

directed the BOCs to work through the IILC on a number of issues requiring further inter-industry effort.

3. The Commission generally approved use of the "common ONA model" offered by the BOCs in their plans. Under that model, ESPs obtain access to optional ONA services, which the BOCs call Basic Service Elements (BSEs), through BOC-provided access links, which the BOCs call Basic Serving Arrangements (BSAs). The Commission did not require BOCs to allow ESPs to connect their own loops or trunks to BOC switching facilities. The Commission also clarified that its nondiscrimination rules apply to all basic ONA services regardless of their classification.

4. The Commission found that the BOCs have done a generally acceptable job of identifying initial ONA services that they feasibly can provide in the short term, using the existing capabilities of their networks. However, because some BOCs have not proposed to offer some initial ONA services that others offer, propose, the Commission directed the BOCs to examine each other's plans to determine whether they can augment their initial sets of ONA services.

5. The Commission directed the BOCs to continue working to achieve greater uniformity in the nomenclature, technical characteristics, availability and deployment of ONA services, and noted topics that the IILC could consider in this area.

6. The Commission, pursuant to section 410(b) of the Communications Act, established a joint conference with state regulatory commissions from the seven BOC regions to act as a forum for cooperation and coordination among the FCC and the states on specific ONA issues of common interest.

7. The Commission also preserved the existing exemption from federal access charges for ESPs, ensuring that ESPs will continue to have the option of using state-tariffed access arrangements to provide interstate enhanced service offerings.

8. The Commission generally approved those portions of the BOCs' plans that provide for state-tariffed ONA services to be used for intrastate enhanced services or, pursuant to the federal access charge exemption, for interstate enhanced services. However, the Commission did not approve that portion of the BellSouth state tariffing proposal that deprived ESPs of existing state access arrangements.

9. The Commission required the BOCs to establish a federally tariffed BSA option for ESPs to use for interstate enhanced services, which will include

unbundled interstate BSEs provided pursuant to full federal tariffing principles. Because the Commission's existing Part 69 rules for access tariffs must be modified to implement this requirement, the Commission announced its intention to initiate a separate rulemaking to amend Part 69. Complementary Network Services (CNSs), those basic services used by consumers in connection with enhanced services, will continue to be tariffed at the state level, subject to existing nondiscrimination requirements.

10. The Commission required the BOCs to provide three-year projected deployment schedules for their ONA services and to explain the manner in which they will offer advanced ONA services through new technologies such as Signalling System #7, Integrated Services Digital Network (ISDN), and Intelligent Network/2. The Commission also required the BOCs to incorporate ESP input on these issues into their network planning processes. In addition, the Commission required the BOCs to provide geographic deployment schedules, where feasible, for advanced ONA services that BOCs will begin placing in service within three years.

11. The Commission also required the BOCs to make certain changes in their implementation of the Customer Proprietary Network Information (CPNI) requirements to protect the interests of competing ESPs. The Commission permitted all BOCs except US West to file installation and maintenance reports in a simplified format, because those BOCs have provided adequate assurances that their internal procedures precluded discrimination in the timing of installation and maintenance of ONA services. The Commission lifted the quality reporting requirement for all BOCs except Bell Atlantic, because those BOCs have demonstrated that they lack the ability to discriminate in the quality of their ONA services. Finally, the Commission approved all of the BOCs' proposed treatment of network information disclosure.

Ordering Clause

12. It is hereby ordered, that pursuant to section 1, 4(i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. 553, the ONA plans of Ameritech, Bell Atlantic, BellSouth, NYNEX, Pactel, SWBT, and US West are approved in part and rejected in part, subject to the conditions described herein.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
 [FR Doc. 89-1122 Filed 1-23-89; 8:45 am]
 BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket No. 87-113; FCC 88-400]

Amendment of Part 69 of the Commission's Rules; Access Charge Rules; Allocation Procedures

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: In this Order, the Commission generally affirms its decision regarding the new allocation procedures established in the Part 69 Access Charge rules. Part 69 has been recently revised to conform to the Uniform System of Accounts and to the Separations Manual. This Order grants, to a limited extent, the petitions for reconsideration and clarification of Part 69 by revising the procedures applicable to the local switching access element. The Commission also revised the procedures applicable to property Held for Future Telecommunications Use and Telecommunications Plant Under Construction—Short Term.

DATE: The modifications of Part 69 of the Commission's Rules will become effective April 1, 1989.

ADDRESS: Federation Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Diane Shaw-Gill, Accounting and Audits Division, Common Carrier Bureau, at (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the petitions for reconsideration and clarification of Part 69, Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, To Conform It With Part 36, Jurisdictional Separations Procedures, CC Docket No. 87-113, FCC 88-400, adopted December 9, 1988, and released December 12, 1988.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this Order may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037 (202) 857-3800.

Summary of Order on Reconsideration

1. In this Order, the Commission addresses a number of issues. It revises its prescribed phase-out schedule for the discounted Local Switching 1 rate element. The former Part 69 rules required carriers to apportion costs between three end office elements. Local Switching is one of the three end office elements. Those rules also provided the division of Local Switching into subelements, Local Switching 1 (LS1) and Local Switching 2 (LS2). The new Part 69 rules phases-out LS1, the discount subelement which reflects a 35 percent discount. This phase-out begins in April, 1989 and ends in June, 1993. On reconsideration, the Commission revised the schedule for phasing out the LS1 subelement.

2. The Commission declined to revise the allocation procedures for the General Support Facilities (GSF). The new Part 69 rules, combine Land, Buildings, and Vehicles and apportion the investment portion of each category among the Interexchange and Billing and Collection categories and the access elements on the basis of the combined investment in COE, Information Origination/Termination Equipment (IOT), and Cable and Wire Facilities (C&WF), excluding Category 1.3 C&WF (subscriberline). The Commission affirms its original decision that the inclusion of Category 1.3 C&WF would apportion excessive GSF costs to the Carrier Common Line Element. The Commission also declined to adopt other approaches suggested by two parties for the allocation of GSF costs.

3. The Commission declined to revise the new allocation procedures for computer expenses related to Billing and Collection. The new Part 69 rules assign the interstate portion of the Revenue Accounting Expenses in the Customer Services Account to the Billing and Collection category. The computer expenses related to Billing and Collection are included in two computer accounts. The new rules allocate General Purpose Computer Expenses on the basis of the allocation of GSF. Those rules also allocate the Information Management Expenses on the basis of the Big Three Expenses. The Commission found that any modifications of the current apportionment procedures for computer expenses related to billing and collection would add undue complexities to those procedures.

4. The Commission clarified the allocation procedures for Category 4.23 Central Office Equipment (COE), All Other Interexchange Circuit Equipment, Circuit Equipment that is used in

conjunction with a particular cable or wire facility will be assigned or allocated in the same manner as the associated facility. Circuit Equipment that is used with an ordinary subscriber line is assigned to the Common Line element. Circuit Equipment that is used with a WATS access line or a private line is assigned to the Special Access Element. Circuit Equipment that is used with trunks that connect end office switches or that connect end office and interexchange switches is assigned to Transport. Circuit Equipment uses with trunks that are not classified as "origination" or "termination" for purposes of the Part 69 access charge rules are assigned to the interexchange category.

5. The Commission declined to adopt alternative proposals for the allocation of COE direct expenses. Under the new Part 69 rules, COE direct expenses are allocated on the basis of total COE investment. The Commission found that this is in conformance with the Part 36, separations rules which allocate COE expenses between the jurisdictions on the basis of total COE investment.

6. The Commission declined to exclude equal access investment from the allocation factor for Other Investment. The Commission found that the proposed modification of these two accounts would not have a significant impact upon the charges for the other elements.

7. The Commission revised the allocation procedures for Property Held for Future Telecommunications Use and Telecommunications Plant Under Construction—Short term. The new Part 69 rules require that the investment in these accounts be apportioned among the Interexchange and Billing and Collection categories and the appropriate access elements in the same proportion as the associated investment. The Commission modified these procedures to allow the allocation of these accounts on the basis of Total Plant In Service instead of associated investment.

8. The Commission declined to include Telecommunications Plant Under Construction—Long Term, in the definition of net investment. It allowed investment in Telecommunications Plant Adjustment to be included in the definition of net investment in those limited cases in which the Common Carrier Bureau has granted a waiver to allow the inclusion of this account in the rate base. The Commission found that such an approach will ensure that Part 65 and Part 69 policies are consistent.

9. The Commission declined to allocate gross receipts taxes on the

basis of taxable receipts, finding that the allocation of gross receipts taxes on the basis of net income is consistent with the Part 36 separations procedures which allocate these taxes on the basis of net plant.

10. The Commission declined to change the annual access tariff filing period from annual to biennial, finding that such a modification is outside the scope of this proceeding.

Regulatory Flexibility Act

11. The Commission certified that the Regulatory Flexibility Act¹ is not applicable to the rule changes it adopted in this proceeding. In accordance with the provisions of section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this Notice in the *Federal Register*. As part of its analysis of the new rules adopted in this Order, the Commission considered the impact of proposals on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines.² The action adopted herein will have a beneficial economic impact on all such telephone companies because the new procedures will reduce administrative burdens and will better reflect cost-causation principles. The carriers will therefore be able to develop rates that better reflect their actual costs.

Paperwork Reduction Act

12. The Commission analyzed the new rules contained herein with respect to the Paperwork Reduction Act of 1980³ and concluded that they will not impose new or modified information collection requirements on the public. Therefore, implementation of the new rules will not be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

¹ 5 U.S.C. 601.

² Because of the nature of local exchange and access service, this Commission has concluded that small telephone companies are dominant in their fields of operation and, therefore, are not small entities as defined by the Regulatory Flexibility Act. See MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983). Thus, the Commission is not required by the terms of the Regulatory Flexibility Act to apply the formal procedures set forth therein. It is nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with its other public interest responsibilities. Accordingly, it has chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of proposed regulations on small telephone companies.

³ 44 U.S.C. 501.

Ordering Clause

13. Accordingly, it is ordered, That the Petitions for Reconsideration or Clarification filed in these proceedings ARE GRANTED to the extent provided herein and otherwise ARE DENIED.

List of Subjects in 47 CFR Part 69

Communications common carrier, Telephone, Uniform system of accounts, Access charges, Jurisdictional separations procedures.

Authorizing Provisions

This action is taken pursuant to sections 47 U.S.C. 154(i), 154(j), 201, 202, 203, 205, 218, and 221(c).

Federal Communications Commission,
Donna R. Searcy,
Secretary.

Appendix A

Part 69 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 69 continues to read:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as

amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Sec. 69.205 is amended by revising para. (d) to read to as follows:

§ 69.205 Transitional premium charges.

* * * * *

(d) During each of the following years the LS1 transition factor shall be:

- (1) From April 1, 1989 to June 30, 1990—.877
(2) From July 1, 1990 to June 30, 1991—.921
(3) From July 1, 1991 to June 30, 1992—.960
(4) From July 1, 1992 to June 30, 1993—.995

3. Sec. 69.302 is amended by revising para. (b) to read as follows:

§ 69.302 Net investment.

* * * * *

(b) Investment in Accounts 2002, 2003 and to the extent such inclusions are allowed by this Commission, Account 2005 shall be apportioned on the basis of the total investment in Account 2001, Telecommunications Plant in Service.

In addition, the following changes are made to the *Access Charge Rules*, 52 FR 37,308 (October 6, 1987):

§ 69.2 [Amended]

In § 69.2(g), add "and included in Account 2410" after "Manual."

In § 69.2(i), add "and included in Accounts 2210, 2220 and 2230" after "Manual."

In § 69.2(l)(1), change "6223" to "6230."

In § 69.2(q), add "and included in Account 2110" after "Manual."

In § 69.2(r), add "and in Account 2310" after "Manual."

In § 69.2(dd), add ", WATS" after "FX."

§ 69.302 [Amended]

In § 69.302(b)(3), change "2001" to "2110."

§ 69.408 [Amended]

In § 69.408, change "69.403" to "69.404."

[FR Doc. 89-1123 Filed 1-23-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 54, No. 14

Tuesday, January 24, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Schedule B Appointment Authority for Professional and Administrative Career Positions

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management published a proposed regulation on May 11, 1982 (47 FR 20264). That regulation established a new appointing authority in the excepted service made pursuant to Schedule B authority at 5 CFR 213.3202(1). Following the receipt of comments from interested members of the public, the final rule was published on August 31, 1982 (47 FR 38257). The regulation provided for the filling of professional and administrative career (PAC) positions at the GS-5 and GS-7 levels during the period when the Office of Personnel Management did not have a register of competitive eligibles to fill vacancies in those occupations. The new Schedule B authority applied only when agencies used external recruiting and hiring procedures to fill such positions. Since that time, one union has challenged the absence of competitive, job-specific examinations for all of the approximately 118 PAC occupations which were formerly examined under the PACE and which were subject to the Schedule B authority. The United States Court of Appeals for the DC Circuit (*NTEU v. Horner*, Nos. 87-5102 & 87-5191) and the United States District Court for the District of Columbia (Civil Action No. 84-2573) have directed that OPM conduct a notice and comment rulemaking proceeding in order to supplement the rulemaking record which was developed in 1982 to include the publication of the cost data upon which OPM relied in making its decision in 1982 to permit agencies to use Schedule B in those occupations where alternative

examinations had not been developed. The reasons, based on various cost factors, for OPM's decision not to develop examinations in all of the PAC occupations are stated below under "Supplementary Information." The purpose of this publication of the proposed rule is to provide an opportunity for comment by interested members of the public.

DATE: Comments must be received on or before February 24, 1989.

ADDRESS: Written comments may be sent to Donald L. Holum, Chief, Staffing Policy Division, Career Entry and Employee Development Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20451 or delivered to Room 6355, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James S. Green, Associate General Counsel, Office of General Counsel, (202) 632-5087.

SUPPLEMENTARY INFORMATION: Pursuant to the terms of a consent decree which was entered by the U.S. District Court for the District of Columbia on November 18, 1981 (*Luevano v. Devine*, Civil Action No. 79-271), OPM agreed to eliminate the Professional and Administrative Career Examination (PACE), a general abilities test, and the register of eligibles derived therefrom and to replace that examination with job-specific, alternative examinations for approximately 118 job series. Those jobs are in Professional and Administrative Career (PAC) occupations at the GS-5 and GS-7 levels.

OPM considered a number of factors relating to cost when it arrived at its decision to permit agencies to use a Schedule B authority until OPM could develop alternative examinations to replace the PACE. In 1981, OPM anticipated little outside hiring due to a government-wide, employment freeze which had been imposed by the President of the United States. Reductions-in-force (RIFs), due to severe budget reductions, were also declared and conducted at that time and in 1982. For those reasons, cost considerations were a prominent feature in OPM's cost-analysis in determining when and for which occupations new competitive examinations should be developed.

The emphasis in 1981 and 1982 was in placement of Federal employees who had been the subject of RIFs into any upcoming Federal vacancies. That was accomplished through programs such as the Displaced Employees Program (DEP) and the Voluntary Inter-Agency Placement Program (VIAP) wherever possible. Thus, in 1982, OPM anticipated that there would be substantially reduced external hiring in most Federal occupations, including those which had been formerly filled through the use of the PACE. It was believed that most hiring in the PACE occupations would be accomplished through internal means, including promotions, transfers, and reassignments, and that few agencies would use Schedule B to hire from external sources.

In arriving at its decision to develop examinations in only those occupations where the Federal government had the largest number of vacancies instead of examining in all the approximately 118 occupations, OPM considered a number of factors. Among those were historical trends based on the annual number of hires from the PACE register in each occupation over a six-year period (1975 to 1981), the overall hiring figures and anticipated hiring trends throughout the Federal government in all occupations, the actual cost for development and implementation of the PACE which were based on OPM's previous experience with the PACE, and the legislative budget allocated for examination development.

Between 1975 and 1981, the annual hiring figures from the PACE register appeared to be steadily declining. For example, in FY 1978, over 7,000 applicants had been selected from the PACE register. By FY 1980, however, selections had decreased to 4,674. Based on the hiring freeze mandated by the President in 1981, OPM anticipated hiring less than 2,000 employees per year after 1982 into all of the PAC occupations. In 1983, external hiring through Schedule B amounted to 2,059, and, in 1984, it increased to 4,020. The unexpected increase was due to a subsequent Presidential emphasis on hiring at the Department of Defense and the Department of the Treasury.

Known costs for PACE research and development amounted to \$320,000 plus an additional \$800,000 for four criterion-related validation studies, all related to the single PACE examination. Those

costs were expended for the PACE between 1973 and 1975. In other words, during that period, OPM spent approximately \$1.2 million on the development of the single PACE examination.

Based on the developmental costs for the PACE, OPM estimated in 1981 that it would have to allocate at least \$5 million over a four-year period (1982-1985) to develop job-specific examinations for seven of the large-fill occupations which had been covered by the PACE. That figure took into account an average cost of \$520,000 per examination in 1973 to 1975 dollars which had to be augmented by inflation. Thus, it was anticipated that a single examination would cost somewhere between \$550,000 to \$800,000 to develop, depending upon the nature of the examination required by that specific occupation. Start-up costs alone for the development of examinations for those seven occupations were estimated to be \$1.5 million out of the \$5 million projected expenditure. Actual start-up costs amounted to \$1.8 million.

The Office of Personnel Research and Development (OPRD) at the Office of Personnel Management was responsible for the development of competitive examinations. OPM's total operating budget for the OPRD was \$855,249 in FY 1981 and \$962,623 in FY 1982. Although, on average, approximately one-third of the budget of OPRD has been devoted since 1981 to the development of alternative examinations for the PAC occupations, it could not possibly have absorbed the enormous costs which would have been required to develop and implement 100 examinations. Furthermore, in 1981, OPM knew that the OPRD staff would be reduced by 50% early in 1982 as a result of the reduction-in-force at the OPM. All programs, including the effort to develop alternative examinations, suffered by those reductions.

Thus, the decision was made to use Schedule B as an appointing authority while OPM initially pursued the development of competitive alternatives in those seven occupations which historically had the largest number of hires and for which OPM anticipated significant hiring would continue. OPM concentrated its limited resources on seven occupations which, in conjunction with the competitive examinations which had been developed prior to November 1981 in nine other former PACE occupations, accounted for 55% to 60% of all hires in the PAC occupations. The remaining 100 occupations

historically have accounted for no more than 40% to 45% of all such hires.

In the three year period between January 1, 1983, and December 31, 1985, of the 108 occupations for which no competitive alternatives had been developed, eighty-seven of those occupations had an annual average of 20 or fewer external PAC hires under Schedule B throughout the Federal government. Of those eighty-seven occupations, forty occupations had no external PAC hires under Schedule B during that three year period. Seven occupations had an annual average of between 21 to 50 total external PAC hires throughout the Federal government during that entire period. Six occupations had an annual average of between 51 to 100 total external PAC hires; three occupations had an annual average of between 101 to 200 total external PAC hires; and only five occupations had over 200 total external PAC hires during all of that same period in all Federal agencies. Of those five occupations, four are now covered by a new competitive examination and the fifth is scheduled to be in the next group for examination development.

Those figures must be compared with the total number of all PAC selections and the total number of employees in the Federal workforce at that time. The average total for external PAC hires under Schedule B during that three year period amounted to only 3,396 out of an average total of 15,280 for all PAC selections and represented only a small fraction of the total Federal workforce which, between 1983 and 1985, averaged 2.25 million employees, excluding postal workers.

OPM estimated, in 1981, that it would have cost approximately \$71.4 million to develop examinations (excluding operational costs) in the remaining 100 occupations where OPM had traditionally done little hiring from the PACE register. That cost projection, too, was based on prior PACE expenditures. OPM had neither the financial nor staff resources to commit those expenditures.

The following represent OPM's actual costs for test development between FY 1981 and FY 1987 for seven PAC occupations: Computer Specialist (\$742,900); Tax Technician (\$744,400); Internal Revenue Officer (\$547,300); Customs Inspector (\$554,200); Contract Specialist (\$1,038,550), and Social Insurance Claims Examiner and Social Insurance Representative (\$884,100). Additional operating costs during this same period range from \$100,000 to \$300,000 for each examination.

Accordingly, total costs actually expended by OPM for development and implementation for competitive examinations in those seven occupations amounted to \$5,461,450 between FY 1981 and FY 1987.

It is the intention of OPM to re-adopt its final rule previously adopted by OPM on August 31, 1982 (47 FR 38257), as amended on July 6, 1987 (52 FR 25193). OPM intends to continue to seek the appropriate means of examining so that examination development is accomplished on an overall cost-productive basis. OPM will continue to permit Federal agencies to utilize Schedule B as an appointing authority while it develops competitive examinations for the remaining PAC occupations.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains solely to procedures for appointment of employees by Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.
Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is republishing its final regulation under 5 CFR Part 213, originally published on August 31, 1982 (47 FR 38257) and amended on July 6, 1987 (52 FR 25193), as a proposed regulation with opportunity for comments, as set forth below:

PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; Section 213.101 also issued under 5 U.S.C. 2103; Section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5); Section 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h), and 8457.

2. Paragraph (1) of 5 CFR 213.3202 is republished without change to read as follows:

§ 213.3202 Entire Executive Civil Service.

(l) Professional and administrative career (PAC) positions at the GS-5 or GS-7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano v. Devine* and numbered as No. 79-271, which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree, and which are to be filled, under the conditions described below, by appointment of individuals other than those who at the time of such appointment already have competitive status in the Federal civil service. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and the agency has made maximum use of priority placement sources and has given appropriate consideration to available and qualified status applicants, then OPM may authorize the agency to make a new appointment under this paragraph. Such appointments shall be authorized and made pursuant to such Schedule B requirements for PAC positions as shall be prescribed in the Federal Personnel Manual. Terms of use of this appointment authority shall be established by an appointment authority agreement to be executed for each position excepted from the competitive service pursuant to this authority. The appointment authority agreement will remain in effect with respect to particular GS-5 and GS-7 PAC positions only so long as there is no competitive examination available to fill those positions. Establishment of a register under an alternative competitive examination for any PAC position(s) at grades GS-5 and GS-7 will immediately terminate all agreements permitting new Schedule B appointments to such position(s) under this authority. Individuals appointed before termination of the agreements may, however, continue to serve under those appointments at grades GS-5 and GS-7 until they are appointed to a competitive position in accordance with applicable civil service laws, rules, and regulations. An incumbent of a Schedule B PAC position may be converted to a career or career-conditional appointment under the provisions of Executive Order 12596, subject to the conditions set out in § 315.710 of this chapter.

[FR Doc. 89-1467 Filed 1-18-89; 11:57 am]

BILLING CODE 6325-C1-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 907 and 908 for the 1988-89 fiscal year established for each order. Funds to administer these programs are derived from assessments on handlers.

DATES: Comments must be received by February 3, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the *Federal Register* and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Volume Control Programs, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos. 907 (7 CFR Part 907) and 908 (7 CFR Part 908), regulating the handling of California-Arizona navel and Valencia oranges. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulations 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the

Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the navel and Valencia orange marketing orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

Marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Navel Orange Administrative Committee (NOAC) met on December 6, 1988, and unanimously recommended 1988-89 fiscal year expenditures of \$1,247,455 and an assessment rate of \$0.025 per carton of navel oranges. In

comparison, 1987-88 fiscal year budgeted expenditures were \$1,114,790 and the assessment rate was \$0.026 per carton. Expenditure categories in the 1988-89 budget are \$338,630 for program administration, \$151,020 for compliance activities, \$583,155 for the field department, \$171,300 for direct expenses, and \$3,350 for a salary reserve. Assessment income for 1988-89 is expected to total \$1,087,500, based on shipments of 43.5 million cartons of oranges. Interest and incidental income is estimated at \$50,000. The NOAC may expend operational reserve funds of \$109,955 to meet budgeted expenses. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

The Valencia Orange Administrative Committee (VOAC) met on December 6, 1988, and unanimously recommended 1988-89 fiscal year expenditures of \$694,840 and an assessment rate of \$0.028 per carton of Valencia oranges. In comparison, 1987-88 fiscal year budgeted expenditures were \$526,590 and the assessment rate was \$0.029 per carton. Expenditure categories in the 1988-89 budget are \$166,785 for program administration, \$74,380 for compliance activities, \$287,225 for the field department, \$164,800 for direct expenses, and \$1,650 for a salary reserve. Assessment income for 1988-89 is expected to total \$588,000 based on shipments of 21 million cartons of oranges. Interest and miscellaneous income is estimated at \$30,000. The VOAC may expend operational reserve funds of \$76,840 to meet budgeted expenses. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for both programs need to be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 907 and 908

Arizona, California, Marketing agreements and orders, Navel, Oranges, Valencia.

For the reasons set forth in the preamble, it is proposed that new §§ 907.226 and 908.228 be added as follows:

1. The authority citation for both 7 CFR Parts 907 and 908 continues to read as follows:

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

2. New §§ 907.226 and 908.228 are added to read as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 907.226 Expenses and assessment rate.

Expenses of \$1,247,455 by the Navel Orange Administrative Committee are authorized, and an assessment rate of \$0.025 per carton of navel oranges is established for the fiscal year ending October 31, 1989. Unexpended funds from the 1988-89 fiscal year may be carried over as a reserve.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 908.228 Expenses and assessment rate.

Expenses of \$694,840 by the Valencia Orange Administrative Committee are authorized, and an assessment rate of \$0.028 per carton of Valencia oranges is established for the fiscal year ending October 31, 1989. Unexpended funds from the 1988-89 fiscal year may be carried over as a reserve.

Dated: January 18, 1989.

William J. Doyle,
Associate Deputy Director, Fruit and
Vegetable Division.
[FR Doc. 89-1491 Filed 1-23-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 982

[FV-88-133]

Filberts/Hazelnuts Grown in Oregon and Washington; Proposed Establishment of Final Free and Restricted Percentages for the 1988-89 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes the establishment of final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1988-89 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The proposed percentages would specify the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This proposal was recommended by the Filbert/Hazelnut Marketing Board (Board), the agency responsible for local administration of the order.

DATE: Comments must be received by February 23, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, Room 2085-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the date and page number of his issue of the *Federal Register* and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tom Jacobs, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order and Agreement No. 982 (7 CFR Part 982), as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly