

and public comment in accordance with the National Environmental Policy Act of 1969 (U.S.C. 4321), Council on Environmental Quality Regulations (40 CFR Part 1500-1508) and HUD's Regulations (24 CFR Part 50). All comments received were reviewed, evaluated, and those which were substantially pertinent were incorporated into the Final EIS. A copy of this Final EIS will be available for inspection in the Office of the Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

#### List of Subjects in 24 CFR Part 51

Hazardous substances, Housing standards.

#### PART 51—[AMENDED]

Accordingly, 24 CFR Part 51 is amended as follows:

1. By adding new Subpart C to read as follows:

#### Subpart C—Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature

Sec.

- 51.200 Purpose.
- 51.201 Definitions.
- 51.202 Approval of HUD-Assisted Projects.
- 51.203 Safety Standards.
- 51.204 HUD-Assisted Hazardous Facilities.
- 51.205 Mitigating Measures.
- 51.206 Implementation.
- 51.207 Amendments of Appendix 1.
- 51.208 Reservation of Administrative and Legal Rights.

Authority: Sec. 2 Housing Act of 1949 (42 U.S.C. 1441); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Sec. 2, Housing and Urban Development Act of 1969 (42 U.S.C. 1441(a)).

#### Subpart C—Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature

##### § 51.200 Purpose.

The Department of Housing and Urban Development finds that it is necessary to establish standards for the location of proposed HUD-assisted projects near hazardous operations handling petroleum products or chemicals of an explosive or fire-prone nature in order to minimize the possibility of loss of life and substantial property loss from such hazards.

The purpose of this subpart is to:

(a) Establish safety standards which can be used as a basis for calculating acceptable separation distances (ASD) for HUD-assisted projects from specific

stationary, hazardous operations which store, handle, or process hazardous substances;

(b) Alert those responsible for the siting of HUD-assisted projects to the inherent potential dangers when such projects are located in the vicinity of such hazardous operations;

(c) Provide guidance for identifying those hazardous operations which are most prevalent;

(d) Provide the technical guidance required to evaluate the degree of danger anticipated from explosion and thermal radiation (fire); and

(e) Provide technical guidance required to determine acceptable separation distances from such hazards.

#### § 51.201 Definitions.

*Acceptable Separation Distance (ASD)*—means the distance beyond which the explosion or combustion of a hazard is not likely to cause structures or individuals to be subjected to blast overpressure or thermal radiation flux levels in excess of the safety standards in § 51.203. The ASD is determined by applying the safety standards established by this subpart to the guidance set forth in HUD Guidebook, "Urban Development Siting With Respect to Hazardous Commercial/Industrial Facilities."

*Blast Overpressure*—means the pressure, in pounds per square inch, in excess of normal atmospheric pressure on the surrounding medium caused by an explosion.

*Danger Zone*—means the land area circumscribed by the radius which delineates the ASD of a given hazard.

*Department*—means the Department of Housing and Urban Development (HUD).

*Hazard*—means any stationary container which stores, handles or processes hazardous substances of an explosive or fire prone nature. The term "hazard" does not include pipelines for the transmission of hazardous substances, if such pipelines are located underground or comply with applicable Federal, State and local safety standards. Also excepted are: (1) Containers with a capacity of 100 gallons or less when they contain common liquid industrial fuels, such as gasoline, fuel oil, kerosene and crude oil since they generally would pose no danger in terms of thermal radiation of blast overpressure to a project; and (2) facilities which are shielded from a proposed HUD-assisted project by the topography, because these topographic features effectively provide a mitigating measure already in place.

*Hazardous Substances*—means petroleum products (petrochemicals)

and chemicals that can produce blast overpressure or thermal radiation levels in excess of the standards set forth in § 51.203. A specific list of hazardous substance is found in Appendix 1.

*HUD-Assisted Project*—the development, construction, rehabilitation, modernization or conversion with HUD subsidy, grant assistance, loan, loan guarantee, or mortgage insurance, of any project which is intended for residential, institutional, recreational, commercial or industrial use. For purposes of this subpart the terms "rehabilitation" and "modernization" refer only to such repairs and renovation of a building or buildings as will result in an increased number of people being exposed to hazardous operations by increasing residential densities, converting the type of use of a building to habitation, or making a vacant building habitable.

*Secretary*—means the Secretary of Housing and Urban Development.

*Thermal Radiation Level*—means the emission and propagation of heat energy through space or a material medium, expressed in BTU per square foot per hour (BTU/ft.<sup>2</sup> hr.)

#### § 51.202 Approval of HUD-assisted projects.

(a) It is HUD's policy that projects receiving HUD assistance will be located in a safe and healthful environment. The Department will not approve an application for assistance for a proposed project located at less than the acceptable separation distance from a hazard, as defined in § 51.201, unless appropriate mitigating measures, as defined in § 51.205, are implemented, or unless mitigating measures are already in place.

(b) In the case of all applications for proposed HUD-assisted projects, the Department shall evaluate projected development plans in the vicinity of these projects to determine whether there are plans to install a hazardous operation in close proximity to the proposed project. If the evaluation shows that such a plan exists, the Department shall not approve assistance for the project unless the Department obtains satisfactory assurances that adequate mitigating measures will be taken when the hazardous operation is installed.

#### § 51.203 Safety standards.

The following standards shall be used in determining the acceptable separation distance of a proposed HUD-assisted project from a hazard:

(a) *Thermal Radiation Safety Standard.* Projects shall be located so that:

(1) The allowable thermal radiation flux level at the building shall not exceed 10,000 BTU/sq. ft. per hr.;

(2) The allowable thermal radiation flux level for outdoor, unprotected facilities or areas of congregation shall not exceed 450 BTU/sq. ft. per hour.

(b) *Blast Overpressure Safety Standard.* Projects shall be located so that the maximum allowable blast overpressure at both buildings and outdoor, unprotected facilities or areas shall not exceed 0.5 psi.

(c) If a hazardous substance constitutes both a thermal radiation and blast overpressure hazard, the ASD for each hazard shall be calculated, and the larger of the two ASDs shall be used to determine compliance with this subpart.

#### § 51.204 HUD-assisted hazardous facilities.

In reviewing applications for proposed HUD-assisted projects involving the installation of hazardous facilities, the Department shall ensure that such hazardous facilities are located at an acceptable separation distance from residences and from any other facility or area where people may congregate or be present. The mitigating measures listed in § 51.205 may be taken into account in determining compliance with this section.

#### § 51.205 Mitigating measures.

Application of the standards for determining an Acceptable Separation Distance (ASD) for a HUD-assisted project from a potential hazard of an explosion or fire prone nature is predicated on level topography with no intervening object(s) between the hazard and the project. Application of the standards can be eliminated or modified if:

(a) The nature of the topography shields the proposed project from the hazard.

(b) An existing permanent fire resistant structure of adequate size and strength will shield the proposed project from the hazard.

(c) A barrier is constructed surrounding the hazard, at the site of the project, or in between the potential hazard and the proposed project.

(d) The structure and outdoor areas used by people are designed to withstand blast overpressure and thermal radiation anticipated from the potential hazard (e.g., the project is of masonry and steel or reinforced concrete and steel construction).

#### § 51.206 Implementation.

This subpart shall be implemented for each proposed HUD-assisted project by

the Departmental official responsible for Departmental review of the project. The implementation procedure will be part of the environmental assessment process in accordance with the decision points set forth in 24 CFR Part 50. In the case of HUD-assisted projects for which the Department's Project Selection Criteria at 24 CFR 200.700 *et seq.* are applicable, the requirements of this subpart shall be implemented by the Departmental official responsible for determining compliance with such criteria.

#### § 51.207 Amendments to Appendix I.

(a) The Secretary may prescribe supplementary substances for inclusion in Appendix I without prior notice and public procedure. Specific notice of these supplementary substances, to include the reason for including the substances, shall be published in the *Federal Register*, in accordance with 5 U.S.C. 552 and 24 CFR 15.11. Such notice may incorporate these supplementary substances by reference. In addition, discussion of the basis for including these supplementary substances will be available for examination and distribution in the Office of Environment and Energy, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, and in each HUD Regional and local office.

(b) The Secretary or his designee may, on a case-by-case basis, when circumstances warrant, require the application of this subpart with respect to a substance not listed in Appendix I that would create thermal or overpressure effect in excess of that listed in § 51.203.

(c) Any interested person may petition the Secretary for amendment of Appendix I in accordance with 24 CFR 10.20.

#### § 51.208 Reservation of administrative and legal rights.

Publication of these standards does not constitute a waiver of any right: (a) Of HUD to disapprove a project proposal if the siting is too close to a potential hazard not covered by this Subpart, and (b) of HUD or any person or other entity to seek to abate or to collect damages occasioned by a nuisance, whether or not covered by the Subpart.

Dated: February 1, 1984.

Samuel R. Pierce, Jr.,  
Secretary of Housing and Urban  
Development.

2. The Appendix, Definition of Acoustical Quantities is removed.

3. New Appendices I and II are added to Part 51 to read as follows:

#### Appendix I.—Specific Hazardous Substances

The following is a list of specific petroleum products and chemicals defined to be hazardous substances under § 51.201.

##### Hazardous Liquids

Acetic Acid	Ethyl Benzene
Acetic Anhydride	Ethyl Dichloride
Acetone	Ethyl Ether
Acrylonitrile	Gasoline
Amyl Acetate	Heptane
Amyl Alcohol	Hexane
Benzene	Isobutyl Acetate
Butyl Acetate	Isobutyl Alcohol
Butyl Acrylate	Isopropyl Acetate
Butyl Alcohol	Isopropyl Alcohol
Carbon Bisulfide	Jet Fuel and Kerosene
Carbon Disulfide	Methyl Alcohol
Cellosolve	Methyl Amyl Alcohol
Cresols	Methyl Cellosolve
Crude Oil (Petroleum)	Methyl Ethyl Ketone
Cumene	Naphtha
Cyclohexane	Pentane
No. 2 Diesel Fuel	Propylene Oxide
Ethyl Acetate	Toluene
Ethyl Acrylate	Vinyl Acetate
Ethyl Alcohol	Xylene

##### Hazardous Gases

Acetaldehyde	Liquefied Natural Gas (LNG)
Butadiene	Liquefied Petroleum Gas (LPG)
Butane	Propane
Ethene	Propylene
Ethylene	Vinyl Chloride
Ethylene Oxide	
Hydrogen	

(Primary Source: "Urban Development Siting with respect to Hazardous Commercial/Industrial Facilities," by Rolf Jensen and Associates, Inc., April 1982)

#### Appendix II—Development of Standards; Calculation Methods

##### I. Background Information Concerning the Standards

###### (a) Thermal Radiation:

(1) *Introduction.* Flammable products stored in above ground containers represent a definite, potential threat to human life and structures in the event of fire. The resulting fireball emits thermal radiation which is absorbed by the surroundings. Combustible structures, such as wooden houses, may be ignited by the thermal radiation being emitted. The radiation can cause severe burn, injuries and even death to exposed persons some distance away from the site of the fire.

(2) *Criteria for Acceptable Separation Distance (ASD).* Wooden buildings, window drapes and trees generally ignite spontaneously when exposed for a relatively long period of time to thermal radiation levels of approximately 10,000 Btu/hr. sq. ft. It will take 15 to 20 minutes for a building to ignite at that degree of thermal intensity. Since the reasonable response time for fire fighting units in urbanized areas is approximately five to ten minutes, a standard of 10,000 BTU/hr. sq. ft. is considered an acceptable level of thermal radiation for buildings.

People in outdoor areas exposed to a thermal radiation flux level of approximately 1,500 Btu/ft<sup>2</sup> hr will suffer intolerable pain after 15 seconds. Longer exposure causes

blistering, permanent skin damage, and even death. Since it is assumed that children and the elderly could not take refuge behind walls or run away from the thermal effect of the fire within the 15 seconds before skin blistering occurs, unprotected (outdoor) areas, such as playgrounds, parks, yards, school grounds, etc., must be placed at such a distance from potential fire locations so that the radiation flux level is well below 1500 Btu/ft<sup>2</sup> hr. An acceptable flux level, particularly for elderly people and children, is 450 Btu/ft<sup>2</sup> hr. The skin can be exposed to this degree of thermal radiation for 3 minutes or longer with no serious detrimental effect. The result would be the same as a bad sunburn. Therefore, the standard for areas in which there will be exposed people, e.g. outdoor recreation areas such as playgrounds and parks, is set at 450 Btu/hr. sq. ft. Areas covered also include open space ancillary to residential structures, such as yard areas and vehicle parking areas.

(3) *Acceptable Separation Distance From a Potential Fire Hazard.* This is the actual setback required for the safety of occupied buildings and their inhabitants, and people in open spaces (exposed areas) from a potential fire hazard. The specific distance required for safety from such a hazard depends upon the nature and the volume of the substance. The Technical Guidebook entitled "Urban Development Siting With Respect to Hazardous/Commercial Industrial Facilities," which supplements this regulation, contains the technical guidance required to compute Acceptable Separation Distances (ASD) for those flammable substances most often encountered.

###### (b) Blast Overpressure:

The Acceptable Separation Distance (ASD) for people and structures from materials prone to explosion is dependent upon the resultant blast measured in pounds per square inch (psi) overpressure. It has been determined by the military and corroborated by two independent studies conducted for the Department of Housing and Urban Development that 0.5 psi is the acceptable level of blast overpressure for both buildings and occupants, because a frame structure can normally withstand that level of external exertion with no serious structural damage, and it is unlikely that human beings inside the building would normally suffer any serious injury. Using this as the safety standard for blast overpressure, nomographs have been developed from which an ASD can be determined for a given quantity of hazardous substance. These nomographs are contained in the handbook with detailed instructions on their use.

###### (c) Hazard evaluation:

The Acceptable Separation Distances for buildings, which are determined for thermal radiation and blast overpressure, delineate separate identifiable danger zones for each potential accident source. For some materials the fire danger zone will have the greatest radius and cover the largest area, while for others the explosion danger zone will be the greatest. For example, conventional petroleum fuel products stored in unpressurized tanks do not emit blast overpressure of dangerous levels when ignited. In most cases, hazardous substances

will be stored in pressurized containers. The resulting blast overpressure will be experienced at a greater distance than the resulting thermal radiation for the standards set in Section 51.203. In any event the hazard requiring the greatest separation distance will prevail in determining the location of HUD-assisted projects.

The standards developed for the protection of people and property are given in the following table.

	Thermal radiation	Blast overpressure
Amount of acceptable exposure allowed for building structures.	10,000 BTU/ft <sup>2</sup> hr.	0.5 psi.
Amount of acceptable exposure allowed for people in open areas.	450 BTU/ft <sup>2</sup> hr.	0.5 psi.

#### Problem Example

The following example is given as a guide to assist in understanding how the procedures are used to determine an acceptable separation distance. The technical data are found in the HUD Guidebook. Liquid propane is used in the example since it is both an explosion and a fire hazard.

In this hypothetical case a proposed housing project is to be located 850 feet from a 30,000 gallon liquid propane (LPG) tank. The objective is to determine the acceptable separation distance from the LPG tank. Since propane is both explosive and fire prone it will be necessary to determine the ASD for both explosion and for fire. The greatest of the two will govern. There is no dike around the tank in this example.

Nomographs from the technical Guidebook have been reproduced to facilitate the solving of the problem.

#### ASD For Explosion

Use Figure 1 to determine the acceptable separation distance for explosion.

The graph depicted on Figure 1 is predicated on a blast overpressure of 0.5 psi.

The ASD in feet can be determined by applying the quantity of the hazard (in gallons) to the graph.

In this case locate the 30,000 gallon point on the horizontal axis and draw a vertical line from that point to the intersection with the straight line curve. Then draw a horizontal line from the point where the lines cross to the left vertical axis where the ACCEPTABLE SEPARATION DISTANCE of 660 feet is found.

Therefore the ASD for explosion is 660 feet.

Since the proposed project site is located 850 feet from the tank it is located at a safe distance with regards to blast overpressure.

ACCEPTABLE SEPARATION DISTANCE  
BLAST OVERPRESSURE  
(NO BLAST BARRIERS)  
HAZARDOUS GAS CONTAINER

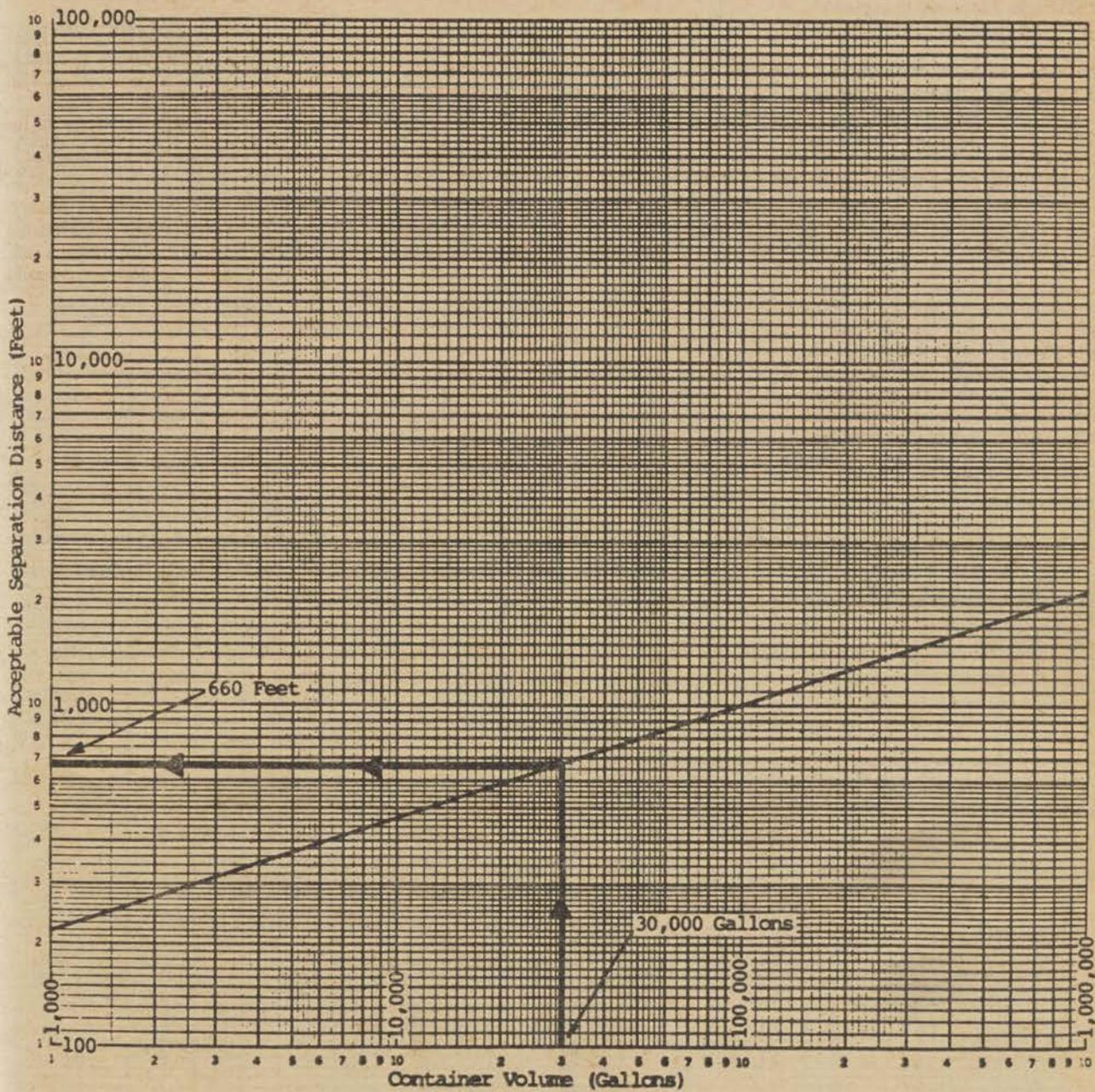


Figure 1

*ASD For Fire*

To determine the ASD for fire it will be necessary to first find the fire width (diameter of the fireball) on Figure 2. Then apply this to Figure 3 to determine the ASD.

Since there are two safety standards for fire: (a) 10,000 BTU/ft<sup>2</sup>hr. for buildings; and (b) 450 BTU/ft<sup>2</sup>hr. for people in exposed areas, it will be necessary to determine an ASD for each.

To determine the fire width locate the 30,000 gallon point on the horizontal axis on Figure 2 and draw a vertical line to the straight line curve. Then draw a horizontal line from the point where the lines cross to the left vertical axis where the FIRE WIDTH is found to be 350 feet.

Now locate the 350 ft. point on the horizontal axis of Figure 3 and draw a vertical line from that point to curves 1 and 2. Then draw horizontal lines from the points where the lines cross to the left vertical axis where the ACCEPTABLE SEPARATION DISTANCES of 240 feet for buildings and 1,150 feet for exposure to people is found.

Based on this the proposed project site is located at a safe distance from a potential fireball. However, exposed playgrounds or other exposed areas of congregation must be at least 1,150 feet from the tank, or be appropriately shielded from a potential fireball.

(Source: HUD Handbook, "Urban Development Siting With Respect to Hazardous Commercial/Industrial Facilities.")

BILLING CODE 4210-32-M

FIRE WIDTH - UNCONFINED SPILL  
HAZARDOUS GAS CONTAINER  
NOT DIKED

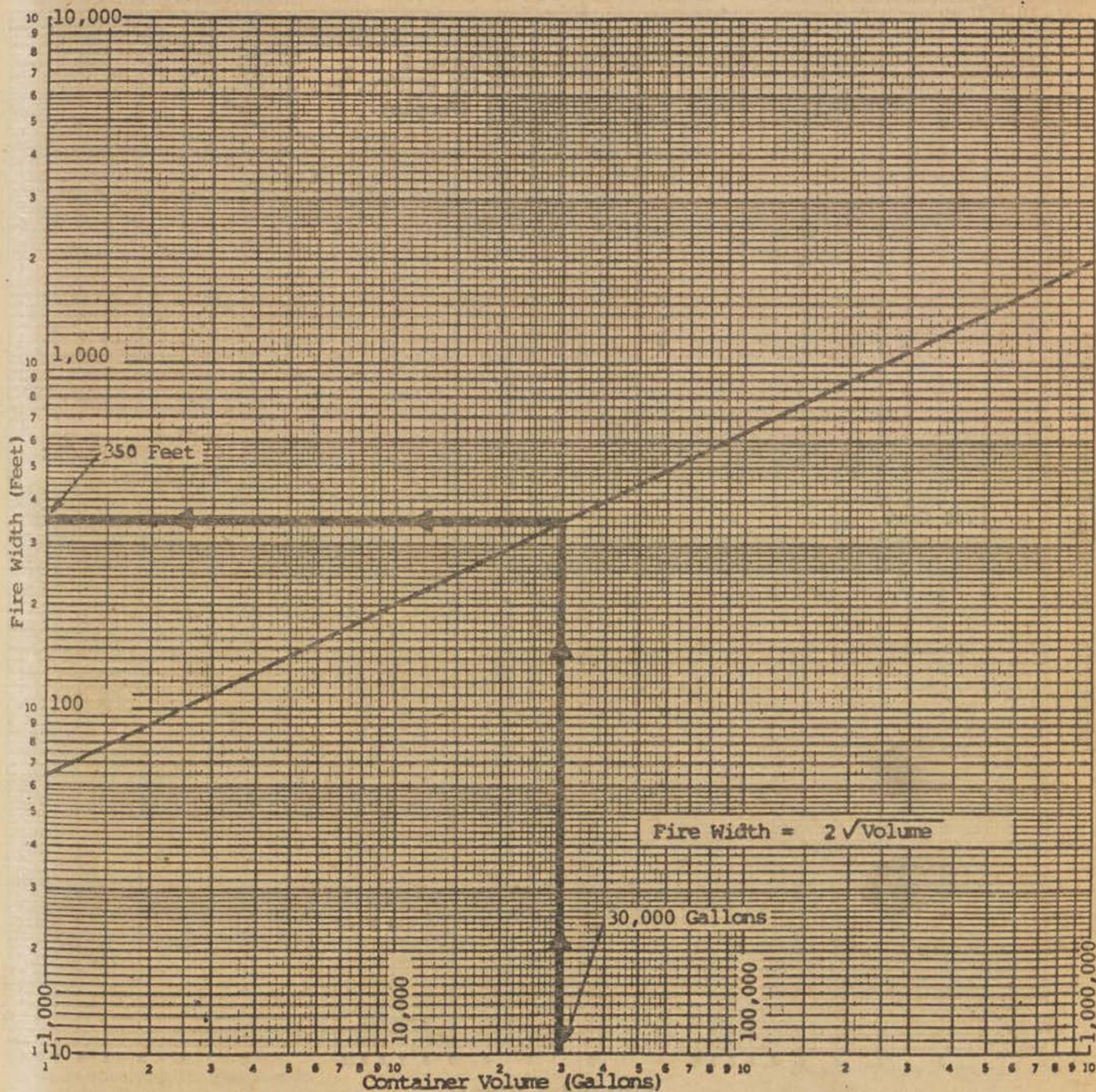


Figure 2

ACCEPTABLE SEPERATION DISTANCE  
HAZARDOUS GAS CONTAINER  
DIKED/UNDIKED

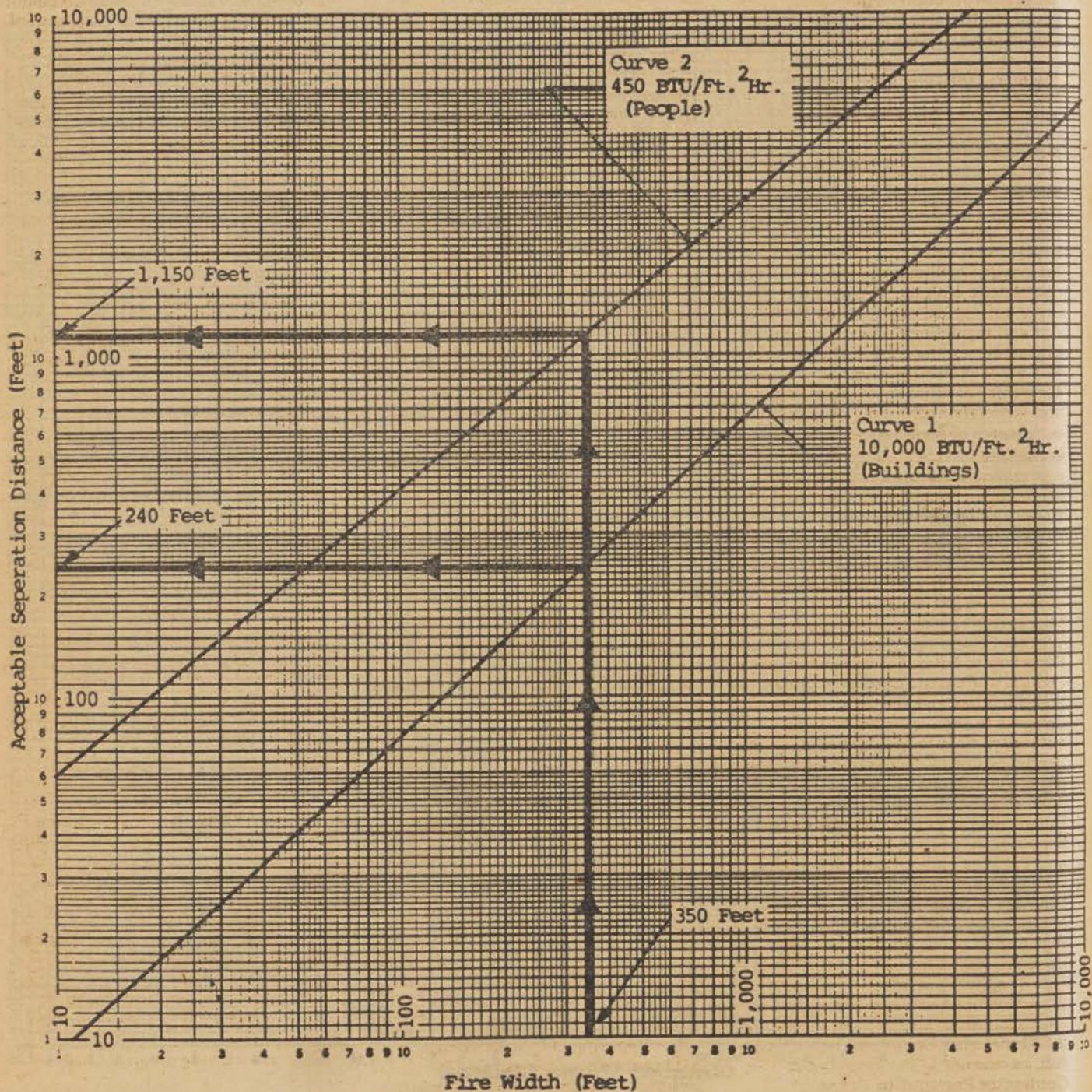


Figure 3

## DEPARTMENT OF LABOR

## Wage and Hour Division

## 29 CFR Part 500

**Migrant and Seasonal Agricultural Worker Protection Regulations; Issuance of Farm Labor Contractor Certificates of Registration by States**

**AGENCY:** Wage and Hour Division, Labor.

**ACTION:** Final rule.

**SUMMARY:** This is a procedural amendment authorizing the State of Florida by agreement with the Department of Labor to issue Farm Labor Contractor Certificates of Registration and Farm Labor Contractor Employee Certificates of Registration in compliance with the Migrant and Seasonal Agricultural Worker Protection Act and regulations issued thereunder. This document lists the State of Florida as a state authorized to issue farm labor contractor certificates of registration and farm labor contractor employee certificates of registration.

**EFFECTIVE DATE:** February 10, 1984.

**FOR FURTHER INFORMATION CONTACT:** Mr. William M. Otter, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523-8305.

**SUPPLEMENTARY INFORMATION:** The Migrant and Seasonal Agricultural Worker Protection Act authorizes the Secretary to enter into agreements with Federal and State agencies to utilize their facilities and services, and to delegate to such agencies certain authority, other than rulemaking, as the Secretary deems necessary in carrying out the provisions of the Act. Under this authority the State of Florida, Department of Labor and Employment Security, Division of Labor, Employment and Training entered into an agreement with the Department of Labor to continue to receive, handle, and process applications and issue certificates of registration under the Migrant and Seasonal Agricultural Worker Protection Act. The State previously performed these functions under an agreement which had been entered into pursuant to the Farm Labor Contractor Registration Act, as amended. The Farm Labor Contractor Registration Act was repealed and replaced by the Migrant and Seasonal Agricultural Worker Protection Act, effective April 14, 1983.

This document incorporates into the existing regulations these delegated functions of the Secretary to the State of

Florida and lists the State as being authorized to issue farm labor contractor certificates of registration and farm labor contractor employee certificates of registration under the Migrant and Seasonal Agricultural Worker Protection Act which are entitled to the same recognition in all states as if they had been issued by the Department of Labor.

The authority conferred by section 513 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1863) requires the issuance of regulations which authorize the Department to enter into agreements with states to carry out delegated functions, such as the issuance of certificates of registration on behalf of the Secretary. These regulations were issued in final form on August 12, 1983 (48 FR 36761 *et seq.*) and appear at 29 CFR 500.155 through 500.162. Agreements entered into pursuant to this authority are effective upon execution and notice to the public thereof is required. The State of Florida has executed such agreement, effective November 2, 1983 and notice is hereby given.

This document was prepared under the direction and control of Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor.

**Publication in Final**

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on this procedural amendment to the regulation because such comment is unnecessary. This finding is made because section 513 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1863) and the regulations issued thereunder at 29 CFR 500.155 through 500.162 authorizes the Secretary to enter into agreements with State agencies to use their facilities and services to perform functions delegated to them by the Secretary as may be useful in carrying out this Act. Such agreements are effective upon their execution as noted above and merely require notice of such execution.

**Effective Date**

The Department has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. Therefore, this amendment shall be effective immediately. This finding is made because the agreement with the State of Florida became effective upon its

execution (November 2, 1983) and affects only the procedural processing of certificates of registration.

**Executive Order 12291**

The Department has determined that the amendment is procedural in character and announces an agreement between a state and the Department of Labor. Therefore, this rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects 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. Accordingly, no regulatory impact analysis is required.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b) the requirements of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

**Paperwork Reduction Act**

As the incorporation of the agreement with the State of Florida requires the collection of no additional information additional approval of the Office of Management and Budget is not required. See 44 U.S.C. 3501 *et seq.*

**List of Subjects in 29 CFR Part 500**

Administrative practice and procedure, Agricultural associations, Agricultural worker, Aliens, Carpooling, Day-haul, Farmers, Farm labor contractor, Health, Housing, Housing standards, Immigration, Insurance, Investigation, Migrant agricultural workers, Migrant labor, Motor carriers, Motor vehicle safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Seasonal agricultural workers, State of Florida, Transportation, Wages, Manpower training programs, Labor, Safety.

**PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION**

For reasons set out in the preamble, Part 500 of Chapter V of Title 29 of the

Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 500 reads as follows:

Authority: Pub. L. 97-470, 96 Stat. 2583 (29 U.S.C. 1801-1872); Secretary's Order No. 5-83, 48 FR 15352; and Employment Standards Order No. 83-1, 48 FR 15352.

2. Section 500.160 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 500.160 Approved State plans.**

(a) The Secretary, in accordance with the authority referred to in § 500.155 of this Part, has delegated the following functions to the States listed herein below:

State	Function
Florida	Receive, handle, process applications and issue certificates of registration.

(c) Every enumerated delegated function shall be valid in all states.

Signed at Washington D.C., this 3rd day of February 1984.

William M. Otter,

Administrator, Wage and Hour Division,  
Employment Standards Administration.

[FR Doc. 84-3747 Filed 2-9-84; 8:45 am]

BILLING CODE 4510-27-M

## Occupational Safety and Health Administration

### 29 CFR Part 1910

#### Access to Employee Exposure and Medical Records; Extension of Partial Stay

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Extension of partial stay.

**SUMMARY:** OSHA is hereby extending the partial administrative stay of the access to employee exposure and medical records regulation, 29 CFR 1910.20, for the flavor and fragrance industries. The current partial stay, which expired February 1, 1984, is being extended until February 1, 1985, or until completion of the current rulemaking, whichever is sooner, to allow OSHA to complete consideration of the issues presented by the flavor and fragrance industries as part of its rulemaking on the records access rule.

**DATE:** The flavor and fragrance stay is extended to February 1, 1985, or until completion of the current rulemaking, whichever is sooner.

**FOR FURTHER INFORMATION CONTACT:** James Foster, Office of Information and

Consumer Affairs, OSHA, Room N-3641, Third Street and Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 523-8151.

**SUPPLEMENTARY INFORMATION:** Since August 1980, the flavor and fragrance industries have been subject to a series of administrative stays of 29 CFR 1910.20, OSHA's access to employee exposure and medical records rule. The current partial stay, which expired February 1, 1984, is hereby being extended until February 1, 1985, or until completion of the current rulemaking, whichever is sooner, to allow OSHA to complete its consideration of the issues presented by the flavor and fragrance industries as part of its rulemaking on the records access rule. A proposal to modify the records access rule was published July 13, 1982 (47 FR 30420 *et seq.*), and it is anticipated that a final determination with respect to this proposal will be completed in advance of February 1, 1985.

The full text of the current administrative stay for the flavor and fragrance industries was published in the August 7, 1981, *Federal Register* (46 FR 40490).

(Secs. 6(b), 8(g); 84 Stat. 1593, 1600 (29 U.S.C. 655, 657); sec. 4 of the Administrative Procedure Act (5 U.S.C. 553))

Signed at Washington, D.C., this 7th day of February 1984.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 84-3772 Filed 2-9-84; 8:45 am]

BILLING CODE 4510-26-M

## VETERANS ADMINISTRATION

### 38 CFR Part 21

#### Veterans Education; Implementing Legislation

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** The following regulatory provisions implement some of the provisions of the Veterans' Compensation, Education and Employment Amendments of 1982 which affect people receiving educational assistance under chapters 34, 35 and 36, title 38, United States Code. Some of the changes are liberalizing. Some are more restrictive.

**EFFECTIVE DATE:** In keeping with Pub. L. 97-306, the effective date for the cancellation of § 21.4252(g) is October 1, 1982. The effective date for all other changes is October 14, 1982.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer (225), Assistant Director for Policy and Program

Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202-389-2092).

**SUPPLEMENTARY INFORMATION:** On pages 47011 through 47014 of the *Federal Register* of October 17, 1983 there was published a notice of intent to amend part 21 to implement some provisions of the Veterans' Compensation, Education and Employment Amendments of 1982.

Interested people were given 30 days to submit comments, suggestions or objections. The VA (Veterans Administration) received no comments, suggestions or objections. Accordingly, the agency is making the proposal final without change.

The VA has determined that these regulations do not contain a major rule as that term is defined by Executive Order 12291, entitled "Federal Regulation". The annual effect on the economy will be less than \$100 million. They will not result in any major increases in costs or prices for anyone. They will have no significant adverse effects 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.

The Administrator of Veterans' Affairs hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations dealing with payments to incarcerated veterans and eligible persons will affect only individual benefit recipients. They will have no significant impact on small entities, i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions.

The regulations on disapproving courses for enrollments and reenrollments and suspending and discontinuing payments of educational assistance allowance will primarily affect individual benefit recipients. They may affect some small entities, such as privately-owned educational institutions or educational institutions supported by small school districts. However, in most cases where there are recordkeeping, reporting or approval violations, the educational institution either corrects the violation or the State approving

agency withdraws approval. The VA expects to suspend payments under these regulations less than 10 times annually. Some of the educational institutions affected will not be small entities. Therefore, the number of small entities affected by these regulations will not be substantial.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111 and 64.117.

#### List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 25, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

#### PART 221—[AMENDED]

The Veterans Administration amends 38 CFR Part 21 as follows:

1. In § 21.4131, paragraph (h) is revised and paragraph (i) is removed and reserved as follows:

##### § 21.4131 Commencing dates.

\* \* \* \* \*

(h) *Individuals in a penal institution.* If a veteran or eligible person is paid a reduced rate of educational assistance or no educational assistance under § 21.4136 (n), (o), (p), or (r) § 21.4137 (j) or (l), the rate will be increased or benefits will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program, or a State or local program, or

(2) The date of the release from the prison or jail.

(38 U.S.C. 1682(g), 1732(e); Pub. L. 97-306, 96 Stat. 1429)

(i) [Reserved].

2. Section 21.4133 is revised as follows:

##### § 21.4133 Notification of suspension or discontinuance.

(a) *Presuspension notice.* Not less than 30 days before the Director of a Veterans Administration field station acts to make a mass suspension of payments of educational assistance allowance under § 21.4134(c) he or she shall send written notice to each affected veteran or eligible person. The notice—

(1) Shall state the Director's intent to suspend payments unless the

educational institution takes corrective action;

(2) Shall give the Director's reasons for suspending payments; and

(3) Shall state the date on which the Director intends to suspend payments.

(38 U.S.C. 1790(b); Pub. L. 97-306, 96 Stat. 1429)

(b) *Notice of suspension and discontinuance.* When the Veterans Administration suspends or discontinues payment to any veteran or person under § 21.4134(b) or § 21.4135, the Veterans Administration shall send written notice of the suspension or discontinuance to the veteran or eligible person. The notice—

(1) Shall state the reasons for the suspension or discontinuance of payments, and

(2) Shall notify the veteran or eligible person that he or she has a right—

(i) To a hearing, and

(ii) To present evidence why payments should not be discontinued or suspended.

(38 U.S.C. 1790(b))

3. Section 21.4134 is revised as follows:

##### § 21.4134 Suspension and discontinuance.

(a) *Suspension and discontinuance despite course approval.* Even though a State approving agency has approved a course offered by a school, the Director of the Veterans Administration field station of jurisdiction—

(1) May suspend payment of educational assistance allowance to any or all veterans and eligible persons enrolled in the course, and

(2) After following the procedures in § 21.4207 may discontinue payment of educational assistance to any or all veterans and eligible persons enrolled in the course.

(38 U.S.C. 1790)

(b) *Evidence requirements for individual suspensions.* The Director of the Veterans Administration field station of jurisdiction may suspend or discontinue payments of educational assistance allowance to a veteran or eligible person, even if the Director continues payment to other veterans or eligible persons enrolled in the course. Before the Director can do this, he or she must have evidence showing either that—

(1) The program of education or any course in which the veteran or eligible person is enrolled fails to meet any of the requirements of chapters 32, 34, 35, or 36, title 38, United States Code, or

(2) The educational institution offering the veteran's or eligible person's course has violated or failed to meet any of the

requirements of chapters 32, 34, 35, or 36, title 38, United States Code, and

(3) The violation or failure results in erroneous payment of educational assistance to the veteran or eligible person.

(38 U.S.C. 1790(b))

(c) *Evidence requirements for mass suspension of payments.* Before suspending payments to all veterans and eligible persons enrolled in a course the Director must have evidence to support the suspension. The evidence must show that a substantial pattern of veterans and eligible persons enrolled in the course are not entitled to the educational assistance they are receiving because—

(1) One or more of the course approval requirements of chapter 36, title 38, United States Code are not met, or

(2) The educational institution offering the course has violated one or more of the recordkeeping or reporting requirements of chapters 32, 34, 35, or 36, title 38, United States Code.

(38 U.S.C. 1790(b); Pub. L. 97-306, 96 Stat. 1429)

(d) *Notification.* (1) The Director may suspend educational assistance allowance as provided in this section only after—

(i) He or she notifies the State approving agency concerned and the educational institution in writing of any failure to meet the approval requirements and any violation of recordkeeping or reporting requirements.

(ii) The educational institution—

(A) Refuses to take corrective action, or

(B) Does not take corrective action within 60 days (or 90 days if permitted by the Director); and

(iii) The Director notifies each veteran and eligible person as provided in § 21.4133.

(2) If an educational institution believes it cannot complete corrective action within 60 days, it may ask the Director for additional time (not to exceed 30 days) to take corrective action.

(38 U.S.C. 1790(b); Pub. L. 97-306, 96 Stat. 1429)

(e) *Action following suspension.* If following a suspension of payments the Director is convinced that the educational institution will not take corrective action and that the State approving agency will not disapprove the course, he or she will refer the facts to the station Committee on Educational Allowances. See §§ 21.4207 and 21.4208.

(38 U.S.C. 1790(b); Pub. L. 97-306, 96 Stat. 1429)

4. Immediately following § 21.4134, a cross reference is added as follows:

**Cross reference:** Overcharges—restrictions on enrollments. See § 21.4202.

5. In § 21.4135, paragraph (m) is revised and paragraph (x) is removed and reserved as follows:

**§ 21.4135 Discontinuance dates.**

(m) *Incarceration in prison or penal institution for conviction of a felony.* (1) The provisions of this paragraph apply to a veteran or eligible person whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance allowance at a reduced rate under § 21.4136 (n), (o), (p) or (r) or § 21.4137(j) or (1).

(2) The reduced rate or discontinuance will be effective the latest of the following dates:

(i) The first day on which all or part of the veteran's or eligible person's tuition and fees were paid by a Federal, State or local program.

(ii) The date the veteran or eligible person is incarcerated in prison or penal institution, or

(iii) The commencing date of the award as determined by § 21.4131.

(38 U.S.C. 1682(g), 1732(e); Pub. L. 97-306, 96 Stat. 1429)

(x) [Reserved]

6. In § 21.4136, paragraph (m), (n), (o), (p), and (r) are revised and paragraph (q) is removed and reserved as follows:

**§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.**

(m) *Incarcerated veterans—general.* Notwithstanding the provisions of paragraphs (a) and (c) of this section, some incarcerated veterans and servicepersons may have their educational assistance allowance terminated or reduced.

(38 U.S.C. 1682(g); Pub. L. 97-306, 96 Stat. 1429)

(n) *No educational assistance allowance for some incarcerated servicepersons.* As with servicepersons who are not incarcerated, the Veterans Administration will not pay educational assistance allowance to an incarcerated serviceperson enrolled in a course for which there are no tuition and fees. Furthermore, the Veterans Administration will not pay educational assistance allowance to a serviceperson who—

(1) Is enrolled in a course where his or her tuition and fees are being paid for by

a Federal program (other than one administered by the Veterans Administration) or by a State or local program, and

(2) Is incarcerated in a Federal, State or local prison or jail for conviction of a felony, and has incurred no expenses for supplies, books or equipment.

(38 U.S.C. 1682(g); Pub. L. 97-306, 96 Stat. 1429)

(o) *No educational assistance allowance for some incarcerated veterans.* The Veterans Administration will pay no educational assistance allowance to a veteran who—

(1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course—

(i) For which there are no tuition and fees, or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by the Veterans Administration) or by a State or local program, and

(3) Is incurring no charge for the books, supplies and equipment necessary for the course.

(38 U.S.C. 1682(g); Pub. L. 97-306, 96 Stat. 1429)

(p) *Reduced educational assistance allowance for some incarcerated servicepersons.* (1) The Veterans Administration will pay a reduced educational assistance allowance to a serviceperson who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course where his or her tuition and fees are being paid for entirely or partly by a Federal program (other than one administered by the Veterans Administration) or by a State or local program, and

(iii) If all the tuition and fees are paid for by such a program, must buy books, supplies or equipment for the course.

(2) The monthly rate of educational assistance allowance payable to a serviceperson described in paragraph (p)(1) of this section shall equal the lowest of the following:

(i) The monthly rate of the portion of the tuition and fees paid by the serviceperson plus the monthly rate of the cost of books, supplies and equipment paid by the serviceperson;

(ii) The monthly rate of the portion of the tuition and fees paid by the serviceperson plus the monthly rate of the portion of tuition and fees paid by the Federal, State or local program; or

(iii) The monthly rate found in paragraph (c)(2) of this section.

(38 U.S.C. 1682(g); Pub. L. 97-306, 96 Stat. 1429)

(q) [Reserved].

(r) *Reduced educational assistance allowance for some incarcerated veterans—felony conviction.* (1) The Veterans Administration will pay a reduced educational assistance allowance to a veteran who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(iii) Is enrolled in a course—

(A) For which the veteran pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by the Veterans Administration) or a State or local program pays all the charges for tuition and fees, but which requires the veterans to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance allowance payable to such a veteran who is pursuing the course on a half-time or greater basis shall be the lesser or the following:

(i) The monthly rate of the portion of the tuition and fees that the veteran must pay plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(ii) The monthly rate stated in paragraph (a) of this section for a veteran with no dependents.

(3) The monthly rate of educational assistance allowance payable to such a veteran who is pursuing the course on a less than half-time basis or on a one quarter-time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course,

(ii) The monthly rate of tuition and fees which the veteran must pay plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(iii) The monthly rate stated in paragraph (a) of this section.

(38 U.S.C. 1682(g); Pub. L. 97-306, 96 Stat. 1429)

7. In § 21.4137, paragraphs (i), (j) and (l) are revised and paragraph (k) is removed and reserved as follows:

**§ 21.4137 Rates; educational assistance allowance—38 U.S.C. Chapter 35.**

(i) *Incarcerated eligible person—general.* Notwithstanding the provisions of paragraph (a) of this section, some incarcerated eligible persons may have

their educational assistance allowance eliminated or reduced.

(38 U.S.C. 1732(e); Pub. L. 97-306, 96 Stat. 1429)

(j) *No educational assistance allowance for some incarcerated eligible persons.* The Veterans Administration will pay no educational assistance allowance to an eligible person who—

(1) Is incarcerated in a Federal, State or local prison or jail for conviction of a felony, and

(2) Is enrolled in a course—

(i) For which there are no tuition or fees or charges for books, supplies and equipment; or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by the Veterans Administration) or by a State or local program, and the eligible person is incurring no charge for the books, supplies and equipment necessary for the course.

(38 U.S.C. 1732(e); Pub. L. 97-306, 96 Stat. 1429)

(k) [Reserved].

(l) *Reduced educational assistance allowance for some incarcerated eligible persons—felony conviction.* (1) The Veterans Administration will pay a reduced educational assistance allowance to an eligible person who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course—

(A) For which the eligible person pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by the Veterans Administration) or a State or local program pays all the charges for tuition and fees, but which requires the eligible person to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance allowance payable to such an eligible person who is pursuing a course on a half-time or greater basis shall be the lesser of the following:

(i) The monthly rate of the portion of the tuition and fees that the eligible person must pay plus the monthly rate of the charge to the eligible person for the cost of necessary supplies, books and equipment, or

(ii) The monthly rate stated in paragraph (a) of this section.

(3) The monthly rate of educational assistance payable to such an eligible person who is pursuing the course on a less than half-time basis or on a one quarter-time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course,

(ii) The monthly rate of tuition and fees which the eligible person must pay plus the monthly rate of the charge to the eligible person for the cost of necessary supplies, books and equipment, or

(iii) The monthly rate stated in paragraph (a) of this section.

(38 U.S.C. 1682(g); Pub. L. 97-306, 96 Stat. 1429)

8. In § 21.4140, paragraph (d)(1) is revised and paragraph (e) is removed and reserved as follows:

§ 21.4140 Apportionment.

(d) *Apportionment—incarceration due to a felony conviction.* (1) The provisions of this paragraph apply to a veteran whose educational assistance allowance is terminated or reduced because the veteran is incarcerated in a Federal, State or local penal institution for conviction of a felony.

(38 U.S.C. 3107(c); Pub. L. 97-306, 96 Stat. 1429)

(e) [Reserved].

9. In § 21.4202, the introductory portion of paragraph (b) and (b)(4) and (b)(7) are revised and paragraph (b)(8) is added so that the added and revised material reads as follows:

§ 21.4202 Over charges—restrictions on enrollments.

(b) *Restrictions on enrollments.* The Veterans Administration will disapprove a course for further enrollments or reenrollments and will discontinue educational assistance allowance to veterans or eligible persons already enrolled when one or more of the following conditions exist, and the conditions result in a substantial pattern of veterans or eligible persons or both receiving educational assistance allowance to which they are not entitled. If one or more of the following conditions exist at a school, but there is no pattern of overpayments of educational assistance allowance, the Veterans Administration will discontinue payments only to the affected veterans and eligible persons, and will disapprove new enrollments.

(38 U.S.C. 1790(b); Pub. L. 97-306, 96 Stat. 1429)

(4) The Veterans Administration has notified the school and the State approving agency in writing of a violation of a provision of the law or of failure of a course to meet the specific

requirements of law other than approval criteria. The school has—

(i) Failed to correct the situation within 60 days (or 90 days if the director of the Veteran Administration field station of jurisdiction determines additional time is warranted), or

(ii) Has knowingly and willfully repeated the violation.

(38 U.S.C. 1790(b); Pub. L. 97-306, 96 Stat. 1429)

(7) The requirements of §§ 21.4250, 21.4253, 21.4254, 21.4261 and 21.4264 are not being met in respect to a substantial number of veterans and eligible persons.

(8) The Veterans Administration has given written notice to the state approving agency and the school as to specific violations—

(i) Within 60 days following the notice, or

(ii) Within 90 days following the notice when the Director of the Veterans Administration field station of jurisdiction determines that conditions warrant allowing additional time to take corrective action.

(38 U.S.C. 1790(b); Pub. L. 97-306, 96 Stat. 1429)

10. In § 21.4207, paragraph (a) is revised as follows:

§ 21.4207 Failure of school to meet requirements.

(a) *Committee and Educational Allowances.* (1) The Committee on Educational Allowances will consist of a minimum of three staff members designated by the Director of the field station.

(2) The Committee is authorized to recommend the action to be taken for the purposes of this section, subject to approval by the Director of the Veterans Administration field station. The Committee's recommendations may include, but are not limited to—

(i) Disapproval of the enrollment or reenrollment of veterans and eligible persons in any course, and

(ii) Discontinuance of payment of educational assistance allowance to eligible veterans and eligible persons enrolled in a course.

(3) The Committee may not recommend disapproval or discontinuance unless the evidence requirements of § 21.4202 are met. However, if the provisions of § 21.4202 require disapproval or discontinuance, those actions must be recommended by the Committee.

(4) The unanimous recommendations of the Committee, when approved by the

Director of the Veterans Administration field station, becomes the final administrative decision of the Veterans Administration unless an application for review is filed as provided in paragraph (d) of this section.

(38 U.S.C. 1671, 1721, 1790(b); Pub. L. 97-306, 96 Stat. 1429)

§ 21.4252 [Amended]

11. In § 21.4252, paragraph (g) is removed and reserved

(g) Reserved

[FR Doc. 84-3672 Filed 2-9-84; 8:45 am]

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FEDERAL EMERGENCY  
MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6585]

List of Communities Eligible for the  
Sale of Insurance Under the National  
Flood Insurance Program; Connecticut

AGENCY: Federal Emergency  
Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes

§ 64.6 List of eligible communities.

the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The date listed in the fourth column of the table.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 287-0222, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the

communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance—flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard areas
Region I					
Connecticut:					
Fairfield.....	Bethel, town of.....	090001B	July 29, 1975, emergency, Feb. 15, 1984, regular, Feb. 15, 1984, suspended.	Apr. 5, 1974 and Feb. 18, 1977.	Feb. 15, 1984
Fairfield.....	New Fairfield, town of.....	090188A	Nov. 17, 1975, emergency, Feb. 15, 1984, regular, Feb. 15, 1984, suspended.	Jan. 31, 1975.....	Do.
Region II					
New Jersey:					
Monmouth.....	Middletown, township of.....	340313B	May 20, 1974, emergency, Feb. 15, 1984, regular, Feb. 15, 1984, suspended.	July 19, 1974 and July 9, 1976.	Do.
Sussex.....	Vernon, township of.....	340561A	July 29, 1975, emergency, Feb. 15, 1984, regular, Feb. 15, 1984, suspended.	Apr. 11, 1975.....	Do.
Sussex.....	Wantage, township of.....	340562A	July 28, 1975, emergency, Feb. 15, 1984, regular, Feb. 15, 1984, suspended.	July 11, 1975.....	Do.
Region III					
Maryland:					
Kent.....	Chestertown, town of.....	240046B	Sept. 4, 1973, emergency, Feb. 15, 1984, regular, Feb. 15, 1984, suspended.	July 26, 1974 and Jan. 16, 1976.	Do.
Pennsylvania:					
Bucks.....	Lanighome Manor, Borough of.....	422336A	Oct. 5, 1976, emergency, Feb. 15, 1984, regular, Feb. 15, 1984, suspended.	Feb. 14, 1975.....	Do.
Region IV					
Florida:					
Sarasota.....	Sarasota, city of.....	125150B	Sept. 18, 1970, emergency, July 30, 1971, regular, Feb. 15, 1984, suspended.	July 30, 1971.....	Do.