1,400 feet. The thickness of the formation ranges from approximately 1,500 to 3,500 feet.

[FR Doc. 84-22687 Filed 8-24-84; 8:45 am]
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**18 CFR Part 292**

**[Docket No. RM79-54-001; Order No. 70-F]**

## Small Power Production and Cogeneration Facilities; Order Denying Rehearing

Issued: August 23, 1984

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

**ACTION:** Order denying rehearing.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 70-E) on June 18, 1981 (46 FR 33025 (June 26, 1981)). That rule allowed new diesel and dual-fuel cogeneration facilities to qualify for benefits under sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 796 and 824a-3 (1982). The Commission received one application for rehearing of the final rule. This order denies the application because it presented no new facts or arguments that were not previously considered by the Commission.

**DATES:** The order is effective on August 23, 1984.

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

### I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying rehearing of the final rule issued on June 18, 1981, 46 FR 33025 (June 26, 1981) (Order No. 70-E). The rule amended § 292.203 of the Commission's regulations, which establishes criteria and procedures to determine whether a small power production or cogeneration facility is eligible to qualify for benefits under sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[1] Specifically, the final rule allowed new diesel and dual-fuel cogeneration facilities to obtain qualifying status on a generic basis, subject to the general requirements in § 292.207.

Consolidated Edison Company of New York, Inc. (Con Ed) filed an application for rehearing of the final rule on July 17, 1981. On August 11, 1981, the Commission granted the application for rehearing solely for purposes of further consideration. For the reasons discussed below, the Commission now denies that application.

### II. Background

Section 201 of PURPA requires the Commission to issue rules under which small power production and cogeneration facilities can obtain qualifying status.[2] Qualifying status enables a facility to be exempted from regulation under certain provisions of the Federal Power Act (16 U.S.C. 792-828c), from regulation under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 through 79z-6), and from certain state laws and regulations pertaining to the regulation of electric utilities. A facility with qualifying status may obtain a rate for its power purchased by an electric utility that is equal to the incremental "avoid cost" to the utility. A qualifying facility also may obtain retail electric service on a non-discriminatory basis.

During the rulemaking proceedings to implement sections 201 and 210 of PURPA, the Commission prepared an Environmental Assessment (EA)[3] under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4361. Based on data developed in the EA, the Commission determined that only diesel and dual-fuel commercial cogeneration facilities in the Middle Atlantic region had the potential to cause environmentally significant effects.[4] As a result, when the Commission issued a final rule (Order No. 70),[5] it excluded new diesel cogeneration facilities from obtaining qualifying status, pending completion of a Final Environmental Impact Statement (FEIS). Later, in an order on rehearing of the final rule, the Commission also excluded new dual-fuel cogeneration facilities from obtaining qualifying status on a generic basis but, unlike facilities, permitted them to qualify for PURPA benefits on a case-by-case basis.[6]

In June 1980, the Commission made available for comment a Draft Environmental Impact Statement (DEIS). After considering the numerous comments received on the DEIS, the Commission issued the FEIS on May 1, 1981. While an FEIS is not normally subject to comment at this stage, the Commission elected to receive additional comments, ending on June 1, 1981.

The Environmental Protection Agency (EPA) and Con Ed filed timely comments on the FEIS. The comments filed by the EPA assure the Commission that the FEIS addressed the concerns that EPA has expressed in comments on the DEIS. The comments filed by Con Ed raise substantially the same arguments as those contained in its comments on the DEIS. The Commission considered, and responded to, those arguments in the FEIS and in the final rule (Order No. 70-E) allowing diesel and dual-fuel cogeneration facilities to obtain qualifying status generically. This rule was issued on June 18, 1981.

### III. Discussion

In its application for rehearing, Con Ed argues that the Commission's rulemaking contained a procedural defect relating to the FEIS. In addition, Con Ed repeats the substantive arguments presented in its June 1, 1981 comments on the FEIS. Con Ed maintains that the Commission must suspend or revoke the final rule (Order No. 70-E) and reinstate the interim exclusion (in Order No. 70) because the FEIS is fatally deficient and must be substantially supplemented.

#### *A. Procedural Issue*

Con Ed contends that the Commission erred procedurally because it took final action on Order No. 70-E before the June 1, 1981 comment deadline for the FEIS, thereby precluding consideration of comments on the FEIS.

The Commission did not take final action without considering the comments filed on the FEIS. At the Commission meeting of May 29, 1981, the Commission discussed, but did not approve, a draft of Order No. 70-E. On June 15, 1981, two weeks after the close of the comment period on the FEIS, the Commission approved a revised Order No. 70-E. That final rule was issued on June 18, 1981. Thus, Con Ed's allegation is in error.

The Commission notes that Con Ed's comments on the FEIS were before the Commission, prior to its approval and issuance of Order No. 70-E. Moreover, the issues raised in Con Ed's June 1st comments were the same as those

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[1] 16 U.S.C. 796 and 824a-3 (1982).

[2] Those rules are contained in 18 CFR Part 292, Subpart B.

[3] Notice of No Significant Impact and Notice of Intent to Prepare Environmental Impact Statement, Docket Nos. RM79-54 and RM79-55, 10 FERC ¶61,314 (March 31, 1980).

[4] *Id.* at 61630.

[5] Small Power Production and Cogeneration Facilities—Qualifying Status, 45 FR 17959 (March 30, 1980) (Order No. 70) (Docket No. RM79-54 issued March 13, 1980); FERC Stats. & Regs., Reg. Preambles 1977-1981 ¶30,134.

[6] Order Granting in Part and Denying in Part Rehearing of Order Nos. 69 and 70, and Amending Regulations, 45 FR 33958 (May 21, 1980) (Docket Nos. RM79-54 and RM79-55, issued May 15, 1980); FERC Stats. & Regs., Reg. Preambles 1977-1981 ¶30,160.

raised in its earlier comments on the DEIS. These arguments were considered during the preparation of the FEIS, and therefore the Commission finds no reason to grant rehearing on this point.

*B. Substantive Issues*

The application for rehearing also raises a number of arguments relating to the substantive validity of the FEIS as it relates to cogeneration facilities in the New York City area. Con Ed contends that the FEIS failed to provide either a full or fair discussion of the potential environmental impacts in the New York City area of diesel and dual-fuel cogeneration facilities encouraged by PURPA. Con Ed alleges a number of deficiencies in the FEIS to support its argument that the FEIS does not meet NEPA requirements.

1. Cumulative Impact

Specifically, Con Ed contends that the FEIS failed to address the cumulative air quality impact of PURPA-induced diesel and dual-fuel cogeneration in the New York City area. Con Ed alleges that, instead of a cumulative impact study, the Commission analyzed a single 1.4 MW diesel cogeneration facility and compared the impact of that single facility with state and federal air quality standards.[7]

The Commission rejects Con Ed's argument that the FEIS considered only the effect of 1.4 MW from one facility on air quality in New York City. In fact, the FEIS addressed the cumulative impact on air quality of new commercial diesel and dual-fuel cogeneration development in the New York City area resulting from PURPA.[8] The FEIS considered an analysis of the cumulative air quality impact of 562 MW of cogeneration in New York City that was prepared for Con Ed by Environmental Research and Technology, Inc. (ERT). It also considered another analysis prepared by the staff of the New York Public Service Commission.[9] The Commission's independent evaluation of these studies provided sufficient detail to apprise it of the potential impact of new diesel and dual-fuel cogeneration on air quality in New York City.

In addition, Con Ed contends that the FEIS misused the 562 MW figure, which originally represented Con Ed's estimate of the commercial cogeneration that would be developed in New York City by 1995 without PURPA-related rate or interconnection inducements.

Again, the Commission disagrees. The FEIS evaluated the possible environmental effects of cogeneration development that might occur by 1995 in the entire Middle Atlantic Region as a result of PURPA. However, the Commission recognized that a relatively larger portion of market penetration might occur in the New York City area because, with the level of Con Ed's rates, commercial cogeneration facilities could produce electricity more cheaply than it could be bought from Con Ed. For this reason, the FEIS singled out the New York City area for further consideration.

The Commission believes that the evaluation in the FEIS was thorough and adequate under NEPA. A full consideration of the environmental consequences of encouraging cogeneration development did not require an analysis of site-specific market penetration in the New York City area. Under these circumstances, it was reasonable for the Commission to evaluate the 562 MW figure used by Con Ed in the ERT study and to find it also reasonably represented the level of diesel and dual-fuel cogeneration that the Commission expected to result from the PURPA program.

The Commission determined that the 562 MW figure was within a zone of development that might be expected for the New York City area. The FEIS established a range of 625 MW to 1,875 MW for potential new diesel and dual-fuel cogeneration development resulting from PURPA by 1995 in *all* urban areas in the Middle Atlantic Region.[10] This range of potential development therefore includes but is not limited to solely New York City, as Con Ed believes. Large urban areas in this Region include Philadelphia, Camden, Newark, Pittsburgh, Buffalo, the New York City metropolitan area and Long Island. Given the large number of major urban areas and the level of Con Ed's rates in the New York City area, it was reasonable to conclude that New York City's likely proportional share of this total was roughly one-third of the maximum projected for all urban areas in the Region. The Commission therefore was able to consider the study based on the 562 MW figure in evaluating the potential environmental impact of new diesel and dual-fuel cogeneration that could develop in the New York City area as a result of PURPA.

Experience has shown that, in fact, this estimate is probably much too high. The Commission has monitored the degree of market penetration, and current reports indicate that, since the final rule was issued, the Commission has received applications for, or notification of, qualifying status for approximately 3.15 MW of new diesel or dual-fuel cogeneration in Con Ed's New York City service area.[11] Consequently, the impact projected in the FEIS for 562 MW of new diesel and dual-fuel cogeneration appears much less likely than the Commission originally anticipated. However, as noted in the FEIS (at I–6a), the Commission will continue to monitor the development of cogeneration facilities through its reporting program, and, if necessary, could consult with appropriate agencies to determine whether future environmental action should be taken.

Finally, Con Ed also suggests that the Commission erroneously reduced the estimate of cogeneration in New York City from 562 MW to an estimate of less than 290 MW.

The FEIS analyzed the cumulative impact of many cogeneration facilities on air quality in New York City by assuming 562 MW of cogeneration, and did not use a figure of less than 290 MW as suggested by Con Ed. Con Ed relied on a discussion in the FEIS that merely reflected the possibility that increases in the price of oil could reduce the potential for cogeneration in New York City to less than 290 MW.[12] That number was not used for a cumulative impact analysis.

2. Air Quality Control Capabilities

Con Ed argues that the Commission's reliance on federal, state, and local air pollution laws to prevent air quality from deteriorating as a result of projected PURPA-induced diesel and dual-fuel cogeneration is not an adequate substitute for the detailed environmental analysis and discussion Con Ed believes is required by NEPA. Con Ed alleges, for example, that the New York State regulations presently exempt diesel and dual-fuel cogeneration facilities that use diesel oil or natural gas from construction and operating permit requirements. In addition, Con Ed points out the apparent concern of New York State and local authorities that their existing regulations

[7] DEIS, at VII–41.

[8] FEIS, at VII–12a.

[9] *See* FEIS Appendix 3.

[10] DEIS Appendix C, at C–7. The DEIS estimated that cogeneration in larger urban areas may account for 25% to 75% of the 2500 MW total projected for the Middle Atlantic Region.

[11] *See* FERC Quarterly Report on Qualifying Small Power Production and Cogeneration Facility Filings, January 1, 1984, and recent filings made under § 292.207 of the Commission's regulations. The Report and filings also show that, in addition to the 3.15 MW of new diesel and dual-fuel cogeneration in the New York City area, there has been a small amount of spark ignition cogeneration development (0.3 MW) and approximately 67.3 MW of steam turbine cogeneration development.

[12] FEIS, at VII–12a

may be inadequate to prevent substantial adverse air quality impacts.

The Commission disagrees that its consideration of air quality control by federal, state, and local authorities substituted for a detailed environmental analysis. Rather, it was one of many factors that were considered in the FEIS. The evaluation in the FEIS of potential air quality impacts resulting from cogeneration would have been incomplete if it had failed to recognize the ability of air pollution control agencies to regulate the installation and operation of cogeneration facilities. The Commission's finding that sufficient authority exists at the national, state, and local level to avoid a serious environmental impact from PURPA-induced cogeneration facilities in the New York area was entirely appropriate, especially in view of the relatively slow projected rate of market penetration.[13]

The discussion in the FEIS details the authority of the EPA, New York State, and New York City to regulate the construction and manner of operation of diesel and dual-fuel cogeneration facilities to protect air quality. Althouth some of these facilities presently may be exempt from state regulation as Con Ed contends, New York City has the authority to license new pollution sources such as diesel cogenerators and to conduct programmatic reviews if there is a potential for a cumulative impact. Furthermore, the agencies that administer air quality control programs in New York State have ample authority to address whatever adverse effects on air quality that may arise from even a much higher level of cogeneration than the FEIS projected.

3. Effect of Cogeneration on Con Ed's Rates

Con Ed argues that the analysis in the FEIS of the socio-economic impact of cogeneration in the New York City area is inadequate because it did not address the effect of cogeneration development on the rates charged to Con Ed's remaining customers. Con Ed states that every 100 MW of load lost to cogeneration will result in a 0.7 percent rate increase as the fixed costs of excess generating capacity are spread over the remaining customers. Con Ed alleges that the rate increases could significantly affect some customers if 1,875 MW of cogeneration capacity is installed in New York City as a result of PURPA.

The Commission was not required to prepare a detailed analysis of the effect of cogeneration on the rates to Con Ed's remaining customers. NEPA does not require an agency to evaluate economic impacts that are not interrelated with the physical environment.[14] Con Ed does not allege such a connection or provide any information to support its contention.

Moreover, as previously noted, 1,875 MW is the maximum amount of cogeneration projected for all urban areas in the Middle Atlantic Region (not for New York City) by the year 1995. This degree of market penetration in New York City alone is extremely unlikely. In any event, the FEIS projected that market penetration would proceed slowly at first.[15] Therefore, the rate impact in the early years would be minimal. In addition, any impact that might occur would be reduced or eliminated by expected increases in load growth. In fact, in the 1981 New York Power Pool submittal to the New York State Energy Office, Con Ed estimated that it would need additional capacity by 1995. As a result, the impact on rates, if any, would be a short-term phenomenon.

In addition, when cogenerated electricity is used for the cogenerator's internal energy needs and is not sold to a utility, the impact on the utility is the same as that of a conservation measure. Both may require a reallocation of demand costs due to a reduction in total kilowatt-hour demands. Although, in the short-term, Con Ed may be inclined to increase its rates, in the long-term, Con Ed's customers will benefit from the more efficient use of resources.

4. Tax Effects of Cogeneration

Con Ed contends that the Commission should have evaluated the tax effects of cogeneration. Con Ed states that a reduction in its sales will result in reduced revenues from taxes collected by state and city authorities as a percentage of electric bills. Thus, it is argued, the area's other taxpayers will have to absorb the resulting revenue losses.

The Commission recognizes that the development of cogeneration may result in lost tax revenues and that these revenue losses may result in some increase in taxes. However, there is no relationship between this potential economic effect and the physical environment. For this reason, a detailed evaluation in the FEIS of the effect of cogeneration on taxes in New York City was not required.[16] Moreover, any conclusion from such an exercise would have been based largely on speculation because of the inability to precisely estimate the degree of cogeneration development resulting from PURPA and the unforeseeable variables in state and city tax policy. The Commission does not believe that NEPA requires this type of speculation relating to socioeconomic impacts.

5. Other Issues

Con Ed argues that the FEIS is deficient because the Commission failed, in its market penetration analysis, to consider the potential for cogeneration in existing buildings.

As previously noted, the Commission estimated that the potential Middle Atlantic commercial cogeneration market by 1995 was approximately 11,000 MW.[17] That total, however, was reduced to 2500 MW of potential cogeneration because of production and installation limitations and environmental constraints.[18] Therefore, it is irrelevant that the Commission did not consider existing buildings in arriving at the 11,000 MW. Had it done so, the ultimate potential for cogeneration may have been slightly higher than 11,000 MW, but the growth-limited market for 2500 MW of cogeneration, on which the analyses in the FEIS were based, would have remained the same.

Con Ed also contends that there is no support for assuming the market penetration of commercial cogeneration facilities is limited by the existing capacity to manufacture cogeneration equipment.

The Commission does not accept Con Ed's characterization that equipment manufacturing capability was the only limitation that was considered in determining the growth-limited market. The potential for cogeneration in the commercial sector also was limited by the ability to produce and to install practicable and workable cogeneration systems because of the limited number of engineering and architectural firms with expertise in the design and installation of these systems. In addition, as noted in the FEIS, the maintenance of air quality by federal, state, and local authorities limited the market penetration potential of cogeneration facilities.

Con Ed argues that the Commission erred because the FEIS did not consider the environmental effects of spark ignition engine cogeneration facilities that might be located in the New York

[13] *See* DEIS Appendix C, Figure C–2.

[14] *Metropolitan Edison Co.* v. *People Against Nuclear Energy*, 103 S.Ct. 1556, 1560, 1563 (1983); 40 CFR 1508.14. (1984)

[15] *See* DEIS Appendix C, Figure C–2.

[16] *See Metropolitan Edison, supra* note 14.

[17] DEIS Appendix C, at C–7.

[18] *Id.* at C–1, C–6, C–7.

City area. It asserts that, in view of the high nitrogen oxide emission rate from these facilities, the Commission should deny qualifying status to spark ignition cogeneration facilities in areas where air quality is already marginal.

The Commission rejects this argument. The EA made a finding that only new diesel and dual-fuel commercial cogeneration facilities in the Middle Atlantic Region had the potential to cause environmentally significant effects. As a result, when Order No. 70 was issued, the Commission permitted spark ignition cogeneration facilities, among others, to obtain qualifiying status.[19] Con Ed's objections to the inclusion of spark ignition cogeneration facilities were properly raised in an application for rehearing of Order No. 70. The Commission rejected those arguments in the order on rehearing of Order No. 70 [20] and need not address the issue in this proceeding.

Con Ed raises other arguments in its application for rehearing. However, the Commission believes that further discussion of those issues here is unnecessary because they were considered by the Commission and adequately discussed in the FEIS and in the preamble to the final rule (Order No. 70-E).

### IV. Conclusion

Accordingly, for the reasons discussed above, in the preamble to the final rule, and in the FEIS, the Commission denies the application for rehearing of Order No. 70-E.

By the Commission.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 84-22611 Filed 8-24-84; 8:45 am]

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[19] *See supra* note 5.

[20] *See supra* note 6.

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## 18 CFR Part 385

**[Docket No. RM83-1-001; Order No. 375-A]**

## Rules of Practice and Procedure; Reconsideration of Initial Decisions

Issued August 23, 1984.

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

**ACTION:** Order denying rehearing.

**SUMMARY:** On May 16, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule to require, in designated wholesale electric rate cases, the filing of motions for reconsideration of initial decisions as a prerequisite to seeking Commission review of those decisions.

In this order, the Commission denies a request, filed on behalf of Wisconsin Customers, for rehearing of that portion of the final rule that establishes deadlines for the receipt of briefs on and opposing exceptions.

**EFFECTIVE DATE:** The order is effective on August 23, 1984.

**FOR FURTHER INFORMATION CONTACT:** Fredric D. Chanania, Deputy Assistant General Counsel, Rulemaking and Legislative Analysis Division, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-8033.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Oliver G. Richard III, and Charles G. Stalon.

### I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying a request from Wisconsin Customers[1] to rehear a portion of its final rule in Docket No. RM83-1-000.[2] That portion requires participants, in designated wholesale electric rate cases, to file briefs on and opposing exceptions within 20 and 10 days respectively after a presiding officer rules on a motion for reconsideration of an initial decision.[3]

### II. Discussion

#### *A. The Final Rule*

On May 16, 1984, the Commission issued a final rule to require, in designated wholesale electric rate cases, the filing of motions for reconsideration of initial decisions as a prerequisite to seeking Commission review of those decisions.[4] The rule is designed to improve the quality and timeliness of the Commission's decisionmaking process by ensuring that, in the more routine electric rate cases, the Commission will be able to adopt summarily a presiding officer's initial decision.

Under this rule, participants in designated cases file motions for reconsideration of a presiding officer's initial decision within 30 days after that decision is issued. The rule then establishes the following timetables for subsequent actions:

• Within 20 days of the last date for filing a motion for reconsideration, a reply to the motion may be submitted.

• Within 30 days after the last pleading is filed, the presiding officer will rule on the motion and, if the motion is granted, revise the initial decision.

• Within 20 days after the presiding officer's ruling on the motion has been issued, a brief on exceptions may be filed with the Commission.

• Within 10 days after the last date for filing a brief on exceptions, a brief opposing exceptions may be filed.

As a result of these additional procedures, a presiding officer will have an opportunity to correct any errors in an initial decision, to clarify or otherwise resolve any issues that may not be clear or well-documented by the hearing record, and to modify any ruling if compelling reasons to do so are advanced by the participants.

In establishing the timetables for reconsideration, the Commission has considered both the need to achieve expedition in designated wholesale electric rate cases and the need to provide participants adequate opportunity to present their views and arguments. The Commission believes that a full brief is likely to be necessary when a motion for reconsideration is filed, in order for the parties to adequately present all their arguments.[5] The Commission therefore has provided longer periods—30 days for motions and 20 days for replies—during the reconsideration stage of the proceeding. Because all arguments for and against an initial decision would be presented during this reconsideration stage, the Commission has provided shorter periods—20 days for briefs on exceptions and 10 days for briefs opposing exceptions—for appeals to the Commission after reconsideration has been completed.[6]

#### *B. The Rehearing Request*

In their request for rehearing, Wisconsin Customers disagree with the Commission's determination to allow 20 and 10 days respectively for briefs on and opposing exceptions. Their disagreement centers on the practical difficulties in meeting the Commission's time limits, particularly the 10-day

[1] "Wisconsin Customers" is the collective name for a number of cities and villages in Wisconsin, the Washington Island Electric Cooperative, the Ontonagon County Rural Electrification Association, the Oconto Electric Cooperative, and the Wisconsin Public Power, Inc. System.

[2] Rules of Practice and Procedure: Reconsideration of Initial Decisions, 49 FR 21,312 (May 21, 1984) (Order No. 375) [hereinafter referred to as *Final Rule*].

[3] An order granting rehearing solely for the purpose of further consideration was issued in this docket on July 13, 1984, 49 FR 29,005 (July 18, 1984).

[4] This final rule added a new Rule 717 to the Commission's Rules of Practice and Procedure, to be codified at 18 CFR 385.717.

[5] *Final Rule, supra* note 2, at 21,314.

[6] *Id.*

period for filing briefs opposing exceptions.

Wisconsin Customers argue that the final rule penalizes participants not represented by counsel in Washington, D.C. because of the time involved, first, in obtaining a copy of the brief on exceptions and, second, in preparing a brief opposing exceptions with sufficient speed to permit its filing within 10 days. By their calculations, a non-Washington attorney would effectively have only four days in which to prepare a brief to the Commission opposing exceptions. They therefore suggest that the time periods for briefs on the opposing exceptions should each be extended by 10 days to 30 and 20 days, respectively. They contend that this additional time will have a negligible effect on "speeding up the regulatory process" and will allow them to draft a brief "in a coherent and well-reasoned fashion." Wisconsin Customers further argue that because the Commission will rely on these briefs for its final decision, their preparation "should not be regarded in any sense as perfunctory by the parties or the Commission."

*C. Disposition*

The Commission is not persuaded to change the procedural timetables established in the final rule for several reasons. First, as a general proposition, although the Commission recognizes that its rule could require an effort to comply on the part of some participants,[7] the Commission believes that the need to expedite its proceedings far outweighs any drawbacks of the time limits established in the final rule. The overall goal of the final rule is to accelerate the Commission's decision-making process in certain electric rate cases, which will benefit all parties involved. The prejudice to all participants occasioned by unnecessary delays in these proceedings, which the rule is designed to avert, sufficiently justifies keeping the current time limits even though some participants will have to prepare briefs within short time periods.[8]

Second, in establishing procedures, the Commission does, of course, take into account the needs of all entities likely to be affected. In the final rule at issue here, the Commission revised its procedural timetables to account for the concerns expressed by commenters to the Notice of Proposed Rulemaking.[9] Because the Commission's goal is to promulgate uniform rules that will meet its general policy objectives equitably, we are not now persuaded to depart from the timetables in the final rule.

Third, the rehearing request from Wisconsin Customers focuses primarily on the 10-day time limit for briefs opposing exceptions and contains no basis for modifying the 20-day period permitted for briefs on exceptions. With respect to briefs opposing exceptions, the Commission anticipates that by the time this last procedural stage is reached, participants will have sufficient knowledge of each other's positions to prepare a brief within the allotted time. The Commission appreciates the importance of these briefs but believes that, in most cases, the briefs will address issues that have been aired throughout the proceeding or, at a minimum, during reconsideration. As a result, participants generally will have had ample opportunity to formulate their own views and will be able to draft their briefs opposing exception quickly.

Fourth, technological improvements in communications, as well as the availability of numerous overnight delivery services, should speed up the actual transit time needed to obtain or file briefs. These factors further convince the Commission that its original determination is correct and that expedition of electric cases outweighs the potential problems raised by Wisconsin Customers.

## III. Conclusion

For the foregoing reasons, the Commission denies rehearing of the final rule as requested by Wisconsin Customers.

By the Commission.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-22686 Filed 8-24-84; 8:45 am]

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[7] The Commission notes, in passing, that Wisconsin Customers is the only group that has objected to the procedural time-table, even though numerous other participants in Commission proceedings may be represented by non-Washington counsel.

[8] This determination is consistent with our previous decisions in response to similar concerns. *See, e.g.*, Final Rule, Revision of Rules of Practice and Procedure to Expedite Trial-Type Hearings, 47 FR 19014, 19017 (May 3, 1982) (discussing Rule 213).

[9] *Final Rule, supra* note 2, at 21,313.

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## 21 CFR Part 1308

## Schedules of Controlled Substances; Rescheduling of Methaqualone From Schedule II to Scheldule I

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Final rule.

**SUMMARY:** This is a final rule issued by the Administrator of the Drug Enforcement Administration (DEA) rescheduling the Schedule II depressant methaqualone into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This action is required in order to comply with Pub. L. 98-329, an Act to provide for the rescheduling of methaqualone into Schedule I of the CSA and for the withdrawal of approval of its new drug application.

**EFFECTIVE DATE:** August 27, 1984.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C., 20537, Telephone: (202) 633-1366.

**SUPPLEMENTARY INFORMATION:** On June 29, 1984, Pub. L. 98-329 was enacted, thereby requiring the Attorney General to transfer methaqualone from Schedule II to Schedule I of the CSA. Pub. L. 98-329 also requires the Secretary of the Department of Health and Human Services (DHHS), pursuant to section 505 of the Federal Food, Drug and Cosmetic Act, to withdraw the approval of the new drug application for methaqualone. After the rescheduling and the withdrawal of approval of the new drug application, methaqualone will no longer be available for prescription by medical practitioners or dispensing by pharmacists. Persons currently registered with DEA to conduct Schedule II activities with methaqualone will not be allowed to conduct such activities after [August 27, 1984], except as otherwise provided in paragraphs 2 and 4 below. Persons interested in conducting activities allowed for Schedule I substances must comply with the following:

1. *Registration.* Any person not currently registered for Schedule I activities who manufactures, distributes, imports, exports, engages in research, or conducts instructional activities with respect to methaqualone, or who proposes to engage in such activities, shall submit an application for Schedule I registration to conduct such activities in accordance with 21 CFR Parts 1301 and 1311.

2. *Disposal of Stock.* Any person who elects not to obtain a Schedule I registration or is not entitled to such registration must surrender all quantities of currently held methaqualone in accordance with procedures outlined in 21 CFR 1307.21 on or before [October 26, 1984.]. All surrendered methaqualone must be listed on a DEA Form 41,

"Inventory of Controlled Substances Surrendered for Destruction." DEA Form 41 and instructions can be obtained from the nearest DEA office. In accordance with 21 CFR 1307.21(b)(3), pharmacy stocks of methaqualone may be disposed of by state pharmacy board inspectors.

3. *Security.* Methaqualone must be manufactured, distributed and stored in accordance with 21 CFR 1301.71–1301.76.

4. *Labeling and Packaging.* All labels and labeling for commercial containers of methaqualone, packaged after October 26, 1984, shall comply with the requirements of 21 CFR 1302.03–1302.05 and 1302.07–1302.08. In the event this effective date imposes special hardships on any "manufacturer", as defined in section 102(14) of the CSA (21 U.S.C. 802(14)), the Drug Enforcement Administration will entertain any justified requests for extensions of time submitted to it on or before the required date of compliance.

5. *Quotas.* All persons required to obtain quotas for methaqualone shall submit applications pursuant to 21 CFR 1303.12 and 1303.22.

6. *Inventory.* Every registrant required to keep records, who possesses any quantity of methaqualone, shall maintain an inventory, pursuant to 21 CFR 1304.11–1304.19, of all stocks of methaqualone. Every registrant who desires registration in Schedule I shall conduct of inventory of all stocks of methaqualone on or before [October 26, 1984.]

7. *Records.* All registrants required to keep records pursuant to 21 CFR 1304.21–1304.27 shall maintain such records on methaqualone commencing or or before [October 26, 1984.]

8. *Reports.* All registrants required to submit reports on methaqualone to the Drug Enforcement Administration pursuant to 21 CFR 1304.37–1304.41 shall report on the inventory taken under paragraph 6 above and or all subsequent transactions.

9. *Order Forms.* Each distribution of methaqualone shall utilize an order form pursuant to 21 CFR Part 1305.

10. *Importation and Exportation.* All importation and exportation of methaqualone shall be in compliance with 21 CFR Part 1312.

11. *Criminal Liability.* The Administrator, Drug Enforcement Administration, hereby orders that any activity with respect to methaqualone not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act, shall continue to be unlawful.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the placement of methaqualone into Schedule I of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the transfer to Schedule I of methaqualone which is no longer manufactured for marketing as a prescription drug. This action is mandated by law and is to be followed by withdrawal of approval of the new drug application for methaqualone.

In accordance with the provisions of 21 U.S.C. 812(d)(1), this scheduling action is a formal rulemaking that is required by Pub. L. 98–329. Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557, and as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

### List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

## PART 1308—[AMENDED]

Therefore, under the authority vested in the Attorney General by § 201(d)(1) of the CSA (21 U.S.C. § 812(d)) and Pub. L. 98–329 and delegated to the Administrator of the Drug Enforcement Administration pursuant to 28 CFR § 0.100, the Administrator hereby orders that 21 CFR Part 1308 be amended:

### § 1308.12 [Amended]

1. By removing Methaqualone as item (2) of § 1308.12(e) and renumbering items (3) Pentobarbital, (4) Phencyclidine and (5) Secobarbital as items (2), (3) and (4), respectively, and;

2. By amending paragraph (e) of § 1308.11 to include methaqualone as item (2) to read as follows:

### § 1308.11 Schedule I

* * * * *

(e) * * *

(1) Mecloqualone........ 2572
(2) Methaqualone........ 2565

* * * * *

Dated: August 17, 1984.

Francis M. Mullen, Jr.,

*Administrator, Drug Enforcement Administration.*

[FR Doc. 84–22556 Filed 8–24–84; 8:45 am]

BILLING CODE 4410–09–M

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of the Assistant Secretary for Housing—Federal Housing Commissioner

## 24 CFR Parts 232 and 235

[Docket No. R-84-1194; FR-2035]

## Mortgage Insurance; Changes in Interest Rates

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

**ACTION:** Final rule.

**SUMMARY:** This change in the regulations decreases the maximum allowable interest rate on section 232 (Mortgage Insurance for Nursing Homes) and on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates and help assure an adequate supply of and demand for FHA financing.

**EFFECTIVE DATE:** August 13, 1984.

**FOR FURTHER INFORMATION CONTACT:** John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755–7270. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been lowered from 14.00 percent to 13.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709–1.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists

for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in .50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of .50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

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

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small decrease in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

**List of Subjects**

*24 CFR Part 235*

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

*24 CFR Part 232*

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

## PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. In § 232.560, paragraph (a) is revised to read as follows:

**§ 232.560 Maximum interest rate.**

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 13.50 percent per annum, except that where an application for commitment was received by the Secretary before August 13, 1984, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

## PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

2. In § 235.9, paragraph (a) is revised to read as follows:

**§ 235.9 Maximum interest rate.**

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.50 percent per annum, except that where an application for commitment was received by the Secretary before August 13, 1984, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

**§ 235.540 Maximum interest rate.**

(a) On or after August 13, 1984, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 13.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

(Authority: Section 3(a), 82 Stat. 113; (12 U.S.C. 1709–1); Section 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 10, 1984.

**Maurice L. Barksdale,**

*Assistant Secretary for Housing FHA Commissioner. H.*

[FR Doc. 84-22666 Filed 8-24-84; 8:45 am]

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## Government National Mortgage Association

## 24 CFR Part 300

**[Docket No. N-84-1436; FR-2018]**

## List of GNMA Attorneys-in-Fact

**AGENCY:** Government National Mortgage Association, HUD.

**ACTION:** Rule-related notice.

**SUMMARY:** This document updates the current list of persons appointed attorneys-in-fact by the Government National Mortgage Association (GNMA). Attorneys-in-fact are authorized to act for GNMA by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs. These appointments assist GNMA in carrying out its responsibilities under the National Housing Act.

**EFFECTIVE DATE:** August 27, 1984.

**FOR FURTHER INFORMATION CONTACT:** John Maxim, Associate General Counsel, Insured Housing and Finance, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755–6274. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** The Government National Mortgage Association (GNMA) periodically approves staff members of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Montage Corporation (Freddie Mac) to be delegated signatory authority to act in GNMA's behalf as attorneys-in-fact.

Until recently, lists of persons appointed to act have appeared in the Code of Federal Regulations (see 24 CFR 300.11 (c) and (d), 1983 edition). In related documents published on August 12, 1983 (see 48 FR 36572, 36573) GNMA announced that it was removing these lists from the CFR, changing the procedure of announcing appointments to a notice document, and publishing a complete list of persons currently appointed to act as attorneys-in-fact. The rule removing the lists from the CFR, as well as the complete list of