

Rules and Regulations

Federal Register

Vol. 50, No. 40

Thursday, February 28, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, 873, and 874

Basic Life Insurance, Standard Optional Life Insurance, Additional Optional Life Insurance, Family Optional Life Insurance, and Assignment of Life Insurance

AGENCY: Office of Personnel
Management.

ACTION: Interim rulemaking.

SUMMARY: These regulations implement section 208 of Public Law 98-353, the Bankruptcy Amendments and Federal Judgeship Act of 1984. Section 208 permits Federal judges to assign ownership of their Federal Employees' Group Life Insurance (FEGLI) to another person. The regulations describe judges' and assignees' rights and responsibilities with respect to assignments.

DATES: Interim rule effective February 28, 1985 to allow judges to make assignments subject to our regulations as soon as possible. Comments must be received on or before April 29, 1985.

ADDRESS: Send comments to Jean M. Barber, Assistant Director for Pay and Benefits Policy, Compensation Group, P.O. Box 57, Office of Personnel Management, Washington, D.C. 20044; or deliver to Room 4351, 1900 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Angel (202) 632-4634.

SUPPLEMENTARY INFORMATION: Effective July 10, 1984, section 208 of Public Law 98-353, the Bankruptcy Amendments and Federal Judgeship Act of 1984, amended the Federal Employees' Group Life Insurance (FEGLI) law (title 5, United States Code, chapter 87) to permit Federal judges to assign ownership of their FEGLI coverage to

another individual. Judges who assign their FEGLI ownership continue to be insured under the FEGLI Program. However, they irrevocably transfer to the assignee many of the attendant rights, benefits, and responsibilities for their basic, standard optional, and additional optional insurance. (Family optional insurance cannot be assigned, because the coverage provides a benefit payable to the insured judge upon the death of a family member and the judge could reasonably expect to retain that benefit.)

Assignments of insurance are generally made for personal financial planning purposes. If an assignment is made at least 3 years before an individual's death, the insurance is considered a gift to the assignee, rather than a part of the insured's estate. Current Federal estate tax law allows an unlimited marital deduction for that portion of the gross estate passed to a surviving spouse. Thus, there is no apparent immediate tax advantage to assigning ownership of a life insurance policy to a spouse. However, State tax laws vary and tax savings under Federal or State law can be considerable if the estate is large and ownership of a life insurance policy is assigned to children or to a trust.

Once insurance is assigned, the assignee to whom the judge transfers FEGLI ownership may, for the insurance assigned to him or her: (1) Designate beneficiaries, (2) convert the insurance to an individual policy if the judge's eligibility for group insurance ceases, and (3) cancel the insurance or reduce the amount of coverage. When insurance is assigned to more than one person, these people must agree when exercising the right to cancel or reduce coverage.

Judges retain the right to elect new insurance coverage, though all new insurance (excluding family optional insurance) is subject to an existing assignment. They also retain the right to decide, at time of retirement or receipt of workers' compensation, to maintain more than the minimum percentage of their basic life insurance. Judges also continue to be responsible for premium payments under the group policy. Premium payments will continue to be withheld from the judges' pay, annuity, or compensation.

In these interim rules, we make the following amendments to the FEGLI

regulations to reflect the assignment right that is now available to Federal judges under title 5, United States Code, chapter 87:

(1) We amend Parts 870, 871, and 872 to show that judges may irrevocably assign incidents of ownership in their insurance described in those Parts.

(2) We amend Part 873 to show that an assignment of basic life insurance has no effect on the general rules for payment of family optional insurance in cases in which the insured judge survives an insured family member but dies before family optional insurance has been paid. In such cases, family insurance will be paid to the person(s) who would be entitled to the basic insurance if no assignment existed.

(3) We add a new Part 874 to describe judges' and assignees' rights and responsibilities with respect to assignments. This part discusses the types of insurance judges may assign; how to make assignments; and the effect of assignment on the insured judges and on assignees, including assignee rights to waive the insurance and to convert to a private policy when the insurance terminates. It also discusses who must pay for the assigned insurance; the assignees' right to name a beneficiary and right to change that beneficiary; and a number of technical issues related to assignment.

The interim regulations also amend Part 871 to clearly state that the maximum reduction in an annuitant's or compensation's standard optional life insurance is 75 percent. We inadvertently omitted this provision from the final FEGLI regulations published January 25, 1984 (49 FR 3033-3048).

Under section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because an assignment of insurance ownership must be in effect for 3 years prior to the insured person's death before insurance proceeds can be considered a gift to the assignee, rather than part of the insured's estate. Publishing interim rules, rather than proposed rules, will allow judges to make assignment of life insurance ownership subject to regulations at the earliest possible date and thereby achieve the maximum benefit.

E.O. 12291, Federal Regulations

We have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations.

Regulatory Flexibility Act

I certify that, within the scope of the Regulatory Flexibility Act, this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 5 CFR 870, 871, 872, 873, and 874

Administrative practice and procedures, Government employees, Life insurance, Retirement, Workers' compensation.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

For the reasons set forth in the preamble, we amend 5 CFR Parts 870, 871, 872, and 873 and add a new Part 874, as follows:

1. The authority citation for Parts 870, 871, 872, and 873 reads as follows:

Authority: 5 U.S.C. 8716, unless otherwise noted.

PART 870—[AMENDED]

2. Section 870.103 is amended by inserting the following definitions:

§ 870.103 Definitions.

"Assign" and "assignment" refer to a judge's irrevocable transfer to another person of all incidents of ownership of FEGLI coverage (except family optional insurance).

"Assignee" means the person or persons to whom a judge irrevocably transfers ownership of basic life insurance and, if applicable, standard optional life insurance and additional optional life insurance.

"Judge" means an individual appointed as a Federal justice or judge under Article I or Article III of the Constitution. Administrative law judges, bankruptcy judges, and magistrates are not judges for purposes of assignment of FEGLI coverage.

3. A new Subpart H consisting of § 870.801 is added to Part 870 as follows:

Subpart H—Assignments**§ 870.801 Assignments.**

Part 874 of this chapter, Assignment of Life Insurance, describes the right of a judge to assign all incidents of ownership in insurance coverage under this chapter (except family optional insurance under Part 873) to another

person, the effects of such assignment, procedures for making an assignment, and related matters.

PART 871—[AMENDED]

4. A new Subpart G consisting of § 871.701 is added to Part 871 as follows:

Subpart G—Assignments**§ 871.701 Assignment.**

Part 874 of this chapter, Assignment of Life Insurance, describes the right of a judge to assign all incidents of ownership in insurance coverage under this chapter (except family optional insurance under Part 873) to another person, the effects of such assignment, procedures for making an assignment, and related matters.

5. Section 871.104 is revised as follows:

§ 871.104 Definitions.

The terms defined under § 870.103 of this chapter have the same meanings in this part.

6. Section 871.601 is revised to read as follows:

§ 871.601 Amount of Insurance.

The amount of standard optional life insurance continued during receipt of annuity or compensation reduces by 2 percent a month, effective at the beginning of the second calendar month after the date the insurance would otherwise have stopped or the insured's 65th birthday, whichever is later, until a maximum reduction of 75 percent is achieved.

PART 872—[AMENDED]

7. A new Subpart G consisting of § 872.701 is added to Part 872 as follows:

Subpart G—Assignments**§ 872.701 Assignments.**

Part 874 of this chapter, Assignment of Life Insurance, describes the right of a judge to assign all incidents of ownership in insurance coverage under this chapter (except family optional insurance under Part 873) to another person, the effects of such assignment, procedures for making an assignment, and related matters.

PART 873—[AMENDED]

8. Section 873.102 is revised to read as follows:

§ 873.102 Payment of benefits.

(a) Upon the death of an insured family member, family optional insurance benefits will be paid to the employee, annuitant, or compensation

responsible for withholdings under § 873.401, except as provided in paragraph (b) of this section.

(b) If the employee, annuitant, or compensation responsible dies after the insured family member's death and before benefits are paid under this part, optional insurance will be paid as follows:

(1) Unless insurance under this chapter has been assigned in accordance with Part 874, family insurance benefits are paid to the person(s) eligible for basic insurance benefits under 5 U.S.C. 8705(a).

(2) When a judge has assigned insurance under this chapter, the family optional benefits are paid to the person who would have received the basic insurance benefits under 5 U.S.C. 8705(a) had an assignment not been made.

9. Part 874 is added as follows:

PART 874—ASSIGNMENT OF LIFE INSURANCE**Subpart A—Definitions**

Sec.

874.101 Definitions.

Subpart B—Coverage

874.201 Assignments permitted.

Subpart C—Assignment procedures

874.301 Making an assignment.

874.302 Effective date of assignment.

874.303 Waiver of insurance.

874.304 Notification of current addresses.

874.305 Reconsideration.

Subpart D—Annuitants and Compensationers

874.401 Annuitants and compensationers.

Subpart E—Amount of insurance and withholdings and contributions

874.501 Amount of insurance.

874.502 Withholdings and contributions.

Subpart F—Termination and conversion

874.601 Termination.

874.602 Eligibility to convert.

874.603 Rates for converted insurance.

874.604 Notification of conversion rights.

Subpart G—Designations of beneficiary

874.701 Designations of beneficiary.

Authority: 5 U.S.C. 8716, unless otherwise noted.

Subpart A—Definitions**§ 874.101 Definitions.**

The terms defined under § 870.103 of this chapter have the same meanings in this part.

Subpart B—Coverage**§ 874.201 Assignments permitted.**

(a) A judge may irrevocably relinquish ownership of basic life insurance, standard optional life insurance, and additional optional life insurance coverage under this chapter by assigning it to one or more individuals. If a judge owns more than one of these types of coverage—both basic and standard optional, for example—he or she must assign all the insurance. A judge may not assign only a portion of such coverage. Family optional insurance may not be assigned.

(b) If the assignment of the insurance is to two or more individuals, the judge must specify percentage shares, rather than dollar amounts or types of insurance, to go to each assignee.

(c) If a judge who has made an assignment later elects increased insurance coverage under §§ 871.205 and 872.205 of this chapter, the increased coverage will be considered covered by the already-existing assignment.

(d) A judge who assigns ownership of insurance continues to be the insured individual, but the assignee assumes those rights of an insured employee that are specified in this part.

(e) Once assigned, the value of the insurance increases or decreases according to any automatic increase or decrease in the value of the coverage as provided for by Parts 870, 871, and 872 of this chapter.

Subpart C—Assignment procedures**§ 874.301 Making an assignment.**

To assign basic insurance and, if applicable, standard optional insurance and additional optional insurance, judges must make a written request for an approved assignment form. To effect an assignment they must then complete and submit the signed and witnessed form indicating their intent to irrevocably assign all incidents of ownership in the insurance. Judges who are employees send the form to their employing office. Judges who are annuitants send the form to their retirement system. Judges who are compensationers send the form to OPM.

§ 874.302 Effective date of assignment.

An assignment under this part is effective on the date an approved and properly completed assignment form is received by the employing office, the retirement system, or OPM.

§ 874.303 Waiver of insurance.

The assignee assumes all rights to waive insurance under this chapter according to the provisions of

§§ 870.204, 871.204, and 872.204 of this chapter. When the insurance is assigned to two or more people, these assignees must all agree to the waiver. A waiver or cancellation of basic insurance in accordance with the provisions of § 870.204 of this chapter terminates all insurance under this chapter.

§ 874.304 Notification of current addresses.

Each assignee and each beneficiary of an assignee is responsible for keeping the office where the assignment is filed advised of his or her current address.

§ 874.305 Reconsideration.

A judge or an assignee may ask OPM to reconsider any determination that he or she believes denies an entitlement related to assignments under section 8706(f), title 5, U.S. Code, or Part 874 of this chapter. The process and time limits for requesting reconsideration are specified in § 870.205 of this chapter.

Subpart D—Annuitants and Compensationers**§ 874.401 Annuitants and compensationers.**

If a judge assigns basic insurance coverage under this chapter and later becomes eligible to continue such insurance coverage while receiving annuity or workers' compensation, as provided in §§ 870.601(a) and 870.701(a) of this chapter:

(a) The judge may, at the time he or she retires or becomes eligible to receive workers' compensation, elect increased lifetime insurance coverage as provided in §§ 870.601(c)(3) and (4) and 870.701(c)(3) and (4) of this part.

(b) After the judge has made the election described in paragraph (a) of this section, the assignee (or, in cases of multiple assignees, all of the assignees acting together) may, at any time, elect to terminate all or a part of the basic insurance coverage as provided in §§ 870.601(c)(1) and (4) and 870.701(c)(1) and (4) of this part.

Subpart E—Amount of Insurance and Withholdings and Contributions**§ 874.501 Amount of insurance.**

The amount of insurance is based on the judges' basic pay as specified in Subpart C in Parts 870, 871, and 872 of this chapter.

§ 874.502 Withholdings and contributions.

Subject to the provisions of Subpart D in Parts 870, 871, and 872 of this chapter, premium payments for assigned insurance are withheld from the salary, annuity, or compensation of the judge.

Subpart F—Termination and conversion**§ 874.601 Termination.**

Assigned insurance terminates under the conditions stated in Subpart E of Parts 870, 871, and 872 of this chapter.

§ 874.602 Eligibility to convert.

(a) When a judge's insurance terminates under the conditions described in Subpart E of Parts 870, 871, or 872 of this chapter an assignee has the right to convert all or a portion of his or her group insurance to an individual policy on the judge. The conditions specified in those subparts apply to assignees who elect to convert.

(b) When insurance is assigned to more than one assignee, each assignee has the right to convert all or part of his or her share of the insurance. Any assignee who does not convert loses all interest in the insurance.

(c) When multiple assignees have been named and they wish to convert the assigned insurance to individual policies on the judge in accordance with this subpart, the maximum amount of insurance each assignee will be able to convert will be determined by the dollar amount corresponding to the assignee's share of total insurance under this chapter. If such amount is not a multiple of \$1,000, it will be rounded up to the next thousand dollar amount.

§ 874.603 Rates for converted insurance.

Rates for converted life insurance are based on the insured judge's attained age and class of risk at the time the conversion policy is issued.

§ 874.604 Notification of conversion rights.

The employing office, retirement system, or OPM will notify each assignee of his or her conversion right at the time the assigned group insurance terminates.

Subpart G—Designations of beneficiary**§ 874.701 Designations of beneficiary.**

(a) Each assignee or the legally appointed guardian of an assignee may, as part of the assignment process, designate a beneficiary or beneficiaries to receive insurance proceeds upon death of the insured judge and may also subsequently change the beneficiaries. A surviving beneficiary will receive the designated amount of assigned insurance upon death of the insured judge. Assignees may designate themselves the primary beneficiaries and name some other person(s) as contingent beneficiaries to receive

insurance benefits only in the event that the assignee predeceases the insured judge.

(b) Assigned insurance will be paid to an assignee's estate if the assignee predeceases the insured judge and:

(1) An assignee does not designate a beneficiary, or

(2) An assignee's designated beneficiary predeceases the insured judge.

(c) An assignment automatically cancels a judge's prior designation of beneficiary.

(d) The provisions of § 870.901 (a) through (e) of this chapter apply to designations of beneficiary filed by assignees.

[FR Doc. 85-4924 Filed 2-27-85; 8:45 am]

BILLING CODE 8325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children

Correction

In the document beginning on page 6108 in the issue of Wednesday, February 13, 1985, make the following corrections:

1. On page 6108, second column, first complete paragraph, third line, "Regulation" should read "Regulatory".

2. On page 6108, second column, third complete paragraph, ninth line, "evaluation" should read "evaluated".

3. On page 6108, third column, first complete paragraph, sixth line, "issued-" should read "issue-".

4. On page 6109, second column, fourth complete paragraph, thirteenth line, "not" should read "now".

5. On page 6110, third column, third complete paragraph, eighteenth line, remove "to".

6. On page 6115, second column, last line, insert "12" before the word "months".

7. On page 6117, second column, in the ninth line below "Subpart D", "246.1" should read "246.11".

§ 246.2 [Corrected]

8. On page 6122, third column, in § 246.2, seventh line, "Program" should read "Programs".

§ 246.3 [Corrected]

9. On page 6123, second column, in § 246.3(d)(3)(iii), first line, "or" should read "of".

§ 246.5 [Corrected]

10. On page 6124, third column, in § 246.5(b), eighth line, insert "agency shall" after the word "State".

§ 246.10 [Corrected]

11. On page 6132, third column, in § 246.10(c)(1)(ii), in the table, under the heading of "Quantity", second line, "1" should read "8". Also, in the sixth line, "1" should read "8".

12. On page 6133, first column, in § 246.10(c)(2)(iii), second line, "form" should read "from".

13. On page 6134, second column, in § 246.10(c)(6)(i), fourteenth line from the bottom, "Units or" should read "Units of".

§ 246.11 [Corrected]

14. On page 6135, third column, in § 246.11 (e)(2), second line, "contracts" should read "contacts".

§ 246.13 [Corrected]

15. On page 6139, second column, in § 246.13(a), seventh line, insert the word "all" between "for" and "property".

§ 246.27 [Corrected]

16. On page 6146, third column, in § 246.27(g), last line, insert "94108" after "California".

17. On the same page, third column, in the file line at the end of the document, "FR Doc. 85-3881" should read "FR Doc. 85-3581".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24495; Amdt. No. 1289]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) 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.

EFFECTIVE DATE: 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 11, 1985

Bentonville, AR—Bentonville Muni, VOR-A, Amdt. 8
Bentonville, AR—Bentonville Muni, VOR/DME-B Amdt. 1
Santa Rosa, CA—Sonoma County, VOR RWY 32, Amdt. 17
Valdosta, GA—Valdosta Muni, VOR RWY 17, Orig.
Valdosta, GA—Valdosta Muni, VOR RWY 17, Orig., Cancelled
Valdosta, GA—Valdosta Muni, VOR RWY 35, Orig.
Valdosta, GA—Valdosta Muni, VOR RWY 35, Amdt. 24, Cancelled
Warsaw, IN—Warsaw Muni, VOR RWY 27, Amdt. 1
Topeka, KS—Philip Billard Muni, VOR RWY 22, Amdt. 18
Alexandria, LA—Esler Regional, VOR RWY 14, Amdt. 11, Cancelled
Alexandria, LA—Esler Regional, VOR RWY 32, Amdt. 13
Columbus, MS—Columbus-Lowndes County, VOR-A, Amdt. 11
Okolona, MS—Okolona Muni-Richard Stovall Field, VOR/DME RWY 18, Amdt. 1
Tupelo, MS—Industrial Airpark, VOR RWY 11, Amdt. 1
Asheboro, NC—Asheboro Muni, VOR-A, Amdt. 2
Clinton, OK—Clinton-Sherman, VOR 1 RWY 35L, Amdt. 9
Pittsburgh, PA—Greater Pittsburgh Intl, VOR or TACAN RWY 28L/C, Amdt. 2
Orangeburg, SC—Orangeburg, VOR RWY 4, Amdt. 1
Pulaski, TN—Abernathy Field, VOR/DME RWY 33, Amdt. 2, Cancelled
Beaumont, TX—Beaumont Muni, VOR/DME RWY 30, Amdt. 2
Marfa, TX—Marfa Muni, VOR RWY 30, Amdt. 3
Portage, WI—Portage Muni, VOR/DME-A, Amdt. 3

* * * Effective February 14, 1985

Ainsworth, NE—Ainsworth Muni, VOR RWY 35, Amdt. 1

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

* * * Effective April 11, 1985

St. Petersburg-Clearwater, FL—St. Petersburg-Clearwater Intl, LOC (BC) RWY 35R, Amdt. 13
Topeka, KS—Philip Billard Muni, LOC BC RWY 31, Amdt. 17
Alexandria, LA—Esler Regional, LOC BC RWY 8, Amdt. 8
Charlotte, NC—Charlotte/Douglas Intl, LOC RWY 36R, Amdt. 1, Cancelled
Mosinee, WI—Central Wisconsin, LOC BC RWY 26, Amdt. 8

* * * Effective March 14, 1985

Ft. Lauderdale, FL—Ft. Lauderdale-Hollywood Intl, LOC (BC) RWY 27R, Amdt. 5, Cancelled

* * * Effective February 19, 1985

Homer, AK—Homer, LOC/DME RWY 3, Amdt. 8
Sitka, AK—Sitka, LDA/DME RWY 11, Amdt. 8

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

* * * Effective April 11, 1985

Hope, AR—Hope Muni, NDB RWY 16, Amdt. 3
Redding, CA—Redding Muni, NDB RWY 34, Amdt. 4
Titusville, FL—NASA Shuttle Landing Facility, NDB-A, Orig.
Boone, IA—Boone Muni, NDB RWY 14, Amdt. 7
Boone, IA—Boone Muni, NDB RWY 32, Amdt. 3
Eagle Grove, IA—Eagle Grove Muni, NDB RWY 31, Amdt. 1
Milford, IA—Fuller, NDB RWY 18, Amdt. 2
Topeka, KS—Philip Billard Muni, NDB RWY 13, Amdt. 27
Alexandria, LA—Esler Regional, NDB RWY 28, Amdt. 7
Tupelo, MS—C. D. Lemons Muni, NDB RWY 36, Amdt. 2
Kennett, MO—Kennett Memorial, NDB RWY 17, Orig.
Grand Island, NE—Hall County Regional, NDB RWY 35, Amdt. 5
Asheboro, NC—Asheboro Muni, NDB RWY 21, Amdt. 1
Greenville, SC—Donaldson Center, NDB RWY 4, Amdt. 2
Orangeburg, SC—Orangeburg, NDB-A, Amdt. 8
Pulaski, TN—Abernathy Field, NDB RWY 15, Amdt. 2
Orange, TX—Orange County, NDB-A, Orig.
Neillsville, WI—Neillsville Muni, NDB RWY 27, Amdt. 2

* * * Effective February 19, 1985

Homer, AK—Homer, NDB RWY 3, Amdt. 2
Ketchikan, AK—Ketchikan Intl, NDB/DME-A, Amdt. 6

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

* * * Effective April 11, 1985

Montgomery, AL—Dannelly Field, ILS RWY 27, Amdt. 4
Redding, CA—Redding Muni, ILS RWY 34, Amdt. 9
Santa Rosa, CA—Sonoma County, ILS RWY 32, Amdt. 13
Valdosta, GA—Valdosta Muni, ILS RWY 35, Amdt. 4
Topeka, KS—Philip Billard Muni, ILS RWY 13, Amdt. 28
Alexandria, LA—Esler Regional, ILS RWY 26, Amdt. 11
Tupelo, MS—C. D. Lemons Muni, ILS RWY 36, Amdt. 3
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36R, Orig.

* * * Effective March 14, 1985

Fort Lauderdale, FL—Ft. Lauderdale-Hollywood Intl, ILS RWY 27R, Orig.
Houston, TX—West Houston-Lakeside, MLS STOL RWY 15, Orig.

* * * Effective February 19, 1985

Ketchikan, AK—Ketchikan Intl, ILS/DME-1 RWY 11, Amdt. 5

5. By amending § 97.31 RADAR SIAPS identified as follows:

* * * Effective April 11, 1985

Dallas, TX—Dallas Love Field, RADAR-1, Amdt. 24

6. By amending § 97.33 RNAV SIAPS identified as follows:

* * * Effective April 11, 1985

Topeka, KS—Philip Billard Muni, RNAV RWY 17, Amdt. 5

7. By amending § 97.35 COPTER SIAPS identified as follows:

* * * Effective April 11, 1985

Boone, IA—Boone Muni, COPTER NDB 225*, Amdt. 1

(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.

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.

Issued in Washington, D.C. on February 22, 1985.

John S. Kern,

Acting Director of Flight Operations.

[FR Doc. 85-4835 Filed 2-27-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21782; File No. S7-23-84]

Short Tendering

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting an amendment to Rule 10b-4 under the Securities Exchange Act of 1934, the short tendering rule. The amendment requires tendering persons to exclude from their "net long position" those

shares underlying certain standardized call options that they have written after the announcement of the tender offer. The amendment is intended to prohibit hedged tendering through the use of call options.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT:

M. Blair Corkran, Jr. (202-272-2853), Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting an amendment to Rule 10b-4¹ under the Securities Exchange Act of 1934 (the "Act"). Rule 10b-4 (the "Rule") was adopted by the Commission in 1968 for the purpose of prohibiting "short tendering", i.e., tendering more shares than a person owns in order to avoid or reduce the risk of *pro rata* acceptance in tender offers for fewer than all the outstanding securities of a class or series.² Recently, the Rule was amended to prohibit hedged tendering, i.e., tendering and then selling a portion of the tendered shares in the market, a practice that is closely analogous to short tendering.³

The amendment that is being adopted today is intended to make the prohibition of hedged tendering more complete and is responsive to a recommendation made by the Advisory Committee on Tender Offers (the "Advisory Committee").

The Commission has determined not to adopt a proposed amendment to the Rule that would have required persons tendering shares by guarantee to deliver all guaranteed shares to the person making the offer (the "offeror" or "bidder").

I. Background

Tender offers for fewer than all of the outstanding shares of a target corporation involve a risk to the target shareholder that not all of the shares that the shareholder tenders will be accepted.⁴ Before the adoption of Rule

10b-4, market professionals were able to tender more shares than they owned and thereby achieve acceptance of a disproportionately larger number of securities owned by them than could be secured by other persons who tendered only securities that they owned.⁵

Recently, the Commission adopted amendments to Rule 10b-4 (the "1984 amendments")⁶ to prohibit hedged tendering, a practice that had the same purpose and effect as short tendering. The 1984 amendments required tendering persons to own the shares being tendered or an equivalent security not only when the shares are tendered but also at the end of the proration period of the tender offer. Before the 1984 amendments, market professionals were able to reduce proration risk by tendering shares that they owned and then selling in the market the number of shares that they estimated would not be accepted by the bidder. Those shares were generally bought by arbitrageurs at prices reflecting the tender offer and were in turn tendered. The percentage of shares accepted from those who tendered without hedging was thereby diluted.

The Advisory Committee supported the 1984 amendments and recommended two additional changes to Rule 10b-4. The first of these recommendations concerned guarantees of delivery; the second recommendation related to the treatment under the Rule of certain short call options positions.⁷ These recommendations formed the basis of the further amendments to Rule 10b-4 that were proposed for comment by the Commission in June 1984.⁸ Eight commentators submitted letters on these proposals.⁹

II. Discussion

A. Guarantees of Delivery

In a tender offer, a shareholder may tender his securities without actually delivering them at the time of tendering if that shareholder or someone else on

¹ For example, assume there is a tender offer for fewer than all the outstanding securities of the target and that A and B each owns 200 shares of the subject security and expects that the offeror will accept on a *pro rata* basis 50% of the securities tendered. If A tenders 400 shares he will (assuming the 50% expectation proves correct) have 200 shares, or 100% of his securities, accepted by the offeror. In contrast, if B simply tenders his 200 shares, he will have only 100 of his shares accepted and 100 shares will be returned to him.

² See note 3, *supra*.

³ See Report of Recommendations of the Advisory Committee on Tender Offers ("Advisory Committee Report"), Recommendations 45 and 47, at 48, 50.

⁴ Securities Exchange Act Release No. 21049 (June 15, 1984), 49 FR 25244 ("Proposing Release").

⁵ See File No. S7-23-84.

¹ 17 CFR 240.10b-4.

² Securities Exchange Act Release No. 8321 (May 28, 1968), 33 FR 8269.

³ Securities Exchange Act Release No. 20799 (March 29, 1984), 49 FR 13667.

⁴ When tendered securities are accepted on a *pro rata* basis, the offeror accepts only a percentage of the securities tendered by each securityholder. The percentage is calculated from a fraction whose numerator represents the total number of securities accepted and whose denominator represents the total number of securities tendered.

the shareholder's behalf, generally a broker-dealer or a bank, guarantees the delivery of those securities. In this way, shareholders who are unable to physically deposit their certificates before the termination of the tender offer, either because the shares have been purchased but not yet received or because it may not be convenient, can still participate in the tender offer.¹⁰

The Advisory Committee recommended, and the Commission proposed, an amendment to Rule 10b-4 that would have required that all shares tendered pursuant to a guarantee be delivered to the offeror. The Advisory Committee believed that the delivery requirement would make short and hedged tendering less attractive. When a bidder does not require delivery of all guaranteed shares pursuant to the terms of its offer, tendering persons may opt to deliver only that portion of the shares they have tendered by guarantee that the bidder has indicated it will accept. A full delivery requirement would force a short or hedged tenderor to borrow or buy additional shares to deliver to the bidder.

A majority of the commentators opposed the amendment in the form proposed because they felt it would unnecessarily impose the antifraud concepts of the Act upon an area that has been regulated satisfactorily by business practice and contract law,¹¹ and would create a number of uncertainties with respect to the obligations of the various parties involved in the tender offer process. Particular concern was expressed about a guarantor's responsibility if it were unable to deliver, through no fault of its own, such as a fail to receive or a customer's failure to deliver, all the shares for which it had guaranteed delivery. The commentators suggested various exemptive provisions or alternative approaches that would have at least partially addressed their concerns.¹²

The Commission has decided, however, to withdraw the proposed amendment. The Commission does not believe that the requirement would be a significant deterrent to short or hedged tendering, since the shares to be delivered to the bidder pursuant to the guarantee could be borrowed or bought in the post-tender offer market. Moreover, it appears that many bidders require full delivery of guaranteed shares as a condition of their offers. Finally, the Commission believes, after considering the commentators' views and suggestions, that the complexity and uncertainty inherent in any delivery requirement under the antifraud provisions of the Act would not be justified, particularly when weighed against an existing guarantee process that has worked well in facilitating tenders.

*B. Hedged Tendering by Means of Standardized Call Options*¹³

The 1984 amendments were designed to prevent hedged tendering, a practice by which market professionals were able to minimize the risk of proration by selling some of the shares they had tendered into the market that reflected the tender offer. In tender offers involving common stocks on which standardized options are traded, this same result can be accomplished through writing standardized call options. For example, a person who owns 200 shares and who estimates a 50 per cent proration factor is able to hedge the tender by writing an in-the-money¹⁴ call option. The premium received for writing the call option plus the exercise price received when the option is exercised¹⁵ will normally approximate the amount that could be realized if 100 of the tendered shares were sold in the market. Tendering persons who can borrow shares to deliver when the option is exercised can hedge their

beyond the control of the guarantor or the person on whose behalf the shares were tendered.

¹³ In the Proposing Release, these options were referred to as exchange-traded options. The Commission has adopted a commentators' suggestion that they be described as standardized options in recognition of the NASD's proposal to trade options through NASDAQ. References in the Amendment and throughout the Rule have been changed accordingly, and "standardized call option" has been defined in new paragraph (a)(6) of the Rule.

¹⁴ An in-the-money option is one that has an exercise price lower than the market price of the underlying security.

¹⁵ An in-the-money option will generally be exercised before the end of a tender offer for fewer than all of the target's securities, because the holder of the option will otherwise experience a loss in the option's value because of the drop in the market price of the underlying security when the tender offer expires.

tenders as effectively by writing call options as they can by selling the stock.¹⁶

The Advisory Committee recognized this problem and suggested that it be dealt with by excluding from the net long position of a tendering person those shares on which call options have been written that the tendering person knows are highly likely to be exercised before the expiration of an offer.¹⁷ While it agreed in principle with the Advisory Committee's recommendation, the Commission, in the Proposing Release, proposed an objective test rather than the subjective standard recommended by the Advisory Committee because the Commission believed that a subjective test would be difficult to administer and to enforce. The Commission proposed to require that a tendering person deduct from his net long position the number of shares deliverable upon exercise of any exchange-traded call option contracts that the person had written with an exercise price that was less than the tender offer price or the stated value of the consideration offered.¹⁸

The commentators generally favored the concept of prohibiting hedged tendering through the writing of standardized call options and the substitution of an objective standard for the subjective standard recommended by the Advisory Committee.¹⁹

¹⁶ A result of tendering persons hedging their tenders in this fashion could be that more shares will be tendered to the offeror than are actually outstanding ("over-tendering"). The options will often be exercised just before the expiration of the tender offer, the exercise notices will not be allocated to the writers until after the offer has expired. Thus, the same shares may be tendered both by the owner of the underlying shares and by the person who exercises the option because the exercising party is an owner of the underlying stock within the meaning of the Rule. See Rule 10b-4(a)(1)(iii). The by-laws of the Options Clearing Corporation ("OCC") provide for cash settlement of call option exercises if it determines that the supply of deliverable stock is inadequate. See Section 17 of Article VI of the OCC by-laws.

¹⁷ Advisory Committee Report, Recommendation No. 47 at 50. Rule 10b-4 requires that a tendering person have a net long position of at least the number of shares tendered.

¹⁸ The tender offer price rather than the market price is the benchmark for determining whether an option is in-the-money in order to avoid rapid fluctuations in a person's net long position and to eliminate the need for a tenderor to respond at the close of the proration period to changes in the price of the target security.

¹⁹ Two commentators reiterated their objection to any prohibition on hedged tendering, which they had expressed in connection with the adoption of the 1984 amendments. Each agreed, however, that call option writing should be addressed if the Commission's decision to prohibit hedged tendering were to be effective.

¹⁰ Rule 10b-4(b)(2) provides that a guarantor can guarantee a tender for the account of another if the guarantor (i) possesses the subject security or an equivalent security, or (ii) has reasonable belief that, upon information furnished by the person on whose behalf the tender is made, such person owns the subject security or an equivalent security and will promptly deliver the subject security or such equivalent security for the purpose of tender to the person making the tender.

¹¹ The proposal would have made it a "manipulative or deceptive device or contrivance" and a "fraudulent, deceptive or manipulative act or practice" to tender by guarantee unless all shares tendered pursuant to that guarantee are delivered to the offeror or the offeror's agent.

¹² For example, several commentators suggested a five-business-day period during which guarantees could be modified in specified circumstances.

Three commentators argued that call options are written as part of a variety of legitimate strategies, such as covered writing, and that it would be "disruptive" to require market participants to close out their options positions before tendering. They pointed out that call options written before the announcement of a tender offer could not be written for the purpose of hedging a tender and that not requiring a deduction from a tendering person's net long position for such options would not increase substantially the possibility of overtendering.

The Commission is accepting the suggestion of these commentators. Paragraph (a)(5) of the Rule as adopted provides that a tendering person's net long position shall be reduced by the shares deliverable upon exercise of any standardized call options written on or after the date that the tender offer is publicly announced or otherwise made known by the bidder to holders of the security to be acquired.²⁰ If the exercise price of such options is less than the tender offer price or stated value of the consideration offered. Tendering persons who have written call options before the announcement date will be unaffected by the amendment.²¹

In view of this change, a proviso in the proposed rule has been eliminated. The proviso was designed to avoid a reduction in the net long position of a person who had tendered when an increase in the tender offer consideration changed previously written out-of-the-money options into in-the-money options. Under paragraph (a)(5), the benchmark for determining whether an option is in-the-money is the highest tender offer price or stated amount of the consideration offered. Therefore, an out-of-the-money option written after a tender offer is announced could become in-the-money (and thus subject to the net long reduction) if the tender offer consideration is raised or if a higher competing tender offer is announced.²²

²⁰ The "date that the tender offer is publicly announced or otherwise made known" will be interpreted as the earliest date of commencement of a tender offer as set forth in Rule 14d-2(a) [17 CFR 240.14d-2(a)], Rule 13e-4 (a)(4) [17 CFR 240.13e-4(a)(4)], or public announcement by a bidder of an intention to make a tender offer, even if such announcement is not deemed to constitute commencement. See Rule 14d-2(d) [17 CFR 240.14d-2(d)].

²¹ In-the-money options written on the "date that the tender offer is publicly announced or otherwise made known" but before the time of the announcement, will be subject to the deduction. This will eliminate the compliance and enforcement burden of ascertaining the precise times of the announcement and the options transaction.

²² This provision prevents the accomplishment of hedged tendering by writing call options that are

An additional change has been made to prevent an ongoing competing tender offer from providing an opportunity to write calls to hedge a tender to an anticipated second offer before the second offer is announced. Paragraph (a)(5) provides that the controlling announcement date shall be that of the earlier offer.

The Commission believes that this less restrictive approach will effectively prohibit hedged tendering through call options in most circumstances.²³ The Commission also believes that the 1984 Amendments and the amendment being adopted today greatly reduce the potential for overtendering.

Two commentators suggested that options should be in-the-money by at least one exercise price interval before being considered in-the-money for purposes of the Rule. In the Proposing Release, the Commission acknowledged that, by using the stated value of the tender offer consideration as the benchmark for determining whether an option is in-the-money, there would be situations in which the option would be deemed in-the-money by the Rule even though it was unlikely to be exercised.²⁴ The suggestion of a one-exercise-price interval would eliminate many of the situations where the Rule would subject an in-the-money option writer to an arguably "unnecessary" net long position deduction.

The Commission has not adopted this alternative, however, because it believes that, in most tender offers, options that are in-the-money by less than one exercise price interval will be exercised and thereby afford writers of such options an opportunity to hedge tender.²⁵ In addition, the revisions made in the amendment directly address the concern that the rule as proposed was unduly restrictive in some situations. In general, the persons affected by amendment, i.e., those tendering persons who would write call options on or after the announcement date of an offer, will be able to assess the impact of the Rule

slightly out-of-the-money after a tender offer is announced in anticipation of a higher offer.

²³ If rumors of a partial tender offer cause the market price of a target security to rise well above its expected post-tender offer value, call options written before the announcement of the offer could be effectively used to hedge a tender. The Commission believes that, in view of the risks involved, such "anticipatory" hedging will not occur frequently, but may revisit this area if events prove otherwise.

²⁴ See Proposing Release at 49 FR 25246.

²⁵ See n. 15 *Supra*. The Commission believes that even a slightly in-the-money option will generally be exercised if the price of the option during the tender offer exceeds the value of the option due to its remaining life.

before effecting their options transactions.

III. Regulatory Flexibility Act Status

The Chairman of the Commission certified that the amendment to Rule 10b-4 will not have a significant impact on a substantial number of small entities. One commentator questioned the certification because he believed that the proposed amendment would adversely affect individual investors who hold Individual Retirement Accounts. The amendment as adopted fully addresses this concern. In any event, individuals are not small entities as defined by the Regulatory Flexibility Act.²⁶

IV. Competition

Section 23(a)(2) of the Act²⁷ 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 the amended Rule in light of the standard cited in section 23(a)(2) and believes that the adoption of the amended Rule will not impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

List of Subjects in 17 CFR Part 240

Securities.

IV. Statutory Basis and Text of Rule Amendments

The amendment to Rule 10b-4 is promulgated under the Act, 15 U.S.C. 78a *et seq.*, and particularly sections 3(b), 10(a), 10(b), 14(e), 15(b) and 23(a) of the Act [15 U.S.C. 78c(b), 78j(a), 78j(b), 78n(e), 78o(b) and 78w(a)].

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

On the basis of the above discussion, the Commission is amending Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by revising paragraphs (a)(1) and (a)(2) of § 240.10b-4 and adding new paragraphs (a)(5) and (a)(6) to § 240.10b-4 to read as follows:

§ 240.10b-4 Short tendering of securities.

(a) * * *

(1) A person shall be deemed to own a subject security or an equivalent security if neither he nor his agent has entered into an arrangement or agreement (other than one for the

²⁶ See 5 U.S.C. 601(6).

²⁷ 15 U.S.C. 78w(a)(2).

lending of securities or the writing of a standardized call option) whereby any other person may tender that security or be deemed to own it and (i) he or his agent has title to it, or (ii) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it but has not yet received it, or (iii) he has a standardized call option and has exercised that option, or (iv) in the case of a subject security he has converted, exchanged, or exercised an equivalent security that he owned (within the meaning of paragraphs (a)(1) (i) or (ii) of this section).

For the purpose of determining ownership as of the end of the proration period, securities that have been tendered and not withdrawn are deemed to be owned as of the end of the proration period. *Provided, however*, that a person shall be deemed to own a security for purposes of this rule only to the extent that he has a net long position in such security.

(2) The term "equivalent security" means (i) any security (including any option, warrant, or other right to purchase the subject security), issued by the person whose securities are the subject of the offer, that is immediately convertible into, or exchangeable or exercisable for, a subject security, or (ii) any other right or option (other than a standardized call option) that entitles the holder thereof to acquire a subject security, but only if the holder thereof reasonably believes that the maker or writer of the right or option has title to and possession of the subject security and upon exercise will promptly deliver the subject security.

(5) A person's net long position, as that term is used in paragraph (a)(1) of this section, shall be reduced by the number of shares of the subject securities deliverable upon exercise of any standardized call option that the person has written on or after the date that a tender offer is first publicly announced or otherwise made known by

the bidder to holders of the security to be acquired, if the exercise price of such option is lower than the highest tender offer price or stated amount of the consideration offered for the subject security. If one or more other tender offers for the same security are ongoing on such date, the announcement date for the purposes of this paragraph shall be that of the first announced offer.

(6) The term "standardized call option" means any call option that is traded on an exchange, or for which quotation information is disseminated in an electronic interdealer quotation system of a registered national securities association.

By the Commission.

John Wheeler,

Secretary.

February 22, 1985.

Separate Statement of Commissioner Cox

I concur in the Commission's decision to withdraw the proposed amendment to Rule 10b-4 under the Securities Exchange Act of 1934 that would have required delivery of all shares tendered pursuant to a guarantee.

For the reasons stated in my dissent from the adoption of the 1984 amendments to Rule 10b-4,¹ I oppose the prohibition of hedged tendering. Consequently, I dissent from the adoption today of a further amendment to Rule 10b-4 to prohibit hedged tendering through the use of standardized call options.

[FR Doc. 85-4922 Filed 2-27-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79-14]

Incremental Pricing Regulations Implementing the Incremental Pricing Provision of the Natural Gas Policy Act of 1978; OPFR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: March 1, 1985.

FOR FURTHER INFORMATION CONTACT:

Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357-8500.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPFR

Issued: February 22, 1985.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of March 1985 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to March 1985 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

¹ Securities Exchange Act Release No. 20799 (March 29, 1984), 49 FR 13867, 13871 (dissent of Commissioner Cox).