of publication of this rule in the **Federal Register**. Any amendments we make to this rule as a result of these comments will be published in the **Federal Register** following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Los Angeles County, California. It appears that there is very little commercial activity that may be affected by this rule in the quarantined area. The small entities that may be affected by this regulation appear to consist of approximately 85 nurseries, 50 open fruit stands, 5 community gardens, 10 regularly scheduled swap meets (flea markets), 10 caterers who send lunch "chuckwagons" to job sites in the quarantined area, 200 mobile vendors, 7 wholesale distributors, and 20 dooryard fruit producers (producers who contract residentially-produced fruit for commercial sale).

It appears that most of these small entities sell regulated articles primarily for local intrastaste, not interstate, markets. Also, a number of these small entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities will be minimal.

Further, the conditions in the Mediterranean fruit fly regulations and the treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR Part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3(c), the designation of the quarantined areas in Los Angeles County, California, is amended by adding a new paragraph as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County

* * * * *

That portion of the county in the Culver City area bounded by a line beginning at the intersection of Sunset Boulevard and Interstate Highway 405; then southeast along Interstate Highway 405 to its intersection with Wilshire Boulevard; then southwest along Wilshire Boulevard to its intersection with Bundy Drive; then southeast along Bundy Drive to its intersection with Centinella Avenue; then southeast along Centinella Avenue to its intersection with Jefferson Boulevard; then northeast along Jefferson Boulevard to its intersection with Centinella Avenue; then southeast along Centinella Avenue to its intersection with Florence Avenue; then east along Florence Avenue to its intersection with Vermont Avenue; then north along Vermont Avenue to its intersection with U.S. Highway 101; then northwest along U.S. Highway 101 to its intersection with Hollywood Boulevard; then west along Hollywood Boulevard to its intersection with Laurel Canyon Boulevard; then south along Laurel Canyon Boulevard to its intersection with Sunset Boulevard; then southwest along Sunset Boulevard to the point of beginning.

* * * * *

Done at Washington, DC, this 14th day of October, 1988.

Billy G. Johnson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–24189 Filed 10–18–88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS Number: 1102–88]

Documentary Requirements; Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole

AGENCY: Immigration and Naturalization Service (INS), Justice.

ACTION: Final rule.

SUMMARY: This rule expands the coverage of the waiver of inadmissibility of mentally retarded aliens seeking entry as nonimmigrants. Presently, a blanket waiver is provided in the case of Canadian nationals and alien residents of Canada having a common nationality with Canadians. Based on experience in administering the present limited Canadian waiver, it is the Service's view that the same blanket waiver should be made available to all nationalities. This rule will facilitate travel of mentally retarded individuals and their families.

EFFECTIVE DATE: October 19, 1988.

FOR FURTHER INFORMATION CONTACT: Janice B. Podolny, Associate General Counsel, Room 7048, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–1260.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service published a notice of proposed rulemaking on February 5, 1988 to provide a blanket waiver of inadmissibility for mentally retarded aliens seeking admission as nonimmigrants, if accompanied by a family member or guardian who would be responsible for the individual. The proposed rule was published at 53 FR 3403, with a 60 day comment period which closed on April 5, 1988. One comment was received by the Service. The commenter requested that INS broaden the definition of guardian to mean someone who has authority or control over the person for a limited duration of time, such as school administrator leading his or her students on a trip to the United States, rather than limiting it to a permanent legal guardian, whose guardianship authority must be established by a court or other legal authority. The plain language in the rule makes it clear that the guardian need only be responsible for the alien during the period of admission authorized. Thus the commenter's example of a school administrator escorting students on a trip to the United States would satisfy the rule's requirement that the alien be accompanied by a guardian, assuming that the school administrator was responsible for the alien in question during the period of admission authorized. In addition, an amendment to the Act (section 7(a)) dated November 14, 1986, Pub. L. 99-653, 100 Stat. 3655, repealed section 212(a)(24); therefore, reference to section 212(a)(24) of the Act which appeared in the proposed rule was not included in the final rule.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule as defined in section 1(b) of E.O. 12991, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Discretionary relief, Health.

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

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1228, 1252.

2. Section 212.4 is amended by revising paragraph (e) as follows:

§ 212.4 Applications for the exercise of discretion under section 212(d)(3).

* * * * *

(e) *Inadmissibility under section 212(a)(1).* Pursuant to the authority contained in section 212(d)(3) of the Act, the temporary admission of a nonimmigrant visitor is authorized notwithstanding inadmissibility under section 212(a)(1) of the Act, if such alien is accompanied by a member of his/her family, or a guardian who will be responsible for him/her during the period of admission authorized.

* * * * *

Dated: July 18, 1988.

Richard E. Norton,

Associate Commissioner, Examinations.

[FR Doc. 88-24095 Filed 10-18-88; 8:45 am]

BILLING CODE 4410-10-M

FARM CREDIT ADMINISTRATION

12 CFR Part 618

General Provisions; Member Insurance; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Part 618, September 13, 1988 (53 FR 35303). The final regulations to Part 618 relate to the authority of Farm Credit Banks (excluding banks for cooperatives) and associations to sell credit-related forms of insurance to their members and borrowers, on an optional basis. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 13, 1988.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION:

Dennis Carpenter, Senior Credit Specialist, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4498

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020. TDD (703) 883-444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: October 14, 1988.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 88-24193 Filed 10-18-88; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 2

Nonadjudicative Procedures

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has approved two procedural amendments to Rule 2.51(a) of its Rules of Practice and Procedure. The rule governs requests to reopen and modify final orders. The first amendment provides that such requests must be supported by affidavit(s). Under section 5(b) of the FTC Act, 15 U.S.C. 45(b), requests to reopen must make a "satisfactory showing" of the basis for relief. The Commission has concluded that affidavits are required to support factual assertions made in requests filed under section 5(b). The second amendment provides that requests to reopen must contain at the time they are filed "[a]ll information and material that the requester wishes the Commission to consider." This change is intended to ensure that all the information filed in support of the request is available to the public during the public comment period, and that the entire 120-day statutory period is available for Commission consideration of all submitted materials relevant to the request.

EFFECTIVE DATE: The rule is effective October 19, 1988, and applies to requests to reopen and modify filed after that date.

FOR FURTHER INFORMATION CONTACT: Elliot Feinberg, Bureau of Competition, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580, (202) 326-2687.

SUPPLEMENTARY INFORMATION: The Commission has clarified the requirements of Rule 2.51(b) of its Rules of Practice regarding the filing of requests to reopen and modify final orders. Commission orders represent the final resolution of the Commission's law enforcement efforts. Before reopening and modifying such orders, the Commission wishes to ensure that requesters meet the tests of section 5(b) of the FTC Act and Commission Rule 2.51(b), which require a petitioner to make a "satisfactory showing" that reopening and modification are mandated by changed conditions or that reopening and modification are in the public interest. Requests to reopen orders must not only allege facts that, if true, would constitute the necessary showing, but must also credibly demonstrate that the factual assertions are reliable. The amended rule therefore specifically requires that requesters provide one or more affidavits to support facts alleged in petitions to reopen and modify orders. This amendment will not only help the Commission in its decision making process but, by clarifying the applicable standard, aid requesters in presenting meritorious cases. In the past, the Commission required substantiation for material factual allegations contained in these petitions. This amendment specifies the procedural method for substantiating factual assertions.

The Commission further wishes to ensure that the entire 120-day statutory period within which the Commission must act (see 15 U.S.C. 5(b)) is available for consideration of all submitted materials relevant to the request. The Commission seeks also to assure that all submitted information is available to the public during the 30-day comment period applicable to petitions to reopen. See Rule 2.51(c). Therefore, the second amendment to Rule 2.51(b) provides that all the material that the requester wishes the Commission to consider must be contained in the request at the time of filing. This amendment will promote more knowledgeable and relevant public comments and thus increase their utility to the Commission. This amendment also reflects procedures contained in the Commission's July 1984 "Statement of Policy Concerning Supplementation of Requests to Reopen." Under that statement, which discusses in greater detail how the Commission views supplementation of requests to reopen, a requester wishing to supplement its request to reopen must generally withdraw the request and file a supplemented version, thus restarting the statutory 120-day time period.[1]

For these reasons, the Commission has amended Rule 2.51(b) of its Rules of Practice to require that requests to reopen and modify a final order be supported by affidavit(s) and to make clear that requests to reopen must be complete when filed.

List of Subjects in 16 CFR Part 2

Administrative practice and procedure, Requests to reopen.

16 CFR Part 2 is amended to read as follows:

PART 2—NONADJUDICATIVE PROCEDURES

1. The authority for Part 2 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46).

[1] The full text of the Commission's Statement is included as an appendix to this notice.

2. Section 2.51(b) is revised to read as follows:

§ 2.51 Requests to reopen.

(a) * * *

(b) *Contents.* A request under this section shall contain a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified or set aside, in whole or in part or that the public interest so requires. This requirement shall not be deemed satisfied if a request is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions or the public interest require the requested modifications of the rule of order. Each affidavit shall set forth facts that would be admissible in evidence and shall show that the affiant is competent to testify to the matters stated therein. All information and material that the requester wishes the Commission to consider shall be contained in the request at the time of filing.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Policy Concerning Supplementation of Requests To Reopen

The Federal Trade Commission is releasing this statement of policy to clarify for the legal and business communities the Commission's treatment of supplemental information provided to support requests filed pursuant to Rule 2.51 of the Commission's Rules of Practice for the purpose of modifying final orders to cease and desist. Section 5(b) of the Federal Trade Commission Act and Rule 2.51 require the Commission to act on requests to reopen within 120 days of the time of filing. Rule 2.51 further specifies that such requests must set forth specific facts demonstrating in detail the nature of any changed conditions alleged and the reasons why these changed conditions require the requested modifications.[2] Given the limited time for review and the need to evaluate fully the facts and arguments presented, the Commission generally will not accept or consider additional information to support a request to reopen supplied by the requester after the date of filing, unless the requester states in writing that the Commission should consider the request withdrawn and refiled as supplemented, thus restarting the statutory time period.

Additionally, the Commission would be deprived of the full benefits of public comments were it to accept and consider materials supplementing a request to reopen after comments on the original request had been filed. The Commission's purpose in seeking such comments, which is to aid it in making informed decisions, might be hindered to the extent persons commenting on a given request had not reviewed all of the facts and arguments on which the request is premised. Moreover, the absence of such facts and arguments from what is placed on the public record might affect even decisions on whether to comment. Therefore, when a pending request to reopen is supplemented, not only must the 120-day statutory period for the Commission's consideration of the request be restarted, but the entire refiled request, as supplemented, must be placed on the public record for comments as provided in Rule 2.51(c).[3]

The Commission recognizes that comments filed in response to requests to reopen may sometimes raise new issues which those requesting modification may want to address. Therefore, the Commission will consider replies by requesters that are limited in scope to issues raised by such comments, provided that any reply to comments on a given request is filed within ten days of the close of the comment period. However, if a reply exceeds the scope of the comments, the Commission will not consider the reply unless the requester states in writing that the Commission should consider the request withdrawn and refiled as supplemented by the reply. Moreover, the Commission will not reopen an order where an essential element of the "satisfactory showing" that modification is required (as described in Rule 2.51) was not contained in the original request, but only in a reply to comments on the original request. Therefore, unless the Commission requires otherwise

[2] While Section 5(b) of the Federal Trade Commission Act provides for requests to reopen solely on the basis that changed conditions of law or fact require that an order be modified, the section also provides that the Commission may modify orders on its own motion if, in the opinion of the Commission, the public interest so requires. Thus, Rule 2.51 invites respondents requesting reopening to address public interest considerations that may favor reopening as well. As with requests premised on changed conditions, such requests must demonstrate in detail the reasons why the public interest may require the desired modifications.

[3] Rule 2.51(c) recognizes that the Commission's interest in receiving public comments is subject to the rights of requesters, pursuant to the Federal Trade Commission Act, to maintain the confidentiality of trade secrets and financial or commercial information that is privileged or confidential.

when a pending request to reopen is supplemented, not only must the 120 day statutory period for the Commission's consideration be restarted, but the entire refiled request, as supplemented, will generally be placed on the public record for comments as provided in Rule 2.51(c).

This statement of policy does not preclude the Commission's staff from asking requesters to provide documents or other additional information in order to clarify the arguments and factual claims made in connection with the requests to reopen. The staff may, at any time, also seek from third parties information concerning such requests. The supplying of such information will not affect the Commission's obligation to decide a request within 120 days of the date it was filed. However, where supplemental information supplied by a Requester is necessary to show that changed conditions or the public interest require modification, refiling of the request will be necessary. Generally, supplemental information will require refiling when the Request does not address an issue necessary to finding that modification is required or when the information in the request is too conclusory to warrant modification of a final order. The determination whether supplemental information is essential to show that modification is required will depend on the facts of the particular case and necessarily must be decided on a case-by-case basis. Of course, requesters retain the right to have the Commission act on requests to reopen as originally filed, without consideration of any additional information.

In summary, except as provided above the Commission will not consider supplemental information provided after a request to reopen has been filed unless the requester, in writing, asks the Commission to consider the request withdrawn and refiled as of the time the supplemental information is submitted to the Commission.[4] In that case, the Commission will again place the request, including the supplementary materials, on the public record in accordance with Rule 2.51(c). The Commission will consider the original petition and supplementary materials, any additional public comments filed in response to the original petition as well as any comments filed in response to the amended request. The Commission will also consider, without requiring the refiling of a request, a reply by the requester made in response to any comments if it is filed within 10 days of the close of the comment period and if it does not exceed the scope of the comments.[5]

[4] In the event a requester should, during the 120-day period, decide to modify its request to reopen to seek only part of the relief originally requested, while rescinding other parts of the request, refiling of the request will not be necessary unless the Commission determines that it would be in the public interest to do so.

[5] This statement of policy is intended only to provide general guidance and information. When time, circumstances, or the public interest require, this statement may be amended or superseded by subsequent Commission action without prior notice. This statement is not a rule or regulation. It does not modify the scope or coverage of any provision of the Federal Trade Commission Act or the Commission's Rules of Practice.

[FR Doc. 88-24106 Filed 10-18-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87-35-000]

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

October 14, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the "advisory" benchmark rate of return on common equity applicable to rate filings made during the period November 1988 through January 1989. This benchmark rate is set at 12.44 percent.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, (202) 357-8283.

SUPPLEMENTARY INFORMATION:

Benchmark Rate of Return on Common Equity for Public Utilities

Issued October 14, 1988.

On January 27, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule which readopted the quarterly indexing procedure for establishing and updating the benchmark rate of return on common equity applicable to electric rate filings.[1] Based on this procedure, the Commission, by its designee, the Director of the Office of Economic Policy, determines that the benchmark rate of return on common equity applicable to rate filings made during the period November 1, 1988 through January 31, 1989, is 12.44 percent.

Section 37.9 of the Commission's regulations [2] requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 99 utilities.[3] The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$$k_t = 1.02\ Y_t + 4.36$$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the 99-company sample of utilities for the second an third quarters of 1988 are 7.91 and 7.92 percent, respectively. The average yield for those two quarters is 7.92 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.44 percent.

This notice supplements the generic rate of return rule announced in Order No. 489, issued January 29, 1988 and effective on February 1, 1988.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below, effective November 1, 1988.

Bernard W. Tenenbaum,

Acting Director, Office of Economic Policy.

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 489, 53 FR 3342 (February 5, 1988), III FERC Stats. and Regs. 30,795 (January 29, 1988).

[2] 18 CFR 37.9 (1987).

[3] As a result of the acquisition of Savannah Electric and Power Company by the Southern Company, the Commission has reduced the number of companies in the sample for the most recent quarter to 99. It has made this change in accordance with the criteria for inclusion in the sample specified in 18 CFR 37.9(c) (1987).