Technology and Policy Analysis, Department of Commerce, Washington, DC 20230 (Telephone: (202) 377-3856).

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended, (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, like other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Betty Ferrell, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. The Entrance Verification Certificate requirement set forth in Part 375 supersedes the requirements for Form ITA-629P, Statement by Ultimate Consignee and Purchaser (approved by the Office of Management and Budget under control number 0625-0136), to accompany license applications for exports and reexports to Spain. The Entrance Verification Certificate is issued by the Government of Spain and does not constitute a collection of information under the Paperwork Reduction Act of 1980.

List of Subjects in 15 CFR Part 375

Exports.

PART 375—[AMENDED]

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

1. The authority citation for 15 CFR Part 375 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 375.1 [Amended]

2. The table in § 375.1 is amended by adding "Spain," between "Portugal," and "Turkey," under the column titled "and the country of destination is:".

3. The list of "Destinations" in paragraph (b) of § 375.3 is amended by adding "Spain" between "Portugal" and "Turkey".

§ 375.3 [Amended]

4. The first sentence in § 375.3(c)(1) is amended by adding the words "Entrance Verification Certificate," before the words "and 'Landing Certificate'".

Supplement No. 1 to Part 357—[Amended]

5. Supplement No. 1 to Part 375 is amended by inserting the following information between the information on "Portugal" and that on "Turkey":

(a) Under the column heading "Country", insert "Spain".

(b) Under the column heading "IC/DV Authorities", insert "Secretary of State for Commerce, Paseo de la Cistellana 162, Madrid 28046".

(c) Under the column heading "System administered ", insert "IC/DV".

Dated: June 17, 1986.

Walter J. Olson,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-13967 Filed 6-19-86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket Nos. RM85-19-001 through RM85-19-005; Order No. 442-A]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Issued June 11, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is granting in part and denying in part requests for rehearing of its final rule determining the basis for the benchmark rates of return for electric utilities for rate schedule filings made after February 1, 1986, in accordance with the new Part 37 of its regulations. As indicated in § 37.8 of the Commission's regulations, these benchmark rates of return are currently advisory only.

The Commission grants rehearing on the issue of how an average cost of common equity is calculated. It readopts a method based on the result of the formula approved in its first annual rate of return proceeding, which will also be the basis for the quarterly benchmark rates of return in this proceeding.

EFFECTIVE DATE: July 21, 1986.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg, Chief, Financial Analysis Branch, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357-8283

or

Ronald Rattey, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20236, (202) 357-8282

SUPPLEMENTARY INFORMATION:

Order Granting in Part and Denying in Part Requests for Rehearing

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve; Docket Nos. RM85-19-001, RM85-19-002, RM85-19-003, RM85-19-004, and RM85-19-005; Order No. 442-A.

Generic Determination of rate of return of common equity for public utilities.

Issued June 11, 1986

I. Introduction

In this order the Commission denies requests for rehearing of Order No. 442 with regard to the growth rate adopted, the flotation cost adjustment and the indexing procedure. The Commission grants rehearing with regard to the ratemaking rate of return concept adopted in Order No. 442 and adopts instead the model approved in Order No. 420.[1]

II. Background

On December 26, 1985, in accordance with the new Part 37 of its regulations, the Commission adopted Order No. 442,

[1] 50. FR 21,820 (1985).

which determined: (1) The average cost of common equity for the jurisdictional operations of public utilities for the year ending June 30, 1985 (hereafter the "base year"); (2) the average "ratemaking rate of return"[2] on common equity for the jurisdictional operations of public utilities for the base year; and (3) a quarterly indexing procedure to update the cost estimate and establish benchmark rates of return on common equity for use in individual rated cases.[3] Order No. 442 was the second annual proceeding for evaluating the rate of return issue on a generic basis.[4] The benchmark rates of return established are advisory only. As provided in § 37.7 of the Commission's regulations, the third proceeding will determine a rate of return on equity that will constitute a rebuttable presumption in rate cases.

In Order No. 442, the Commission decided to adopt a procedure for determining and updating the benchmark rate of return that was different in three respects from the procedure used in the first annual proceeding:

(1) It used a formulation of the Discounted Cash Flow (DCF) model that was somewhat different from the one that the Commission adopted in the last proceeding and proposed in the NOPR, in an effort to reflect more accurately the timing and growth of quarterly dividend payments and to recognize a relationship between nominal and effective required rates of return;

(2) it adjusted the average effective cost of common equity determined by the new DCF model to reflect certain ratemaking practices of this Commission and obtain what was referred to as the "ratemaking rate of return" to be used as the basis for the quarterly benchmark rates of return; and

(3) it used the most recent two calendar quarters of data on dividend yields as the basis for updating the benchmark rate of return; in contrast, the NOPR proposed to use only the most recent quarter's dividend yields.

Five of the commenters have requested rehearing of the order: (1) A group of utilities made up of Boston Edison Company, El Paso Electric Company, Florida Power Corporation, Montaup Electric Company, and Wisconsin Electric Power Company (hereinafter referred to as "BEC"); (2) Edison Electric Institute (EEI); (3) New England Power Company (NEP); (4) the Southern Company; and (5) the Wholesale Customer Group (WCG).

BEC, EEI, NEP, and the Southern Company object to the "ratemaking rate of return" concept as implemented in the final rule. The Southern Company also reiterates positions previously expressed in its comments regarding growth rate, flotation cost, and the quarterly indexing procedure. In addition, the WCG objects to the equity accretion component of the growth rate.

III. Summary and Analysis of Issues Raised in Requests for Rehearing

A. Growth Rate and Indexing Procedure

As noted, the Southern Company has restated earlier arguments regarding the Commission's treatment of growth rate and has argued in favor of a "total recalculation of the generic [rate] using data as of the end of each quarter for the price and dividend figures." The rehearing request presents nothing new that would cause the Commission to reconsider the prior disposition of these issues. Because the Southern Company's position was considered and addressed in the original order, its request for rehearing on these issues will be denied.

B. Flotation Cost Adjustment

The Southern Company also repeats its recommendations that the flotation cost adjustment should include the effects of market pressure and be applied to total equity capital. However, the Southern Company makes one additional point in support of its recommendation that the adjustment be applied to all equity. It notes that the Commission requires that the expenses associated with issuance and sale of stock be included in Account No. 214 and that there is no provision for the separate recovery of expenses included in Account No. 214 as part of a utility's cost of service. Therefore, according to the Southern Company, this treatment of flotation costs results in a permanent reduction in common equity so that the flotation cost adjustment should be applied to all equity.

It is correct that flotation costs are not recovered as part of the company's cost of service; rather, they are considered part of the cost of common equity and recovered through the company's allowed rate of return. The issue here is not *whether* those costs should be recovered through the company's allowed rate of return; the issue is *how* an adjustment for such recovery should be made. The Southern Company does not explain why it believes the fact that such costs are not recovered as part of the company's cost of service supports its position regarding how those costs should be recovered through the company's allowed rate of return. The method used to allow for the recovery of flotation costs through the allowed rate of return was explained in Order No. 442. No reason has been shown why the Commission's prior disposition of this issue should be changed. The Southern Company's request for rehearing regarding the flotation cost adjustment will therefore be denied.

C. Equity Accretion

WCG challenges the Commission's use of a 1.13 average market-to-book ratio to increase the growth rate used in the fundamental analysis from 4.5% to 4.7% to account for "equity accretion." Equity accretion (or conversely, dilution) occurs when a company issues new stock at a price above (or below) book value per share. Its contribution to the growth rate of book value is equal to the product of one factor which reflects the annual rate of new stock issuance ("s") and another factor which reflects whether and to what extent the company's stock is selling above or below book value ("v"). If the company's stock is selling above book value, "v" is positive; if it is selling below book value, "v" is negative. If the stock is issued at book value, "v" is zero and "sv" is zero. Thus, if the stock is selling above book value and "s" is assumed to be greater than zero, "sv" is positive and there is accretion; if it is selling below book value, "sv" is negative and there is dilution. WCG also contends that because accretion only occurs when net proceeds from a stock issuance exceed book value, the full flotation cost percentage should be deducted from the market-to-book ratio for purposes of computing "sv" in the external growth analysis.

WCG contends that the Commission erred in its earlier disposition of WCG's argument by citing to an argument not in fact made by any other commenter. The Commission, in responding to WCG, had cited BEC as rebutting WCG's suggestion that the "sv" component of the fundamental analysis should be negative.[5] WCG claims that this was in error because BEC only suggested that the median rather than the mean average market-to-book ratios should be used. WCG argues that nothing in any of the comments or in Order No. 442 refutes its argument.

The Commission agrees that it misstated the contention of BEC in response to WCG on this point. Upon further consideration, however, the Commission finds that WCG's position does not warrant rehearing regarding

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[2] As discussed in greater detail below, this term has been used to refer to the rate of return on common equity that, when applied to rate base, will give investors the opportunity to receive the required rate of return on common equity and give firms the opportunity to recover flotation costs.

[3] Order No. 442, 51 FR 343 (1986).

[4] Order No. 420, 50 FR 21,802 (1985).

[5] Order No. 442, 51 FR 343 at footnote 107

the result of the Order No. 442 overall growth rate analysis.

WCG claims that the 1.13 industry average market-to-book ratio used in Order No. 442 does not justify a positive estimate of "sv" because this average reflects high (above one) market-to-book ratios of utilities that are not issuing common stock. Utilities that are issuing or are projected to be issuing common stock in the future, WCG claims, generally have market-to-book ratios lower than one. Therefore, WCG claims the Commission's estimated "sv" calculation is biased upwards. As a remedy, WCG claims that the market-to-book ratios of only those utilities expected to be issuing new common stock should be considered in measuring any "equity accretion" and that such considerations would show a negative "sv," or dilution rather than accretion.

In Order No. 442, an industry average "s" (measure of new stock issuance growth rate) was multiplied by an industry average "v" (measure of market price relative to book value). Since most utilities' stocks were selling above book value, the resulting estimated "sv" had a positive value.

The Commission agrees that accretion (or dilution) occurs only upon issuance of new stock. As WCG points out, if most utilities are not issuing stock, most utilities do not experience accretion (or dilution).[6] If "s" and "v" were individually estimated only for those utilities that expect to issue stock, and if those utilities that are issuing common stock are likely to have market-to-book ratios below unity, then the product of "s" and "v" based upon such data might well have a slightly negative value rather than the positive .155% indicated by the analysis in Order No. 442.

WCG did not, however, support its claim that only those utilities issuing common stock have market-to-book ratios below one. Verification of such an assumption would require separate computations of the "s" and "v" factors for each company in the sample. The purpose of the generic approach is to estimate the industry average cost of equity, not the cost of common equity for each electric utility. To estimate "s" and "v" for individual companies, rather than on an industry average basis, would be counterproductive and inconsistent with this purpose.[7]

[6] WCG Request for Rehearing at p. 2.

[7] "v" could be readily calculated individually for each company as it is merely a function of the price-to-book ratio. Estimating "s" individually for up to 100 utilities would appear to be a prohibitive task.

WCG's suggestion to use only data for those companies issuing common stock in the base period would also lead to an inaccurate estimate of the industry average growth rate, which was the objective of the analysis. To the extent that the utilities that were expected to issue common stock in the base period were the utilities whose stock was selling below book value, as WCG alleges, they would not have been generally representative of the industry, since the industry average market-to-book ratio was slightly above unity during the base year.[8]

WCG's suggested implementation methodology would have the Commission use a non-representative sample of utilities (i.e., only those issuing stock) on which to base the industry average cost of common equity. The industry average should also reflect the fact that most utilities now publicly issue common stock, on average, less frequently than annually. To base the "sv" growth component solely on data for those utilities that issue common stock in a particular year would wrongly ignore the utilities that did not expect to issue stock in that year.

In any event, the growth rate ultimately used to determine the benchmark was not the 4.7% resulting from the "br+sv" analysis, but rather 4.5%, which also reflected the Commission's analysis of historical growth rates and analysts' projections. The 4.5% growth rate used in Order No. 442 is therefore based upon analysis independent of the outcome of the "br+sv" analysis. Concerning WCG's argument that the full flotation cost percentage should be deducted in computing the "sv" component, the Commission is not persuaded as to the validity of this argument at this time. Since the Commission's choice of the growth component of 4.5 percent is based upon the results of analyses independent of the "br+sv" growth analysis, the Commission need not address this point further. WCG's request for rehearing on this issue will therefore be denied.

D. Ratemaking Rate of Return

1. Summary

Petitioners raise numerous arguments with regard to the Commission's ratemaking rate of return concept. This topic in Order No. 442 has promoted the most opposition.

EEI, the Southern Company, and BEC argue, on various bases, that parties were given inadequate notice of the issue, and that it is not fair for the

[8] Order No. 442, 51 FR 343 at 357 (1986).

Commission to adopt this concept in the final rule when it was not proposed in the NOPR or raised by any party in the comment process. They also object to the extent and nature of the support upon which the Commission relied to justify its final decision.

BEC and NEP argue that the Commission has not supported the basic predicate for the ratemaking rate of return concept, insofar as it has not adequately demonstrated the need for consistency in the definitions and estimates of the allowed rate of return and the rate base. They argue that there is no need for the Commission to base the rate of return determination on its method for computing rate base; the determinations are said to be independent of one another.

BEC, the Southern Company, EEI, and NEP also argue that the Commission has not adequately demonstrated that there is an inconsistency that needs a remedy. Petitioners argue that the hypothetical example used in Order No. 442 to explain the ratemaking rate of return concept was flawed in its assumptions, did not adequately reflect the real world, and therefore did not prove an inconsistency exists. For example, they state that the assumption of a forward-looking test period does not adequately reflect the effects of regulatory lag. Alternatively, EEI, BEC, and NEP argue that stock market prices reflect the way rate base is defined and estimated. They claim that any inconsistency between the way rate base is computed and the allowed rate of return is already adjusted for the cost of capital estimate of the Commission.

EEI and BEC contend that even if there is an inconsistency between the rate of return and the rate base, there are probably many other aspects of the cost of service that could likewise be evaluated for consistency which might offset the adjustment being made to the rate of return.

The Southern Company, EEI, and NEP further assert that, if an adjustment is to be made, the formula adopted by the Commission is not the right one with which to make the adjustment. They argue that the formula is based on erroneous assumptions about the way rate base is defined and estimated. For example, they challenge the assumption that the average test year rate base incorporates monthly compounding.

Finally, applicants raise two additional arguments. First, BEC argues that application of the ratemaking rate of return concept to a company with a growing rate base would require that it make an annual rate increase filing in order to update its allowed rate of return annually. Second, NEP and EEI argue that the ratemaking rate concept implicitly makes a distinction between jurisdictional and nonjurisdictional operations, despite the Commission's finding in Order No. 442 that no such distinction is warranted.[9]

2. Commission's Analysis

The new DCF model adopted in Order No. 442 ("442 Effective Rate Model") estimated the investors' "effective" required rate of return. At footnote 13, Order No. 442 explained that the effective rate of return includes the return that the investor expects from the company's reinvestment of retained earnings and the reinvestment of intra-year dividends by the investor. The order further explained that, unlike the rate determined by the prior Order No. 420 model, which was designed to yield a rate which could be used as the allowed rate of return, the effective required rate of return is only a conceptual starting point for determining a rate of return which could be used as the allowed, or benchmark, rate of return. This approach was based upon the belief that the effective rate of return expected to be received by the investor is greater than the rate of return the Commission need allow the company an opportunity to earn on its rate base. To arrive at an appropriate allowed rate of return, the investor's required effective rate of return, as determined by the Order No. 442 Effective Rate Model [10] was adjusted for purposes of achieving three objectives:

(1) To eliminate that portion which relates to the reinvestment of quarterly dividends,

(2) To *eliminate* that portion which relates to the reinvestment by the utility of intra-year retained earnings, and

(3) To make the definition of the allowed rate of return consistent with the Commission's method of computing rate base.

The result was referred to as the ratemaking rate of return.

The effective required rate of return can be viewed from another perspective as being composed of two components:

(1) The dividends and growth that investors expect from their investment in the firm, and

(2) The return that investors expect from their reinvestment of the dividends. In other words, what investors require from their investment in the firm is simply the effective rate less the return from reinvestment of dividends. The return that investors expect from the firm does not include the income that they expect to receive from the reinvestment of dividends; investors have the opportunity to produce this income by their own actions in reinvesting the dividend portion of their return. Thus, it was concluded in Order No. 442 that, in developing the benchmark rate of return, the investors' effective required rate of return should be reduced by these dividend reinvestment earnings.[11] The applicants do not object, in principle, to adjusting the required effective rate of return to account for the effect of the investor's reinvestment of quarterly dividends (Objective No. 1 above). This objective had been previously established in Order No. 420.[12]

Neither Order No. 420 nor Order No. 442, however, specifically discussed the issue of why one would also want to exclude the return associated with reinvestment of retained earnings from the effective required rate of return. (Objective No. 2).[13] Most of the discussion of the ratemaking rate of return concept in Order No. 442 focused on the adjustment for rate base considerations (Objective No. 3). Understandably then, applicants likewise focused their objections to the ratemaking rate of return concept only on the rate base considerations.

The Commission is sensitive to the contentions that there was perhaps too little opportunity to address the ratemaking rate of return concept and that the explanation given in Order No. 442 may have been deficient insofar as it focused primarily on only one of the three purposes for the concept. The rehearing requests and further staff analysis [14] have persuaded the Commission that there are a number of unresolved questions with regard to some of the stated purposes of the ratemaking rate of return. For example: (a) Is there really any need to be concerned about consistency between rate base and allowed rate of return for the purposes of this rulemaking; (b) can such concerns be better addressed through cost of service adjustments as opposed to rate of return adjustments; (c) what reasonable assumptions can the Commission adopt regarding "typical" utility reinvestment patterns and rates? Because of such unresolved questions and the absence of a sufficient record upon which to postulate reasoned answers, the Commission has determined not to adopt the ratemaking rate to return concept, as developed in Order No. 442, in this proceeding. Instead, the Commission will retain the model adopted in Order No. 420, pending further considertion.[15] As discussed above, the Order No. 420 Model recognizes that any return investors expect to receive from dividend reinvestment is not part of the return required from investment in the firm. Since the use of this model was proposed in the NOPR, no party will be prejudiced by this result.

III. Conclusions

The Commission is unpersuaded that any basis has been presented to warrant modification of Order No. 422 regarding the treatment of the growth rate, flotation cost, indexing, and equity accretion. Rehearing, in that regard, will therefore be denied. The Commission is persuaded, however, that questions raised on rehearing and in further staff analysis regarding the ratemaking rate of return concept warrant modification of the earlier order as discussed above. Rehearing, in that regard, will therefore be granted.

The Commissions orders—

(A) The Petitioners' request for rehearing regarding growth rate, floatation costs, indexing, and equity accretion are hereby denied.

(B) The Petitioner's requests for rehearing regarding the ratemaking rate of return adjustment are granted and Chapter I, Title 18 of the *Code of Federal Regulations* is amended accordingly, as set forth below, effective July 21, 1986.

[9] Order No. 442, 51 FR 343 at 366 (1986).

[10] *Id.* at 348.

[11] Separating the return associated with reinvestment of dividends from the effective required rate determined by the Order No. 442 Effective Rate Model, 51 FR 343 at 348 (1986), results in the Order No. 420 Model. The attached Office of Regulatory Analysis staff study paper demonstrates this relationship.

[12] Order No. 420, 50 FR 21,802 at 21,811 (1985); Order No. 420-A, 50 FR 34,086 at 34,087 (1985).

[13] The rationale for an adjustment to reflect the effect of dividend reinvestment would be different from the rationale for adjusting for the reinvestment of retained earnings. As noted, the former adjustment is intended to reflect the investor's recognition of the additional earnings associated with his own reinvestment of dividend payments. In contrast, the return from periodic utility reinvestment of retained earnings is, in effect, reflected in the return that the investor expects/requires from investment in the utility.

[14] *See* the attached report prepared by the staff of the Commission's Office of Regulatory Analysis which discusses the effect of reinvestment of retained earnings on the revenue requirements' analysis.

[15] The original language in the regulatory text adopted in Order No. 420 has been revised slightly for purposes of clarification only; no substantive changes to the Order No. 420 model are intended. The table of quarterly benchmark rates of return in § 37.9 has been revised in accordance with our decision to return to the use of the Order No. 420 model.

By the Commission.
Kenneth F. Plumb,
Secretary.

PART 37—[AMENDED]

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act 42 U.S.C. 7101–7352 (1982).

2. Section 37.3 is revised to read as follows:

§ 37.3 Definitions.

For purposes of this Part:

(a) "Benchmark rate of return" means the rate of return on common equity that is determined each quarter based on the findings made in the annual proceeding regarding the indexing procedure and the average cost of common equity for the jurisdictional operations of public utilities.

(b) "Cost of common equity" means the minimum rate of return that investors require to buy common stock adjusted for the flotation costs incurred by a company when selling such stock.

(c) "Indexing procedure" means the method by which the average cost of common equity under this Part is updated quarterly between annual proceedings to determine benchmark rates of return.

3. Section 37.4 is revised to read as follows:

§ 37.4 Annual proceedings.

An estimate of the average cost of common equity for the jurisdictional operations of public utilities and a quarterly indexing procedure to establish the initial benchmark rate of return and update it quarterly will be determined annually through informal rulemaking proceedings under 5 U.S.C. 553.

4. Section 37.9 is amended by revising paragraph (a)(1), removing paragraphs (a)(2) and (a)(3), redesignating paragraphs (a)(4), (a)(5) and (a)(6) as paragraphs (a)(2), (a)(3) and (a)(4), revising redesignated paragraphs (a)(2), (a)(3), and (d), to read as follows. The introductory text of (a) is republished for the convenience of the reader.

§ 37.9 Quarterly indexing procedure.

(a) *Procedure for Determining Quarterly Benchmark Rates of Return.* In accordance with § 37.4 of this part, the Commission will use the following indexing procedure to update quarterly the benchmark rate of return on common equity.

(1) For purposes of establishing the benchmark rate of return on common equity for period t, the average cost of common equity for the jurisdictional operations of public utilities shall be calculated as follows:

$k_t = a(y_t) + b$

where:

k_t = average cost of common equity for the jurisdictional operations of public utilities for period t;

a = adjustment factor to account for the timing of dividend increases (determined in annual proceeding);

Y_t = average current dividend yield applicable to period t determined under paragraph (b) of this section;

b = adjustment factor to account for expected growth, new common stock flotation costs and jurisdictional risk difference (determined in annual proceeding); and

t = successive three month time periods: February 1 through April 30, May 1 through July 31, August 1 through Ocotober 31, and November 1 through January 31.

(2) The benchmark rate of return on common equity for the first quarter to which an annual proceeding is applicable will be set equal to the average cost of common equity for the jurisdictional operations of public utilities as determined by the formula of paragraph (a)(1) of this section.

(3) The benchmark rate of return on common equity for subsequent quarters prior to the conclusion of the next annual proceeding will be set equal to the average cost of common equity for the jurisdictional operations of public utilities as determined by the formula of paragraph (a)(1) of this section, except where an increase or decrease of more than 50 basis points from the previous quarter's benchmark would occur.

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.*[1] The following table presents the quarterly benchmark rates of return on common equity:

Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (k_t)	Benchmark rate of return
Feb. 1, 1986–Apr. 30, 1986	1.02	4.54	9.03	13.75	13.75
May 1, 1986–Aug. 31, 1986	1.02	4.54	8.37	13.08	13.25
Aug. 1, 1986–Oct. 31, 1986	1.02	4.54			
Nov. 1, 1986–Jan. 1, 1987	1.02	4.54			

Appendix—Staff Report on Ratemaking Rate of Return by Office of Regulatory Analysis, Federal Energy Regulatory Commission

Note.—The following appendix will not appear in the Code of Federal Regulations.

A. Introduction

Order No. 442 introduced a new concept called the "rate-making rate of return" based on the idea that allowing a rate of return equal to the cost of capital can lead to a higher earned rate of return. This concept was the major issue raised in the rehearing petitions. Petitioners raised some questions on both its concept and application which have caused the Commission to reevaluate and modify its decision.

In Order No. 389, the Commission set up a rule for determining benchmark rates of return on common equity and applying them in individual electric utility cases. 49 FR 29946 (July 25, 1984). That rule provides that the Commission would have annual proceedings to determine the industry average cost of common equity and a procedure for updating the cost on a quarterly basis for purposes of establishing the benchmark rates of return for individual rate cases.

The first annual proceeding (Docket No. RM84–15) culminated in Order No. 420. 50 FR 21802 (May 29, 1985). In that order, the Commission adopted a relatively simple constant growth discounted cash flow (DCF) model for purposes of supporting a base year cost of common equity estimate and as the basis for the quarterly indexing procedure. In this report, that model shall be referred to as the 420 Model.[*]

Order No. 442 is the final rule in the second annual generic rate of return proceeding, Docket No. RM85–19. 51 FR 343 (January 6, 1986). In this proceeding, the Commission adopted a different form of DCF model, which we will refer to as the 442 Effective Rate Model.

The 442 Effective Rate Model is as follows:

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[1] Because of the time lag between the issuance of the quarterly updates to the benchmark rate of return and the publication of the Code of Federal Regulations, the currently effective benchmark rate of return can be found, in the **FEDERAL REGISTER.**

[*] The 420 Model is as follows:

$$k = \frac{D_0}{P_0}(1 + .5g) + g$$

Where:

k = market required rate of return (420 nominal rate)

D_0 = current (indicated) annual dividend rate

P_0 = current market price of stock

g = dividend growth rate (annual rate).

$$k_e = \frac{D_0}{4P_0} \left[(1+k_e)^{.75} + (1+k_e)^{.5} + (1+g)(1+k_e)^{.25} + (1+g)\right] + g$$

Where:

k_e = market required rate of return (annual effective rate)

And, as indicated above, the Commission also introduced the concept of the "ratemaking rate of return," which is derived by a formula which adjusts the rate produced by the 442 Effective Rate Model.

This staff report reviews the Commission's analysis of Order No. 422 on the ratemaking rate of return issue and makes some modifications to that analysis. In the process, we hope that the issues related to the ratemaking rate of return concept and its application become clearer.

B. Definitions

Many terms are being used in this proceeding that are similar in appearance and close in meaning. It is easy to understand how a reader may get confused. The purpose of this section is to put the various terms in perspective and thereby to make the reading easier. Unless otherwise specified, these concepts are used in reference to common equity capital only.

First, three adjectives often applied to the phrase "rate of return on common equity" are *required, expected* and *earned*. The first two are often used interchangeably. Sometimes the latter two are used together. This can raise ambiguities in a reader's mind.

In market equilibrium, investors' required and expected rates of return are equal, by definition; supply equals demand. The supply side of the market reflects what investors require while the demand side reflects what investors expect. The basis for estimating investors' required rates of return with a discounted cash flow model depends on the assumption of market equilibrium. The DCF model estimates investors' expected rates of return.

In contrast, the earned rate of return is the rate of return actually earned by a company on the book value of its common equity investment. It is an accounting rate of return rather than a market rate of return like the investors' expected and required rates of return.

A second useful distinction is between *nominal* and *effective* rates of return. Generally, these are different ways of expressing the same thing. There are strict mathematical relationships between these rates. The difference between effective and nominal rates is that the former includes the compounding effects of intrayear earnings in the total return for the year. When compounding occurs only once per year, the effective and nominal rates are the same. However, when the compounding is more frequent, the effective rate is higher than the nominal rate.

For preferred stock and debt, the dividends and interest constitute the total returns paid by the company to the investor. As a result, for these types of securities, the difference between the nominal and effective return is only the return obtained by the investor through his own reinvestment of dividends or interest during each year.

In contrast, utility common stock investors receive their return through a combination of dividends and reinvestment of retained earnings. Since some of a utility's earnings are normally retained, the difference between effective and nominal rates for common stock would include two components: (1) The return that the investor obtains from his own intrayear reinvestment of the dividends he receives on a quarterly basis and (2) the return that the utility obtains through its intrayear reinvestment of the portion of its earnings that it retains on the investors' behalf.

The 442 Effective Rate Model produces an estimate of the investors' *effective* required rate of return on common equity since it incorporates these two return components. The 420 Model produces a rate which cannot be characterized as either a nominal or an effective rate as they are defined above. Rather, the 420 Model produces an estimate of investors' effective required rate less that portion of the intrayear return that the investor obtains through his own reinvestment of dividends. In other words, it is the rate that the company has to pay out to the investor (what can properly be referred to as the cost to the company, excluding flotation costs) in order for the investor to have the opportunity to earn his effective required rate. We shall refer to the rate produced by the 420 Model as the "420 nominal rate."

Another set of terms used in reference to rate of return on common equity include *allowed, benchmark* and *ratemaking*. The "allowed" rate of return is the rate that the regulatory commission uses in determining the utility's revenue requirements. For purposes of this report, the final two terms are defined in terms specific to this proceeding. The following definitions are provided from Order No. 442:

"Benchmark rate of return" means the rate of return on common equity that is determined each quarter based on the findings made in the annual proceeding regarding the quarterly indexing procedure and the average cost of common equity and the average ratemaking rate of return on common equity for the jurisdictional operations of public utilities.

"Ratemaking rate of return" means the rate of return on common equity that, when applied to rate base in determining revenue requirements for ratemaking purposes, will give investors the opportunity to obtain the effective required rate of return on common equity and give firms the opportunity to recover flotation costs.

Also, it should be pointed out that the quarterly indexing procedure established by Order No. 442 defines the benchmark rate of return in terms of the ratemaking rate.

Finally, reference should be made to the "cost of capital" to the company or, more specifically, the "cost of common equity." Generally, this has been defined as the sum of the investors' required rate of return and an allowance for the flotation costs involved in new stock issuances. Since the required rate of return can be defined in terms of effective, nominal and "420 nominal" rates, as discussed above, so too can the cost. Order No. 442 established the definition of the cost of common equity in terms of the investors' effective required rate. On rehearing this cost is being defined in terms of the "420 nominal."

C. Order No. 442

As suggested above, in the second annual generic rate of return proceeding, the Commission made two important changes from the first annual proceeding. First, it adopted a different DCF model—the so-called 442 Effective Rate Model. Second, it introduced the concept of the ratemaking rate of return. The objective of the ratemaking rate of return was to determine the rate of return which, if allowed, will give the utility the opportunity to earn enough revenues to provide its investors with the return they require.

In the first change, the 442 Effective Rate Model estimates the investors' effective required rate of return rather than some nominal required rate.[2] Order No. 442 explains that the primary difference between the effective and nominal rates is that the former is always larger because it includes the returns investors expect from reinvestment of intrayear earnings—reinvestment of dividends by the investor and reinvestment of retained earnings by the firm. 51 FR 343 at footnote 13. The order proceeds to note that the effective rate is not the appropriate basis for allowed, or benchmark, rates of return.

According to that order, the appropriate basis for the benchmark rates of return is the ratemaking rate of return. This is the second, and most important, change in Order No. 442. To arrive at the ratemaking rate of return, the investors' effective required rate of return determined by the new model was adjusted to achieve three objectives:

1. Eliminate from the investors' effective required rate of return that portion which relates to their reinvestment of quarterly dividends.

[2] According to Order No. 442, the 420 Model was "intended to estimate the investors' nominal quarterly required rate of return on common equity." 51 FR 343 at 346. As explained above, the 420 Model is better viewed as providing an estimate of a different type of "nominal" rate than the nominal quarterly rate. As a basis for allowed rates of return, the nominal quarterly rate appears to incorporate aspects of the ratemaking rate concept.

2. Eliminate from the investors' effective required rate of return that portion which relates to the company's reinvestment of intrayear retained earnings.

3. Make the definition of the allowed rate of return consistent with the definition of rate base.

As it turned out, most of the discussion of the ratemaking rate in Order No. 442 focused on the adjustment for rate base considerations. (Objective 3) However, the discussion of the difference between effective and nominal rates indicates that the ratemaking rate also requires that the effective rate be converted to a nominal rate. (Objectives 1 and 2).

D. Arguments on Rehearing

The arguments of petitioners related to the ratemaking rate concept can be categorized as follows:

1. It is not fair for the Commission to adopt such a new concept as the ratemaking rate of return without giving parties notice and an opportunity to comment.

2. The Commission has not adequately explained and justified the basis for the ratemaking rate of return.

With regard to the latter arguments, the petitioners focused on the ratemaking rate adjustment to the effective rate solely as an adjustment for rate base considerations. Petitioners ignored or misunderstood that a portion of the ratemaking rate adjustment dealt with the conversion of the effective rate to a nominal rate.

E. Analysis

The 442 Effective Rate Model produces an estimate of the investors' effective required rate of return on common equity. This effective rate can be viewed as being composed of two components:

1. the dollar return investors expect from the firm (dividends and capital gains), *plus*.

2. the return investors expect from their own actions in reinvesting the quarterly dividends at the same effective rate.

What firms have to "pay out" to investors (or what investors require from the firm) is simply the effective rate less the return from reinvestment of dividends. The firm does not have to pay investors the income they receive from the reinvestment of dividends since investors produce this income by their own actions. Thus, at the least, the investors' effective required rate should be reduced by this dividend reinvestment income in developing the allowed rate of return. This is Objective 1 as described above.

Subtracting this reinvestment return component from the 442 Effective Rate Model results in the 420 Model.[3] This is an additional rationale for the 420 Model. In Order No. 420, the model was supported primarily as a compromise, as an average of two other models. 50 FR 21802 at 21805.

In Order No. 442, the Commission stated that the 420 Model was intended to be an estimate of the investors' nominal quarterly required rate of return.[4] It now appears that the 420 Model does not produce a nominal rate comparable to that discussed in Order No. 442. Nominal rates, as explained above, were distinguished from effective rates by their exclusion of both a reinvestment of intrayear dividends component and a reinvestment of intrayear retained earnings component. The 420 Model excludes only the first component.

Order No. 442 never addressed any separate rationale for excluding the second component—the reinvestment of retained earnings component—from the effective required rate. The rationale for adjusting the effective required rate for reinvestment of dividends is different from the rationale for adjusting for the reinvestment of retained earnings. The return component due to the former results from investors' own actions. In contrast, the return component due to the latter results from the utility's actions and is part of the return the utility pays out to the investor; it is part of the return that investors' expect/require from the utility. Based on our review of the reinvestment of retained earnings issue, it appears that what Order No. 442 referred to as an adjustment for the rate base definition (Objective 3) was really an adjustment for this reinvestment of retained earnings component (Objective 2).

In Order No. 442, the Commission referred to the need to make the rate of return consistent with the rate base definition. Different return allowances are obtained depending on whether the rate base is defined as a beginning of year, end of year, or some average for the test year. And the return component of the cost of service should not vary simply because of the way rate base is determined. It now appears that relating the ratemaking rate adjustment to rate base considerations may have been misleading or unnecessary.

It may have been misleading in the sense that, if a regulatory commission is using a rate base value other than an average for the test year, it might be more appropriate to adjust the rate base rather than the rate of return in order to obtain the correct value for the return component. For the FERC, this issue may be irrelevant since the Commission uses an average rate base for the test year.

It may have been unnecessary in that it now appears that just the exclusion of the dividend reinvestment component (Objective 1) and the exclusion of the reinvestment of retained earnings component (Objective 2) would have produced the same end result reached in Order No. 442. It seems that, because of the reinvestment of the intrayear retained earnings by the firm, it will always be able to pay out more and the shareholder will always get more than what the ratepayer paid in to the firm. In other words, the implication of this theory is that as long as the firm retains some of its earnings and earns a return on the intrayear retained earnings, the firm will always be able to realize a higher rate of return than the Commission allows.

On review, the notion that the firm has the opportunity to earn a higher rate of return than the Commission allows is the basis for the concept of the ratemaking rate adjustment. That is, the problem of determining the allowed rate of return has two parts. First, the determination of what investors require, or what the firm has to pay out as return. Second, the determination of what ratepayers have to pay in in order for the company to be able to meet its pay out requirements. The first part has to do with the traditional determination of the cost of common equity; the second with the notion of the ratemaking rate.

The process by which this difference in pay in and pay out occurs can be described as follows. The firm obtains its earnings throughout the year from its sales revenues, yet it is only obligated to pay a portion of these earnings out (as dividends) and at specific times during the year. For that portion of its earnings going ultimately to pay dividends, the firm can keep its earnings in an income yielding investment (like a bank account, or an investment in Treasury bills) until the day dividends have to be paid out and thereby earn more income. Similarly, during the course of the year, the firm can keep that portion of its earnings going to retained earnings in an income yielding investment and earn still more income. By both of these mechanisms, the firm would appear to have the opportunity to earn more than the rate that the Commission allows it, whatever that rate is based on.

To the extent that this concept of the ratemaking rate—i.e., that the "pay in" rate is different from the "pay out" rate—is valid, the Commission has some alternative ways of dealing with the issue. The investors' effective required rate could be adjusted beyond what is implied by going from the 442 Effective Rate Model to the 420 Model. For example, if the compounding of the average utility's intrayear earnings can be approximated by quarterly or monthly compounding at the effective required rate, the ratemaking rate may be estimated by the quarterly or monthly nominal required rates, respectively. (The ratemaking rate adopted in Order No. 442 is essentially the monthly nominal required rate.)

The Commission could deal with the issue through some other cost of service adjustment. This issue can be viewed in the context of cash working capital. The firm obtains revenues continuously in line with its provision of service. However, it has obligations to pay out a portion of the return component of its costs (dividends) only four times a year. In cash working capital parlance, this means the cash inflow "leads" the cash outflow and, on average, the firm has a cash balance which it can use to earn additional return. This analogy suggests that any potential overrecovery of costs due to the ratemaking rate concept described above can be handled by some adjustment to the cash working capital allowance in rate base.

Finally, the Commission could ignore the ratemaking rate issue in determining revenue requirements. This option could be argued on grounds such as (1) the return component of the cost of service is different from other costs and/or (2) the intrayear use of retained earnings is not something the Commission should be concerned about since it is investors' funds and they should be able to do whatever they want with them.

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[3] *See* Attachment 1 for an algebraic derivation of the 420 Model from the 442 Effective Rate Model.

[4] *See* footnote 3 above.

F. Conclusions

This report has reviewed the "ratemaking rate of return" concept as it was conceived and developed in Order No. 442. Our review indicates that, while the concept has potential merit, the discussion and analysis on this issue in Order No. 442 may have been misleading, and there are some questions on both the concept and its application that deserve further comment and consideration.

First, the discussion of the ratemaking rate concept in Order No. 442 appears to have been unclear. The concept of the ratemaking rate and the adjustment to the cost of capital implied by that concept was linked predominately with establishing consistency between the definitions of rate base and rate of return in setting utility revenue requirements. However, the adjustment was actually doing more. It was also converting an effective rate of return to a nominal rate by reducing the effective rate for the intrayear reinvestment of dividends by investors and for the intrayear reinvestment of retained earnings by the utility.

Second, it appears that the analysis of Order No. 442 supporting the ratemaking rate adjustment was at least misleading. The adjustment to the cost of common equity was said to be based on the number of compounding periods used in the measure of rate base. Instead, staff's more recent analysis suggests that it should be a function of the frequency of compounding and the rate of return on the intrayear reinvestment of retained earnings by the utility.

It also appears that the ratemaking rate concept may be better characterized as relating to a difference between the rate of return that ratepayers "pay in" and the rate of return that utilities "pay out" due to the intrayear reinvestment phenomenon. (In this regard, the Appendix to this report shows how the 420 Model estimates the return that investors expect/require the utility to "pay out" to them.)

Finally, there are a number of questions related to the ratemaking rate concept and its application that deserve further comment and consideration. Is the concept valid? Is there really a difference between the so-called "pay in" and "pay out" rates? Is this difference due to the intrayear reinvestment of retained earnings or is it due to the way rate base is defined or estimated?

If the concept is valid, how should it be dealt with from a policy perspective? Should it be ignored and the benefits be allowed to accrue to investors? Should an adjustment be made to the cost of common equity for purposes of setting allowed rates of return? Or, should the adjustment be made through some other element of the cost of service?

If the ratemaking rate concept is valid and the Commission chooses to make some adjustment to the cost of service to reflect its effects, what is the empirical magnitude of such adjustment? What are the parameters that determine the size of the adjustment? Are they merely the frequency of compounding and the reinvestment rate of return? If the adjustment is made through the rate of return, is there some formula, similar to that adopted in Order No. 442, that could be used?

In sum, given the still unresolved issues, particularly the question of the validity of the ratemaking rate concept, we believe it is appropriate for the Commission to rely on the 420 nominal rate for purposes of determining benchmark rates of return in this proceeding. This is the rate that has traditionally been used as the basis for allowed rates of return. As shown in the preceding analysis, it is the rate that investors expect and require from the utility, and, as such, it is the rate that the utility has to pay out to investors.

Attachment 1

Derivation of the 420 Model From the 442 Effective Rate Model

The DCF model adopted in Order No. 442 estimates the shareholder's required effective annual rate of return.[1]

$$k_e = \frac{D_0}{4P_0} \quad [(1+k_e)^{.75}+(1+k_e)^{.5}+(1+g)(1+k_e)^{.25}+(1+g)]+g$$

Where:
k_e=market required rate of return (annual effective rate)
D_0=current (indicated) annual dividend rate
P_0=current market price of stock
g=dividend growth rate (annual rate).

This effective rate includes the return which investors have the opportunity to obtain on their own by reinvesting the quarterly dividends in the same or another investment yielding the same effective rate.[2]

The term:

$$\frac{D_0}{4P_0} \quad [(1+k_e)^{.75}+(1+k_e)^{.5}+(1+g)\ (1+k_e)^{.25}+(1+g)]$$

represents the return earned from the dividends received during the year and the income earned by reinvesting the dividends during the course of the year.

The term:

$$\frac{D_0}{4P_0} \quad [(1+k_e^{.75}-1]+[1+k_e)^{.5}-1]+(1+g)\ [(1+k_e)^{.25}-1]]$$

represents the return earned on dividend reinvestment income alone.

When the dividend reinvestment income is subtracted from the 442 Effective Rate Model, the result is the 420 Model:

$$k_{420} = k_e - \frac{D_0}{4P_0} \ [[(1+k_e)^{.75}-1]+[(1+k_e)^{.5}-1]+(1+g)[(1+k_e)^{.25}-1]]$$

$$= \frac{D_0}{4P} \ [1+1+(1+g)+(1+g)]+g = \frac{D_0}{4P}[4+2g]+g$$

Dividing through by 4,

$$k_{420} = \frac{D_0}{P_0}(1+.5g)+g$$

where

k_{420}=Market required rate of return less the return from reinvestment of dividends. All other definitions are the same.

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[1] The derivation of this model from the general form of the discounted cash flow model may be found in Appendix A of Order No. 442.

[2] Order No. 442, P. 24.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 24, 112, 123, 134, 144, 145, 148, 162, 172, and 191

[T.D. 86-118]

Conforming Amendments to Customs Regulations

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with Customs policy of periodically reviewing its regulations to ensure that they are current, this document makes certain conforming changes which are necessary because of various executive, legislative, and administrative actions. Several of the changes are the result of Customs continuing efforts to reduce the paperwork burden on the public. The changes merely conform the regulations to existing law or practice. They are nonsubstantive and essentially are procedural.

EFFECTIVE DATE: June 20, 1986.

FOR FURTHER INFORMATION CONTACT: Marvin M. Amernick, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8237).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to keep its regulations current, the Customs Service has determined that various executive, legislative, and administrative actions require conforming amendments to the Customs Regulations contained in Chapter I, Title 19, Code of Federal Regulations (19 CFR Chapter I). Following is a list of these actions, the affected sections of the regulations, and the necessary changes.

Discussion of Changes

1. Section 10.7(a), Customs Regulations (19 CFR 10.7(a)), relating to substantial containers or holders used for the transportation of merchandise, begins with the phrase, "Except as provided for in § 10.2(b)". Treasury Decision 75-230, published in the **Federal Register** on September 18, 1975 (40 FR 43021), amended Part 10, Customs Regulations (19 CFR Part 10), by deleting § 10.2. Section 10.7 is being amended to remove reference to this deleted section.

2. Section 10.74, Customs Regulations (19 CFR 10.74), provides procedures relating to animals which stray or are driven across a U.S. border. Before such animals may be returned, they must be held for such inspection and treatment as deemed necessary by a representative of the Agricultural Research Service of the Department of Agriculture. Customs has been informed that such inspections are now conducted by the Animal Plant and Health Inspection Service of the Department of Agriculture. Therefore, § 10.74 is being amended accordingly.

3. Section 1076, Customs Regulations (19 CFR 10.76), concerns the importation of game animals and birds. Customs Form 3315, Declaration for Free Entry of Game Animals or Birds Killed by United States Residents, has been in use to facilitate the admission into the U.S. of dead game animals and birds, free of duty without entry. The volume of use of CF 3315 averages only 21,000 per year and functionally duplicates U.S. Fish and Wildlife Service Form 3-177, Declaration for Importation or Exportation of Fish or Wildlife. Therefore, the Customs Regulations are being amended to remove reference to CF 3315, which is now obsolete. U.S. Fish and Wildlife Service Form 3-177 will be substituted in its place.

4. Section 10.177, Customs Regulations (19 CFR 10.177), contains criteria to be used in establishing whether or not a product was produced in a beneficiary developing country for purposes of the Generalized System of Preferences (19 U.S.C. 2461 *et seq.*). It has been noted that rather than just quoting the word "country", in § 10.177(a), the phrase, "produced in the beneficiary developing country" should be quoted. Therefore, § 10.177(a) is being amended accordingly.

5. Section 24.17, Customs Regulations (19 CFR 24.17), sets forth the schedule of reimbursable expenses that parties-in-interest must repay to Customs for services rendered by Customs officers or employees. Section 24.17(f) refers to the reimbursement to Customs to cover the Medicare costs of employees. By T.D. 85-70, published in the **Federal Register** on April 17, 1985 (50 FR 15271), the percentage of reimbursable compensation expenses that must be repaid to cover Customs share of Medicare costs was raised from 1.3 to 1.35. Section 24.17(f) is being amended accordingly.

6. Section 112.15, Customs Regulations (19 CFR 112.15), states that approvals and discontinuances of carriers' bonds will be published from time to time in the weekly Customs Bulletin. However, information on the status of bonded carriers is now available on-line at the district and port offices through the Automated Commercial System (ACS) computer. In addition, a monthly computer listing is mailed to the Customs offices. This on-line bonded carrier system efficiently disseminates bonded carrier information to the offices needing such information and makes continued publication in the Customs Bulletin unnecessary. Therefore, § 112.15 is being removed. In addition, the automated bond control system which went into effect with the revision of the Customs bond structure by T.D. 84-213, published in the **Federal Register** on October 19, 1984 (49 FR 41152), further eliminates the need for the bond lists and also instruments of international traffic bond lists. Accordingly, § 10.41a, Customs Regulations (19 CFR 10.41a), relating to instruments of international traffic, where reference is made to the publication of these bond lists in the Customs Bulletin, is also being amended.

7. Section 123.72, Customs Regulations (19 CFR 123.72), provides for the admission into the U.S. without entry or payment of duty of allegedly stolen or embezzled vehicles, trailers, airplanes, or component parts of any of them, being returned from Mexico. This provision was based on an agreement between the U.S. and Mexico dated October 6, 1936. A new agreement entitled, "The Convention between the United States of America and the United Mexican States for the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft" (Treaties and Other International Agreements [TIAS] 10653), which entered into force on June 28, 1983, now controls this situation. Section 123.72 is being amended to update the reference.

8. Section 134.55, Customs Regulations (19 CFR 134.55), refers to the compensation of Customs officers and employees who are assigned to supervise the exportation, destruction, or marking of articles so as to exempt them from the application of marking duties for failure to either mark articles or their container with the name of the country of origin of the article in accordance with § 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). Section 134.55(b) incorrectly states that the compensation is to be figured according to § 19.5(b), Customs Regulations (19 CFR 19.5(b)). The correct reference is § 24.17(a)(3), Customs Regulations (19 CFR 24.17(a)(3)), which states that importers of such merchandise shall be charged the full

compensation and authorized travel and subsistence expenses of such officers or employees from the time they leave their official station until they return thereto. Section 134.55(b) is being amended accordingly.

9. Section 108 of Pub. L. 95–410 (92 Stat. 888), the Customs Procedural Reform and Simplification Act of 1978, amended §§ 557 and 559, Tariff Act of 1930, as amended (19 U.S.C. 1557 and 1559), to permit merchandise to remain in a Customs bonded warehouse at the owner's expense for a period of up to 5 years, without any further extension. By T.D. 79–221, published in the **Federal Register** on August 9, 1979 (44 FR 46794), § 144.5, Customs Regulations (19 CFR 144.5), was amended to establish a 5-year time limit, commencing from the date of importation, on the storage of merchandise in a bonded warehouse. An exception was made for merchandise in a bonded warehouse on the date of enactment of Pub. L. 95–410, October 3, 1978. For such merchandise the 5-year period began on that date. Since the 5 years covered by this exception have expired, and no extensions are allowed, §§ 144.5 and 144.36 are being amended to remove these exceptions.

10. Section 144.32, Customs Regulations (19 CFR 144.32), contains procedures for making withdrawals from Customs bonded warehouses. Section 144.32(c) refers to applications by "proprietors" to make withdrawals. It has come to Customs attention that some confusion may result from that word since persons other than warehouse proprietors can make applications for withdrawals, and in fact, proprietors usually are not the persons making the applications. Accordingly, § 144.32(c) is being amended to remove the word, "proprietors".

11. Section 206 of Pub. L. 98–573, the Trade and Tariff Act of 1984, amended section 498(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1498(a)(1)), by increasing the informal entry limit from $250 to $1,250. However, it exempted all articles valued in excess of $250 classified in Schedule 3, parts of Schedule 7, and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated or any other article for which formal entry is required without regard to value. Under 19 U.S.C. 1498(a)(1), the Secretary of the Treasury may specify the exact amount of the informal entry limit. The limit may vary for different classes or kinds of merchandise or different classes of transactions. After thorough consideration of the issue, it was determined that, with the exception of the specific exclusions, the informal limit for all articles would be set initially at $1,000, with the option to increase it to $1,250 in the future. This change was reflected by amending various sections of the Customs Regulations as part of another document published as T.D. 85–123 in the **Federal Register** on July 13, 1985 (50 FR 29949). It has now been determined that §§ 145.4 and 148.23, Customs Regulations (19 CFR 145.4, 148.23), must also be amended to reflect this change.

12. Section 115 of Pub. L. 97–446 amended Subpart A of Part 2 of Schedule 8 of the Tariff Schedules of the United States Annotated (19 U.S.C. 1202), to raise the personal exemption allowed residents returning to the U.S. Items 813.30 and 813.31, TSUS, were amended to raise from $300 to $400 the exemption allowed residents returning, and from $600 to $800 for residents arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the U.S. This change requires numerous amendments to Part 148, Customs Regulations (19 CFR Part 148).

13. In § 162.75, Customs Regulations (19 CFR 162.75), relating to limitations on seizures for violations of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), an error was made in the numbering of some paragraphs. Paragraphs currently numbered § 162.75(d)(3) (1) and (2) should be designated § 162.75(d)(3) (i) and (ii). The section is being corrected accordingly.

14. Part 172, Customs Regulations (19 CFR Part 172) contains provisions relating to liquidated damages incurred under the provisions of any bond posted with Customs. Section 172.33(c)(1) erroneously refers to the payment of "penalties and withheld duties" prior to filing a second supplemental petition contesting a decision concerning liabilities under a bond. The phrase should be "liquidated damages." Section 172.33(c)(1) is being amended accordingly.

15. Part 191, Customs Regulations (19 CFR Part 191), contains the general provisions and specific procedures relating to drawback claims. Throughout Part 191, various forms have been used to document transactions to determine their compliance with the drawback regulations. Customs has recently begun use of a new form, Customs Form 331, Manufacturing Drawback Entry and/or Certificate, which replaces nine forms previously used. Several sections within Part 191 are being amended to remove references to the obsolete forms.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as these amendments merely conform the Customs Regulations to existing law or practice, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by the E.O. is not required.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of Title 5, United States Code, as added by section 3 of Pub. L. 96–354, the "Regulatory Flexibility Act". That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) or any other statute.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

In General

Customs duties and inspection, Imports, Exports.

19 CFR Part 10

Packaging and containers, Wildlife.

19 CFR Part 24

Accounting, Wages.

19 CFR Part 112

Administrative practice and procedures, Common carriers.

19 CFR Part 123

Mexico.

19 CFR Part 134

Labeling, Packaging and containers.

19 CFR Part 144

Warehouses.

19 CFR Part 145

Postal service.

19 CFR Part 148

Customs duties and inspection, Imports.

19 CFR Part 162

Administrative practice and procedure, Seizures and forfeitures.

19 CFR Part 172

Administrative practice and procedure.

19 CFR Part 191

Drawback.

Amendments to the Regulations

Parts 10, 24, 112, 123, 134, 144, 145, 148, 162, 172, and 191, Customs Regulations (19 CFR Parts 10, 24, 112, 123, 134, 144, 145, 148, 162, 172, and 191), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624.

Section 10.41a also issued under 19 U.S.C. 1322.

Sections 10.171–10.178 also issued under 19 U.S.C. 2461 *et seq.*

§ 10.7 [Amended]

2. Section 10.7(a) is amended by removing the opening phrase, "Except as provided for in § 10.2(b),", and by changing the word "substantial" to "Substantial".

§ 10.41a [Amended]

3. Section 10.41a is amended in the following manner:

a. In paragraph (c) introductory text, the sentence, "The fact of approval and discontinuance of bonds on Customs Form 301, containing the bond conditions set forth in § 113.66 of this chapter will be published in the weekly Customs Bulletin.", is removed.

b. In paragraph (c)(1), the phrase, "published in the weekly Customs Bulletin", is removed, and the word, "established" inserted in its place.

c. In paragraph (c)(2), the phrase, "published in the weekly Customs Bulletin", is removed from both places it appears, and the word, "established", inserted in both those places.

(d) In paragraph (c)(3), the word, "published" is removed from both places where it appears, and the word, "established" inserted in both places.

§ 10.74 [Amended]

4. Section 10.74(c) is amended by removing the phrase, "Agricultural Research Service" and inserting, in it's place, "Animal Plant and Health Inspection Service".

§ 10.76 [Amended]

5. Section 10.76(d) is amended by removing "Customs Form 3315", and inserting, in its place, "U.S. Fish and Wildlife Service Form 3–177, Declaration for Importation or Exportation of Fish or Wildlife".

§ 10.131 [Amended]

6. Section 10.131 is amended by removing the phrase, "or Part 54 of this chapter".

§ 10.177 [Amended]

7. Section 10.177(a) is amended by removing the quotation marks from the word "country" and placing quotation marks around the phrase, "produced in the beneficiary developing country" so the phrase appears as it does in the paragraph heading.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624; 31 U.S.C. 9701.

Section 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112.

§ 24.17 [Amended]

2. Section 24.17(f) is amended by removing the number, "1.3" and inserting, in its place, "1.35".

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. The authority citation for Part 112 is revised to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1624.

2. All other statutory authority cited at the end of the index and various sections in Part 112 is removed.

§ 112.15 [Removed]

3. Part 112 is amended by removing § 112.15.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for Part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624.

Section 123.1 also issued under 19 U.S.C. 1459;

Section 123.2 also issued under 19 U.S.C. 1460;

Section 123.3 also issued under 19 U.S.C. 1459;

Section 123.4 also issued under 19 U.S.C. 1484, 1498;

Section 123.7 also issued under 19 U.S.C. 1498;

Section 123.8 also issued under 19 U.S.C. 1448, 1450–1454, 1459;

Section 123.9 also issued under 19 U.S.C. 1460, 1584, 1618;

Section 123.11 also issued under 19 U.S.C. 1465;

Sections 123.12–123.18 also issued under 19 U.S.C. 1322;

Sections 123.21–123.23, 123.25–123.29, 123.41, 123.51 also issued under 19 U.S.C. 1554;

Section 123.24 also issued under 19 U.S.C. 1551;

Sections 123.31–123.34, 123.42, 123.52, 123.64 also issued under 19 U.S.C. 1553;

Section 123.63 also issued under 19 U.S.C. 1461, 1462;

Section 123.71 also issued under 19 U.S.C. 1595.

2. All other statutory authority cited at the end of the index and various sections in Part 123 is removed.

3. Section 123.72 is revised to read as follows:

§ 123.72 Treatment of stolen vehicles returned from Mexico.

District directors shall admit without entry and payment of duty allegedly stolen or embezzled vehicles, trailers, airplanes, or component parts of any of them, under the provisions of The Convention between the United States of America and the United Mexican States for the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft (Treaties and Other International Acts Series [TIAS] 10653), of June 28, 1983, if accompanied by a letter from the U.S. Embassy in Mexico City containing:

(a) A statement that the Embassy is satisfied from information furnished it that the property is stolen property being returned to the U.S. under the provisions of the convention between the U.S. and Mexico concluded January 15, 1981, and

(b) An adequate description of the property for identification purposes.

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for Part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen Hdnote 11), 1304, 1624.

§ 134.55 [Amended]

2. Section 134.55(b)(1) is amended by removing, "§ 19.5(b)", and inserting, in its place, "§ 24.17(a)(3)".

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The authority citation for Part 144 is revised to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

Section 144.3 also issued under 19 U.S.C. 1563;

Sections 144.33, 144.37 also issued under 19 U.S.C. 1562.

2. All other statutory authority cited at the end of the index and various sections in Part 144 is removed.

3. Section 144.5 is revised to read as follows:

§ 144.5 Period of warehousing.

Merchandise shall not remain in a bonded warehouse beyond 5 years from the date of importation.

§144.32 [Amended]

4. Section 144.32(c) is amended by removing the word "proprietors".

§ 144.36 [Amended]

5. Section 144.36(a) is amended by removing the comma and the phrase, "including any lawful extension thereof." after the word, "period", and inserting a period.

PART 145—MAIL IMPORTATIONS

1. The authority citation for Part 145 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624.

Section 145.4 also issued under 18 U.S.C. 545; 19 U.S.C. 1618.

§ 145.4 [Amended]

2. Section 145.4(c) is amended by removing "$250" and inserting, in its place, "$1000".

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The authority citation for Part 148 continues to read as follows:

Authority: 19 U.S.C. 66, 1498, 1624. The provisions of this part, except for Subpart C, are also issued under 19 U.S.C. 1202 (Gen. Hdnote 11). Section 148.51 also issued under 19 U.S.C. 1321.

§148.12, 148.17, 148.31-148.38, 148.51, 148.101, 148.104, 148.111, and 148.113 [Amended]

2. Sections 148.12, 148.17, 148.31 through 148.38, 148,51, 148.101, 148.104, 148.111 and 148.113 are amended by removing "$300" or "$600", wherever they appear and inserting, in their place, "$400" or "$800", respectively.

§ 148.23 [Amended]

3. Section 148.23(c) is amended in the following manner:

a. In the heading to paragraph (c)(1), "$250" is removed, and, "$1,000 (with exceptions)" is inserted, in its place.

b. In paragraph (c)(1), "$250" is removed, and "$1,000 (except for articles valued in excess of $250 classified in Schedule 3, Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of United States Annotated)", is inserted, in its place.

c. In the heading to paragraph (c)(2), "$250 but not over $500" is removed, and, "$1,000 (with exceptions)" is inserted, in its place.

d. In paragraph (c)(2), "$250 but not over $500" is removed, and, "$1,000 (except for articles valued in excess of $250 classified in Schedule 3, Parts 1, 4A, 7B, 12A, 12D and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated)" is inserted, in its place.

PART 162—RECORDKEEPING, INSPECTION, SEARCH AND SEIZURE

1. The authority citation for Part 162 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624. Subpart G also issued under 19 U.S.C. 1466, 1584, 1592, 1613, 1618.

§ 162.75 [Amended]

2. Section 162.75 is amended by redesignating paragraphs (d)(3)(1) and (d)(3)(2), as (d)(3)(i) and (d)(3)(ii), respectively.

PART 172—LIQUIDATED DAMAGES

1. The authority citation for Part 172 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

§ 172.33 [Amended]

2. Section 172.33(c)(1) is amended by removing "penalties and withheld duties", and inserting, in its place, "liquidated damages".

PART 191—DRAWBACK

1. The authority citation for Part 191 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1313, 1624.

§ 191.2 [Amended]

2. Section 191.2(h) is amended by removing the last sentence, and inserting, in its place, "Depending on the type of drawback applied for, entries are filed on Customs Form 331, 7512, or 7539".

3. Section 191.2(p) is amended by removing the last sentence, and inserting, in its place, "A Manufacturing Drawback Entry and/or Certificate, Customs Form 331, when properly completed, may serve as an abstract of manufacturer's record".

4. Sections 191.62(a) (1) and (2) are revised to read as follows:

§ 191.62 Filing procedure.

(a) *Manufacturing drawback entry and/or certficate*—(1) *Customs Form 331.* The drawback claimant shall file with the appropriate district director the manufacturing drawback entry and/or certificate in duplicate on Customs Form 331, if claiming under 19 U.S.C. 1313 (a) or (b). The district director may require an additional copy for administrative use.

(2) *Customs Form 331—Additional uses.* The drawback claimant shall file with the appropriate district director the original drawback entry on Customs Form 331 in the two instances listed below. The district director may require an additional copy for administrative use.

(i) *Certificates of manufacture filed prior to entry.* When the drawback claimant files a certificate of manufacture prior to the filing of the entry, he shall file the entry on Customs Form 331 and refer to the certificate of manufacture in the entry by the official number instead of describing the particulars of importation and manufacture.

(ii) *Purchase of manufactured articles for exportation.* A purchaser of a completely manufactured article who exports it and claims drawback shall file an entry on Customs Form 331.

* * * * *

5. Section 191.65 is revised to read as follows:

§ 191.65 Certification of delivery.

(a) *When required.* If the merchandise used in the manufacture of the exported articles was not imported by the manufacturer of the articles, no drawback shall be allowed until the drawback claimant files with the regional commissioner where the claim is to be liquidated a manufacturing drawback entry and/or certificate in duplicate on Customs Form 331, or official evidence of the existence of the form filed at another place. The form must describe the merchandise delivered, tracing it from the custody of the importer to the custody of the manufacturer.

(b) *Intermediate transfer.* If the merchandise was not delivered directly from the importer to the manufacturer, each intermediate transfer shall be described on the manufacturing drawback entry and/or certificate (Customs Form 331), certified by the person through whose possession the merchandise passed.

(c) *Consignee as importer.* When the consignee named in an entry summary declares another person to be the actual owner, the consignee shall be considered the importer for drawback purposes, even though the consignee files an owner's declaration under section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)). The drawback claimant shall file a manufacturing drawback entry and/or certificate (Customs Form 331), showing the initial transfer from the consignee to the person to whom delivery was made.

(d) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No manufacturing drawback entry and/or certificate (Customs Form 331) is required covering prior transfers of merchandise while in a bonded warehouse.

6. Section 191.66 is revised to read as follows:

§ 191.66 Certificates of manufacture and delivery.

(a) *When required.* If the imported merchandise has undergone some process of manufacture before delivery, and the wholly or partially manufactured article thereafter is used in the manufacture of some other article for exportation, or when completely manufactured articles are purchased for exportation without further manipulation, the drawback claimant, whether the manufacturer or the exporter, shall file a manufacturing drawback entry and/or certificate on Customs Form 331.

(b) *Subcontractors.* If a subcontractor performs work, which for drawback purposes does not constitute a manufacture or production, with the use of merchandise the principal plans to make the subject of a drawback claim, and if there is a problem in identifying the merchandise the subcontractor returns to the principal from the merchandise received from the principal, the subcontractor shall complete a manufacturing drawback entry and/or certificate (Customs Form 331). If there is no problem of identification, the subcontractor shall complete only the delivery section of the form. If complementary records are maintained by a subcontractor's principal (see § 191.22(d)), and Customs determines no problems of identification exist, it may waive the filing of Customs Form 331 for transfers between principal and subcontractor, whether the subcontractor's operation involves manufacture or not.

(c) *Identifying manufacturing drawback entry and/or certificates.* Drawback claimants may identify the relevant manufacturing drawback entry and/or certificates on drawback entries covering the exported articles rather than describe the importation and manufacture.

(d) *Certification of immediate transfer.* Any intermediate transfer of manufactured articles shall be certified on the manufacturing drawback entry and/or certificate (Customs Form 331).

(e) *Entry filed at place other than where certificate filed.* If the drawback entry is filed at a place other than where the manufacturing drawback entry and/or certificate (Customs Form 331) is on file, the regional commissioner may transmit to the place where the drawback entry is filed an extract on Customs Form 4537.

(f) *Special requirements for agency transactions*—(1) *Requirement of agent.* Each agent manufacturer who conducts operations under § 191.34 shall furnish the principal for whom it processed merchandise a manufacturing drawback entry and/or certificate (Customs Form 331) completing only the portion applicable to the operation so conducted, relating to the substituted or designated merchandise, and identifying the owner of the articles for whom processing was conducted.

(2) *Requirements of principal.* The principal for whom processing was conducted under § 191.34 shall complete and file a manufacturing drawback entry and/or certificate (Customs Form 331) and attach it to the forms from its agents or agent.

7. Section 191.82(e) is revised to read as follows:

§ 191.82 Procedure.

* * * * *

(e) *Customs form.* The Manufacturing Drawback Entry and/or Certificate (Customs Form 331) shall be used in place of the corresponding forms used in the case of articles manufactured with the use of imported merchandise.

* * * * *

8. Section 191.84(c) is revised to read as follows:

§ 191.84 Alcohol, Tobacco and Firearms certificates.

* * * * *

(c) *Request accompanied by Customs Form 331.* If the request is accompanied by Customs Form 331 showing any of the information required by paragraph (b) of this section, that information need not be repeated in the request.

* * * * *

William von Raab,
Commissioner of Customs.

Approved: June 2, 1986.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 86-13984 Filed 6-19-86; 8:45 am]

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DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 697

Industries in American Samoa; Wage Order

AGENCY: Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: Under the Fair Labor Standards Act, minimum wage rates in American Samoa are set by a special industry committee appointed by the Secretary of Labor. After such a committee has investigated conditions in American Samoa, it recommends minimum wage rates which must be published in the **Federal Register** and which become the new wage rates. Industry Committee No. 17 for American Samoa has completed its review and established new minimum wage rates, which are published herewith.

EFFECTIVE DATE: This rule shall become effective on July 7, 1986.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S3502, Washington, DC 20210, Phone: 202-523-8305.

SUPPLEMENTARY INFORMATION: Pursuant to sections 5, 6, and 8 of the Fair Labor Standard Act of 1938 (52 Stat. 1062, 1064), as amended (29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 658 (51 FR 6605), the Secretary of Labor appointed and convened Industry Committee No. 17 for Industries in American Samoa, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 8 of FLSA to such employees, and give notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the