No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980 (45 FR 445), is amended effective 0901 G.m.t. May 15, 1980, by altering the following transition area:

Fulton, Mo.

That airspace extending upwards from 700 feet above the surface within a 5-mile radius of the Fulton Municipal Airport (latitude 38°50'22"N; longitude 92°00'17"W), and within 2 miles each side of the Hallsville, Missouri VORTAC (latitude 39°06'49"; longitude 92°07'41") 154°R; extending from the 5-mile radius area to 6 miles NW of the Fulton Municipal Airport, and within 3 miles each side of the Fulton, Missouri NDB (latitude 38°50'34"; longitude 92°00'16") 229° bearing; extending from the 5-mile radius area to 8.5 miles SW of the NDB, and within 3 miles each side of the NDB facility 065° bearing; extending from the 5-mile radius area to 8.5 miles NE of the NDB; excluding that portion which overlies the Columbia, Missouri, 700 foot transition area.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on March 10, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-8804 Filed 3-21-80; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6199; 34-16647; IC-11081]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to delegate authority to the Director of the Division of Market Regulation to grant exemptions from Rule 13e-4, tender offers by issuers, under the Securities Exchange Act of 1934 [17 CFR § 240.13e-4] pursuant to paragraph (g)(5) thereof. Paragraph (g)(5) of Rule 13e-4 provides that the Commission, upon written request or on its own motion, may exempt transactions from Rule 13e-4 as not constituting a fraudulent, deceptive or manipulative act or practice. The Commission believes that it would facilitate the timely review of exemptive requests if the authority to grant exemptions from Rule 13e-4 were delegated to the Director of the Division of Market Regulation.

EFFECTIVE DATE: March 13, 1980.

FOR FURTHER INFORMATION CONTACT: Mary E. Chamberlin (202-272-2828), Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Securities Exchange Act Rule 13e-4 (17 CFR 240.13e-4) and related Schedule 13E-4 (17 CFR 240.13e-101) impose certain filing and other requirements in the context of tender offers by issuers for their own equity securities. Paragraph (g)(5) of Rule 13e-4 provides that the Commission, upon written request or on its own motion, may exempt transactions from Rule 13e-4 as not constituting a fraudulent, deceptive or manipulative act or practice. The Commission believes that it would facilitate the timely review of exemptive requests if the authority to grant exemptions from Rule 13e-4 were delegated to the Director of the Division of Market Regulation. Accordingly, the Commission, acting pursuant to the Act of August 20, 1962, Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2) hereby amends Section 200.30-3 (17 CFR 200.30-3) of the Commission's rules relating to general organization by adding a new paragraph (a)(35) to delegate authority to the Director of the Division of Market Regulation to grant exemptions from Rule 13e-4.

The Commission finds, in accordance with 5 U.S.C. 553(b)(A) and 5 U.S.C. 553(d) of the Administrative Procedure Act, that this amendment relates solely to agency organization and procedure and, therefore, that notice and public procedures pursuant to 5 U.S.C. 553 are not necessary pursuant to subsection (b) thereof. Such amendment shall be adopted, effective immediately.

Part 200 of Title 17 of the Code of Federal Regulations is amended by adding a new paragraph (a)(35) to § 200.30-3, as follows:

§ 200.30-3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(35) To grant exemptions from Rule 13e-4 (§ 240.13e-4 of this chapter) pursuant to Rule 13e-4(g)(5) (§ 240.13e-4(g)(5) of this chapter).

* * * * *

(Pub. L. 87-592, 76 Stat. 394, (15 U.S.C. 78d-1, 78d-2))

By the Commission.

George A. Fitzsimmons,

Secretary.

March 13, 1980.

[FR Doc. 80-8515 Filed 3-21-80; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 240

[Release Nos. 33-6197; 34-16645; IC-11079]

Application of Rule 10b-6 to Purchases Pursuant to Certain Tender Offers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending Rule 10b-6, which prohibits trading by persons interested in a distribution of securities, to except certain purchases of an issuer's securities by the issuer or an affiliate pursuant to a tender offer subject to Rule 13e-4 or Section 14(d) (15 U.S.C. 78n(d)) which regulate such offers. The amendment will except such purchases if the issuer of affiliate is subject to Rule 10b-6 solely because the issuer has outstanding securities convertible into or exchangeable for the security for which the tender offer will be made. The Commission believes that adequate safeguards exist in the context of such offers and that additional regulation under Rule 10b-6 is not necessary.

EFFECTIVE DATE: March 13, 1980.

FOR FUTHER INFORMATION CONTACT: Mary E. Chamberlin (202-272-2828), Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On August 16, 1979, the Commission adopted Rule 13e-4 (17 CFR 240.13e-4) and related Schedule 13E-4 (17 CFR 240.13e-101) which impose certain filing and other requirements in the context of cash tender and exchange offers by issuers or their affiliates for equity

securities of the issuer.[1] In the Adopting Release, the Commission noted its intent to amend Rule 10b–6 (17 CFR 240.10b–6) to provide that, if the provisions of that Rule would apply to bids for or purchases of ("purchases") the subject security solely because the issuer has outstanding a class of securities which is immediately convertible into or exchangeable for the subject security, such provisions shall not apply if the bids and purchases are made in accordance with Rule 13e–4.[2] The Commission continues to believe that Rule 13e–4 provides sufficient safeguards in the context of issuer tender offers and that additional regulation of such offers under Rule 10b–6 is not necessary. Accordingly, the Commission has adopted this amendment with certain modifications.[3]

New paragraph (f) provides that the provisions of Rule 10b–6 shall not apply to purchases pursuant to an issuer tender offer if the issuer is engaged in a distribution of the subject security solely because the issurer has outstanding securities which are immediately convertible into, or exchangeable or exercisable for, the subject security, provided that the offer is subject to and made in compliance with Rule 13e–4 or, as applicable, Section 14(d) of the Act and the rules thereunder.[4] Thus, an issuer or an affiliate no longer will be required to seek exemptive relief under Rule 10b–6 to permit purchases pursuant to a tender offer for the issuer's common stock simply because the issuer has outstanding preferred stock, debentures or warrants which are convertible into, or exchangeable or exercisable for, common stock.[5]

The Commission finds, in accordance with 5 U.S.C. 553(b)(B) and 553(d) that, in view of the response by commentators on proposed Rule 13e–4 concerning the application of Rule 10b–6 to issuer tender offers and the Commission's notice of intent to amend Rule 10b–6 in the manner described above, notice and public procedures pursuant to 5 U.S.C. 533 are not necessary pursuant to subsection (b) thereof. Such amendment shall be adopted, effective immediately.

Text of Amended Rule

Part 240 of Title 17 of the Code of Federal Regulations is amended by redesignating paragraph (f) of § 240.10b–6 as paragraph (g), and adding a new paragraph (f) thereto, as follows:

§ 240.10b–6 Prohibitions against trading by persons interested in a distribution.

* * * * *

(f) If the provisions of this section would apply to bids for or purchases of any equity security pursuant to an issuer tender offer, as that term is defined in Rule 13e–4(a)(2) under the Act, or to a tender offer subject to section 14(d) of the act and the rules applicable thereto, solely because the issuer has outstanding securities which are immediately convertible into, or exchangeable or exercisable for, the security for which the tender offer is to be made, such provisions shall not apply to such bids and purchases if such bids and purchases are subject to and made in accordance with the provisions of Rule 13e–4 or section 14(d) and the rules applicable thereto.

* * * * *

(Secs. 3(b), 9(a)(6), 10(b), 13(e), 14(e), 15(c)(1), 23(a), 48 Stat. 882, 889, 891, 894, 895, 901, sec. 8, 49 Stat. 1379, sec. 5, 78 Stat. 569, 570, secs. 2, 3, 82 Stat. 454, 455, Secs. 1, 2, 3–5, 84 Stat. 1497, secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78i(a), 78j(b), 78m(e), 78o(c), 78w(a)))

By the Commission.

George A. Fitzsimmons,

Secretary.

March 13, 1980.

[FR Doc. 80–8514 Filed 3–21–80; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 16112 (August 16, 1979), 44 FR 49406 ("Adopting Release"). Rule 13e–4 applies to tender offers by issuers for their own equity securities where the issuer has a class of equity securities registered under Section 12 of the Act or is required to file periodic reports with the Commission pursuant to Section 15(d) of the Act or is a closed-end investment company registered under the Investment Company Act of 1940.

[2] Adopting Release, 44 FR 49406 n.7.

[3] Several commentators on proposed Rule 13e–4 addressed the application of Rule 10b–6 to purchases by an issuer of its securities pursuant to a tender offer subject to Rule 13e–4 and suggested that the Commission adopt some form of an amendment to Rule 10b-6 and generally clarify the extent to which both rules would apply to such purchases. *See, e.g.*, Letter from Leonard M. Leiman, Chairman, Committee on Securities Regulation of the Association of the Bar of the City of New York, to George A. Fitzsimmons, Secretary, SEC, dated February 23, 1978, contained in File No. S7–731.

[4] Paragraph (g)(5) of Rule 13e–4 excepts from the provisions of that Rule any tender offer subject to Section 14(d). Accordingly, as a general matter, a tender offer by an affiliate of an issuer for a class of the issuer's securities which is registered under Section 12 of the Act is subject to Section 14(d) rather than Rule 13e–4. Concurrently with the adoption of this amendment, the Commission is publishing for comment amendments to Rule 10b–6 which would provide that the Rule shall not apply to distributions of securities by an issuer to its employees or shareholders pursuant to employee or shareholder plans sponsored by the issuer. *See* Securities Act Release No. 6198 in this issue.

[5] However, if the common stock is the subject of any other distribution for purposes of the Rule, by or attributable to the issuer (*e.g.*, a distribution in connection with a pending acquisition), Rule 10b–6 will continue to prohibit any purchases of common stock by the issuer or any affiliate, including purchases pursuant to an issurer tender offer, absent an exemption from that Rule.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80–44; Order No. 72]

Final Regulations Implementing Section 109 of the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) hereby reissues as final regulations its interim regulations implementing section 109 of the Natural Gas Policy Act of 1978 (NGPA). The primary purpose of the final rule is to resolve the central question of interpretation of section 109 by determining the proper scope of applicability of that section. In the final rule, the Commission reaffirms the interpretation of section 109 embodied in the interim regulations that section 109 applies only to first sales of natural gas not subject to a maximum lawful price under any other section of Title I of the NGPA.

EFFECTIVE DATE: March 18, 1980.

FOR FURTHER INFORMATION CONTACT:

Mark Magnuson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 4016–I, Washingon, D.C. 20426, (202) 357–8511, or

Susan Tomasky, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 8100, Washington, D.C. 20426, (202) 357–8461.

Before Commissioners: Charles B. Curtis, Chairman; Georgiana Sheldon, Matthew Holden, Jr., and George R. Hall.

Issued: March 18, 1980.

I. Background

On December 1, 1978, the Commission issued interim regulations [1] implementing the Natural Gas Policy Act of 1978 (NGPA).[2] Under the interim regulations, the maximum lawful price established under section 109(b) is applicable to first sales of natural gas not subject to a maximum lawful price under sections 102, 103, 104, 105, 106, 107 or 108 of the NGPA.[3]

The interim regulation, which defines the scope of applicability of section 109, was based on the Commission's interpretation of the following language of section 109(a):

[1] 43 FR 56448 (Dec. 1, 1978).

[2] 15 U.S.C. 3301 *et seq.*

[3] 18 CFR 271.901

Sec. 109. Ceiling Price for Other Categories of Natural Gas.

(a) Application—The maximum lawful price computed under subsection (b) shall apply to any first sale of any natural gas delivered during any month, in the case of any natural gas which is not covered by any maximum lawful price under any other section of this subtitle, including—

(1) natural gas produced from any new well not otherwise qualifying for a higher maximum lawful price under this title; . . ." [paragraphs (2) through (4) omitted] [4]

As drafted, this language is ambiguous on its face. The language of section 109(a) which precedes paragraphs (1) through (4) appears to state a general rule of applicability which limits the scope of each of the four categories of specifically eligible (i.e., included) types of natural gas. However, listed among the four categories of gas specifically included within the scope of section 109 is "natural gas produced from any new well not otherwise qualifying for a higher maximum lawful price under this title," a category of gas that falls outside the general limitation of the preceding language.

Thus, section 109 is susceptible of two widely divergent interpretations. Read narrowly section 109(a) is intended to limit the scope of the categories which follow so that a new well which qualifies for a lower price under another section of the NGPA would be excluded from section 109. Read broadly, however, the specific categories are to be expressly included within the scope of section 109, superseding the preceding general limitation, so that a new well otherwise subject to a maximum lawful price lower than the section 109 price would nevertheless be eligible for the section 109 price.

In the interim regulation, the Commission took the view that the 109 ceiling price extended only to natural gas not qualifying for any other maximum lawful price established under Title I of the NGPA. A number of comments submitted in response to the interim regulation question that interpretation. Their objections are addressed below. For the reasons which are also set out more fully below, the Commission hereby affirms the position of the interim regulations, and adopts the interim regulation as the final regulation implementing section 109 of the NGPA.

II. Summary of Comments

Comments on the Commission's interpretation of section 109 concern, almost exclusively, its effect with regard to gas produced from new wells: in the Commission's view, natural gas from a well which qualifies for a lower maximum lawful price is ineligible for the higher price of section 109.

Objections to the Commission's interpretation rest on two grounds. Pennzoil, Tenneco, the Indicated Producers, Texaco, the Oklahoma Independent Petroleum Association (OIPA) and Exxon contend that the Commission's interpretation contravenes the language of the statute, by effectively ignoring the word "including" in section 109(a) as it pertains to the four categories described in clauses (1) through (4) of that section. They argue that the Commission is obliged to follow the "plain meaning" of the word "including" which is "something as a constituent, component, or subordinate part of a larger whole" [5] or "comprising, comprehending or embracing as a component part, item or member; enclosing within or containing".[6] Applying this plain meaning, these commenters conclude that any natural gas which falls within the specific categories of clause (1) through (4) is expressly included within the scope of section 109. In contrast, they argue, the Commission's interpretation reads the word including to mean "might include, but not necessarily including".[7] The Commission's interpretation, it is claimed, effectively eliminates from the scope of section 109 all gas described in clauses (a)(1) through (4), by requiring that a producer seeking to qualify for a section 109 price would first have to establish that the gas is not covered by any other maximum lawful price.

In addition to arguments based on the language of the statute, arguments were raised that the Commission's interpretation is contrary to Congressional intent as manifested in the Joint Explanatory Statement of the Committee on Conference (Joint Statement).[8] Grace Petroleum Corp., Texaco, the Interstate Natural Gas Association of America (INGAA), Panhandle Eastern Pipeline Co., Trunkline Gas Co., and Exxon point to language in the Joint Statement which states that section 109 applies to five enumerated categories of natural gas. Categories enumerated "(1)" through "(4)" in the Joint Statement are those categories described in clauses (1) through (4) of section 109 as drafted. Following these categories *in seriatum*, enumerated "(5)", is "any natural gas which is not covered by any maximum lawful price under any other section of this subtitle".[9] On the basis of this language, these commenters argue that Congress intended clause (1) of section 109(a) to enlarge, rather than to contract, the scope of applicability.

A comment submitted by Senator Pete V. Domenici agrees with the Commission that the language of section 109 is ambiguous on its face. However, it is his opinion that, despite the discrepancy between the language of the introductory clause and of clause (1), the intent of the Senate and House confereees was to apply the section 109(b) price to all new wells which didn't qualify for a higher price under another section.

The American Gas Association (AGA) voiced support of the Commission's interpretation of section 109(a). AGA argues that any other interpretation would negate the Congressional purpose in establishing the section 104 price, to retain the price ceiling (adjusted for inflation) applicable to interstate natural gas. They contend that if Congress had intended to price all gas supplies at a section 109 level or higher, it would have had no need to establish ceiling prices lower than the section 109 price. AGA further argues that any other interpretation of section 109 would render meaningless Section 121 of the NGPA. in 1984, Section 121 will deregulate intrastate gas subject to a contract price in excess of $1.00 per MMBtu; if all intrastate gas from new wells were subject to the 109 price of $1.45 per MMBtu, the eventual deregulation provided for under section 121 would accomplish the deregulation of virtually all intrastate gas produced from new wells.

III. Discussion

The crucial question of interpretation at issue here is the scope of applicability of section 109. Generally, the issue is whether section 109 is applicable to the four categories of natural gas described in clauses (1) through (4) of section 109(a) in addition to natural gas not

[4] NGPA, section 109(a)(1).

[5] Comment of OIPA.

[6] Comment of Exxon.

[7] Comment of Indicated Producers.

[8] S. Rep. No. 1126, 95th Cong., 2d Sess. (1978).

[9] The Joint Statement indicates that:

(T)his section applies to—

(1) Natural gas produced from any new well not otherwise qualifying for a higher ceiling price; and

(2) Natural gas committed or dedicated to interstate commerce for which a just and reasonable rate was not in effect under the Natural Gas Act; and

(3) Natural gas which was not committed or dedicated to interstate commerce and which was not subject to an existing contract; and

(4) Natural gas produced from the Prudhoe Bay Unit of the North Slope of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976; and

(5) Any natural gas which is not covered by any maximum lawful price under any other section of this subtitle. *Id.* at 90.

covered by any other maximum lawful price, or is applicable only to natural gas not covered by any other maximum lawful price.

However, natural gas falling within the categories described in clauses (2) through (4) of section 109(a), in all cases, would not be subject to a maximum lawful price under another section, so that, as a practical matter, the issue is fundamentally narrower. Specifically, the issue is whether section 109 covers natural gas not covered by any maximum lawful price under any other section and natural gas produced from any new well not otherwise qualifying for a higher maximum lawful price under Title I, or only natural gas which is not covered by any maximum lawful price under any other section. Under the former interpretation, natural gas covered by sections 104, 105, or 106, could also qualify for section 109 if natural gas were produced from a new well. Under the latter interpretation, natural gas from a new well which is covered by section 104, 105, or 106 would be held to that applicable price, unless the gas qualifies for an incentive price under section 102, 103, 107 or 108.

Many commenters contend that our interpretation of section 109 must proceed from consideration of the language of the statute, and, more specifically, from an attempt to discern the intent of Congress underlying its use of the word "including" in subsection (a).[10] The Commission notes that the common definitions of that word supplied by commenters [11] are accurate and ordinarily serviceable definitions of that word. However, we cannot agree with the commenters who suggest that such a plain meaning of "including", properly applied, supplies any plain meaning to the language of subsection (a).

For example, it has been urged that the Commission define "including" as "something as a constituent, component, or subordinate part of a larger whole". In the context of section 109(a) the category in clause (1) (gas from new wells not subject to a higher maximum lawful price) would be the constituent part, and the introductory clause which precedes the word "including" (natural gas not covered by a maximum lawful price under any other section) would be the "larger whole". In this instance, however, the "component part" of clause (1) undisputably is not part of the larger whole of subsection (a).

The Commission is not prepared to ply the word "including" so that in some contorted form it "plainly" supports either a broad interpretation of section 109(a), or a narrow one. After attempting to discern the plain meaning of the word chosen by the drafters, we cannot reach any conclusion but that the meaning of the word "including" as used in section 109 is ambiguous. We therefore must look beyond the meaning of this one word in determining the scope of applicability of section 109.

Notwithstanding the ambiguity created by the use of the word "including" the Commission believes that the text of section 109, taken as a whole, compels us to follow a narrow interpretation. As noted above, the categories of natural gas described in clauses (2) through (4) of paragraph (a) are comprehended within the introductory language, "natural gas which is not covered under any section of this subtitle". In contrast, the natural gas prescribed in clause (1) falls within that category only to the extent that it is not subject to section 104, 105 or 106, or has not qualified for an incentive price under section 102, 103, 107, or 108. If Congress had intended the result which obtains under the broad interpretation, it could have defined the scope of section 109 by reference only to two categories of gas: natural gas which is not covered by a maximum lawful price under any other section and, natural gas produced from any new well not otherwise qualifying for an incentive price under 102, 103, 107, or 108.

To embrace the broad interpretation would lead us to the anomalous conclusion that Congress drafted four parallel clauses with the intent that one clause would have the substantive effect of expanding the scope of applicability of section 109 set forth in the introductory clause, but that the other three clauses, which do not expand the scope of applicability, would have no substantive effect whatsoever. In contrast, the Commission's interpretation recognizes the introductory clause as a general limitation on the scope of applicability of section 109, and gives equal although limited, effect to the four succeeding clauses, as illustrative of the scope of applicability contained in the introductory clause, to the extent not inconsistent therewith.

We also believe that the narrow reading of section 109 is the only interpretation that preserves the statutory scheme of Title I and is consistent with other sections of the NGPA. We are persuaded that Congress established the substantive standards under sections 102 and 103 to assure that a producer receive a higher price for gas from new wells when the well is necessary for the development and production of new reserves. Enforcing these substantive standards, the Commission has provided a producer the opportunity to demonstrate that a particular new well is of the type that Congress intended should receive a price higher than the section 104 price, *i.e.*, a new well drilled to produce additional natural gas from newly discovered or developed reserves. A producer of gas from a new, onshore production well is eligible for the section 103 price if it is determined that the well is necessary to effectively and efficiently drain the reservoir. Or, a producer may qualify for a section 102 price if new reserves of gas are produced from a new well which is 2.5 miles from the nearest marker well or, is produced from a previously existing well tapped by a deepening.[12] To make available a price higher than the section 104 price simply because a producer has drilled a new well violates the statutory scheme which contemplates that higher prices will be accompanied by the development of new reserves.

Congress specifically incorporated, in section 104, the just and reasonable price for natural gas already committed or dedicated to interstate commerce in order to provide for the continued production of flowing gas at current prices, adjusted periodically for inflation. To accept the broad interpretation is to suggest that Congress intended to apply the section 104 price to flowing interstate natural gas, and then intended to create a regulatory alchemy, activated by the drilling of a new well, which changes the price applicable to that natural gas from the expressly incorporated just and reasonable rate to the higher section 109 price. We do not believe that Congress intended that result.

Unquestionably, a fundamental purpose of the incentive prices of Title I of NGPA was to encourage investment in the exploration and development of new natural gas reserves. We do not believe however that the Congress intended to affect investment decisions in a manner which would tend to induce capital investment and the use of limited resources for the production of supplies of natural gas which are already available. Yet this result is an inevitable consequence of a broad interpretation of

[10] *See supra* notes 5–7 and accompanying text.

[11] *See supra* notes 5 and 6 and accompanying text.

[12] Implicit in section 102 is the assumption that a new well drilled 2.5 miles from the nearest marker well will produce new reserves. Similarly, section 102 further encourages the production of new reserves by providing an incentive price for gas from a new well, as defined in section 2(3)(B) of the NGPA, which is deepened and completed at a depth of at least 1000 feet below the completion location of each marker well within 2.5 miles of the new well.

section 109. Under the broad view of section 109, a producer could circumvent a lower price applicable under section 104, 105 or 106, by drilling a new well, even where the well would not qualify as a new onshore production well under section 103 or would not result in the production of new gas under section 102. Producers may be tempted to use available drilling rigs to drill unnecessary wells, diverting that equipment from efforts to explore and develop new reserves. Resources would be misused, no new gas reserves would be developed, and consumers would enjoy no added benefit for the higher prices they would be required to pay. We believe that Congress could not have intended the economic waste that would result if we adopted the broad interpretation of section 109.

The Commission's interpretation of section 109 also draws support from other sections of the NGPA. Section 503(e) provides for the interim collection of the section 109 price for gas from a new well during the period in which the state jurisdictional agency is determining the eligibility of the well for an incentive price. Section 503(e)(1)(B)(i) requires the seller who proposes to make interim collections to provide a sworn statement that the gas is produced from a new well and "that such seller believes in good faith that such natural gas is eligible under this Act to be sold at a price not less than the appropriate maximum lawful price under section 109."

If section 109 were intended to be read broadly, so that a new well would always get at least the section 109(b) price, then it would have been unnecessary for Congress to require the producer to attest that the gas is both from a new well and qualifies for a price no lower than the section 109 price. Unless gas from a new well could be subject to a lower price, the second requirement of the oath statement, that the seller in good faith believe that the gas is eligible for a price no lower than the section 109 price, would be surplusage.

The Commission's interpretation of section 109 is further reinforced by reference to section 503(e)(1)(B)(iii). This provision requires that any interim collections for sales of natural gas from new wells shall be collected subject to a condition of refund in the event it is determined by the appropriate jurisdictional agency that the applicable maximum lawful price is lower than that provided by section 109. However, if section 109 is read to be applicable in all cases to natural gas from a new well, there would be no situation in which the refund obligation in section 503(e)(1) would be triggered, and thus, no reason to have provided for a refund. Only by adopting the narrow interpretation of section 109 can the Commission give full effect to the requirements of section 503(e)(1)(B)(iii) which provide for a refund when gas produced from a new well is found to be subject to a lower maximum price.

In addition we observe that the narrow interpretation is consistent with the economic assumptions on which Congress based the pricing scheme of Title I. Congress had available to it a number of studies on the impact of the provisions of Title I on natural gas prices.[13] These studies assumed the continued applicability over time of sections 104, 105 and 106 to flowing gas. If that gas could be made subject to the section 109 price simply by the drilling of a new well, the continued applicability of section 104, 105 and 106 could not be assumed. Instead, over time, less and less natural gas will be subject to these sections as producers qualify this natural gas for the section 109 maximum lawful price. It would be possible, at some point, that all natural gas which is presently subject to sections 104, 105 and 106 of the NGPA would be subject to the section 109 maximum lawful price; the section 109 price would be the minimum "maximum lawful price" which would be applicable to all natural gas reserves. A reading of section 109 which has the potential to make sections 104, 105 and 106 inapplicable to flowing natural gas is neither reasonable nor consistent with the pricing scheme of the NGPA.

We acknowledge that the support for the Commission's interpretation implicit in the text and underlying policies of the statute is not borne out by the explanation of the scope of section 109 contained in the Joint Statement. As commenters have correctly pointed out, the language of the Joint Statement suggests that Congress intended that section 109 be applicable without limitation to five distinct categories of natural gas, thereby supporting the broad interpretation.[14] As a general rule, the legislative history, including the Conference Report and the accompanying Joint Explanatory Statement, is useful and persuasive evidence of Congressional intent underlying the enactment of a statute. It is, however, no talisman for divining Congressional intent in contradiction to the policies and purpose manifest in the language of the statute and the surrounding legislative scheme. Far greater, if not controlling, weight should be given to those policies and purposes and to the language of sections 109 and 503.[15] In this case, the language of the statute taken as a whole, and the policies underlying the enactment of the NGPA compel us to conclude that Congress intended section 109 to be read narrowly, notwithstanding the suggestion to the contrary that is contained in the legislative history.

III. Other Comments

A comment received from Grace Petroleum Corp. suggests that the Commission establish a procedure whereby a producer may obtain an advisory declaration as to the applicability of section 109 to natural gas which they will produce.

Such a procedure has, to some extent, been implemented. The Commission's NGPA Hotline allows producers to obtain informal advisory opinions as to the eligibility of their natural gas for the section 109 price. An official interpretation may be obtained by submitting a written request for such an interpretation to the Commission's General Counsel.[16]

The Natural Gas Pipeline Co. of America (Natural Gas Pipeline) requests the Commission to clarify its interpretation of clause (2) of section 109(a). That clause makes the section 109(b) price applicable to natural gas committed or dedicated to interstate commerce before November 9, 1978, but not subject to a just and reasonable rate under the Natural Gas Act (NGA). Natural Gas Pipeline comments that the Commission has not made clear the types of natural gas which would fall within this category. To avoid uncertainties with regard to filing and pricing requirements, they ask the Commission to identify the circumstance under which an NGA just and

[13] These studies were prepared by the Department of Energy/Energy Information Administration, the staff of the House Subcommittee of Energy and Power, and the Congressional Budget Office. Order No. 23, issued by the Commission on March 13, 1979, in Docket No. RM79-22, refers to the studies (mimeo, pp. 31-32, n. 27).

[14] *See* discussion *supra*, note 9, and accompanying text.

[15] The language in the Joint Statement deviates from the text of the statute not only in the area of the scope of applicability of section 109 but in another area. Reference to the Joint Statement also would indicate that section 109 applies to gas which is not the subject of a "first sale". This implication from the Joint Statement, however, is belied by the statutory language. The imprecision in the discussion of section 109 in the Joint Statement is a significant factor which bears on the weight which should be accorded that discussion.

[16] The exact scope and limitations of such interpretations are fully explained in the Commission's order establishing procedures for seeking interpretation or declaratory orders under the NGPA, issued on August 7, 1979, in Docket No. RM79-65, 44 FR 48171 (Aug. 17, 1979).

reasonable rate would not have been in effect on November 8, 1978, for gas that is committed or dedicated to interstate commerce. They also request that the Commission clarify the status of natural gas sold under protective orders pending the outcome of the Supreme Court's decision in *California v. Southland Royalty Co.* (*Southland*).[17]

Section 109(a)(2) requires the application of two-fold test: first, that the natural gas was committed or dedicated to interstate commerce on November 8, 1978, and second, that that natural gas was not subject to a just and reasonable rate under the Natural Gas Act on November 8, 1978. On November 8, 1978, the Commission had in effect just and reasonable rates for all natural gas subject to the NGA except gas from Alaska and Hawaii. Accordingly, since all natural gas from the lower 48 states was subject to a just and reasonable rate on November 8, 1978, such gas would not qualify under section 109(a)(2) for the section 109(b) price.

Also, gas that was sold pending the outcome of the *Southland* case would not qualify under section 109(a)(2). In that case the Supreme Court considered whether the expiration of a contract to deliver gas to the interstate market terminated the jurisdiction of the Commission to require abandonment authorization. On May 31, 1978, the Court held that the issuance of a certificate of unlimited duration created a Federal obligation to serve the interstate market until abandonment authorization had been obtained; in other words, the service obligation imposed by the Commission survives the expiration of the private agreement that originally gave rise to the Commission's jurisdiction. As a result, gas which was committed or dedicated to interstate commerce remained committed or dedicated, and could not be diverted to the intrastate market until abandonment authorization could be obtained.

Accordingly, if a producer of gas committed or dedicated to interstate commerce did not obtain an abandonment authorization for gas sold pending the outcome of *Southland* prior to November 9, 1978, such gas would have been subject to a just and reasonable rate and therefore outside the scope of section 109(a)(2). Where the application for abandonment authorization was made before November 9, 1978, but no order permitting abandonment was issued until after that date, natural gas sold during the intervening period would still be subject to a just and reasonable rate and therefore excluded from the scope of section 109(a)(2).

[17] *California v. Southland Royalty Co.*, 436 U.S. 519 (1978).

IV. Public Procedures and Effective Date

The regulation in Subpart I of Part 271 was originally proposed for comment in November of 1978 and issued as an interim regulation on December 1, 1978.[18] For sixty days thereafter comments were received and during that period public hearings were held on the interim regulations. By this process, the Commission has complied with the provisions of section 502(b) of the NGPA which requires that "[t]o the maximum extent practicable, an opportunity for oral presentation of data, views, and arguments" be afforded for certain regulations under the NGPA.

The regulation adopted by this order rests upon consideration given to the information received during this notice, comment and hearing process. The Commission finds that further notice and public procedure with respect to these rules is unnecessary.

Subpart I of Part 271, in final form, adopts the interim regulation without modification. For this reason, the Commission is dispensing with the publication requirements of 5 U.S.C. 553(d)(1). Accordingly, Subpart I of Part 271, issued as a final regulation, is effective immediately upon issuance of this order.

[Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; Exec. Order No. 12,009, 42 FR 46267; Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350.]

In consideration of the foregoing, the interim regulations in Subpart I of Part 271, Subchapter H, Chapter I, Title 18, code of Federal Regulations are reissued as final regulations as set forth below, effective immediately.

By the commission.

Kenneth F. Plumb,

Secretary.

1. Part 271, Subpart I is reissued as final regulations as set forth below:

PART 271—CEILING PRICES

Subpart I—Other Categories of Natural Gas

§ 271.901 Applicability.

This subpart implements section 109 of the NGPA and applies to a first sale of natural gas that is not covered by a maximum lawful price under section 102, 103, 104, 105, 106, 107 or 108 of the NGPA.

[18] 43 FR 56448 (Dec. 1, 1978).

§ 271.902 Maximum lawful price.

The maximum lawful price, per MMbtu, for natural gas to which this subpart applies shall be the price specified for Subpart I of Part 271 in Table I of § 271.101(a).

§ 271.903 Filing requirements.

Any person who collects a price under this subpart shall file reports required by § 276.101.

§ 271.904 Special rule.

First sales of natural gas described in section 109(a)(1), (2) (3) or (4) of the NGPA are covered by this subpart only to the extent such first sales are not covered by any maximum lawful price under section 102, 103, 104, 105, 106, 107 or 108 of the NGPA.

[FR Doc. 80-8915 Filed 3-21-80; 8:45 am]

BILLING CODE 6450-85-M

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18 CFR Part 276

[Docket No. RM79-30]

Order Denying Rehearing

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing.

SUMMARY: This order denies rehearing of the Commission's order issued March 23, 1979, Docket No. RM79-30, which issued final Part 276 regulations under the Natural Gas Policy Act of 1978, 15 U.S.C. § 3301, *et seq.* (NGPA) (order published at 44 Fed. Reg. 18647 on March 29, 1979). On April 20, 1979, Indicated Producers filed for rehearing on the basis that the Commission erred in promulgating the "Affidavit for Filing Under § 176.104" so as to exclude natural gas which is covered by any other section of the NGPA. On May 21, 1979, the Commission granted rehearing for purposes of further consideration. Today's order denies rehearing on the ground that in Docket No. RM80-44, the Commission declined to amend its interpretation of section 109 of the NGPA, on which the subject oath statement was based. The order also clarifies that the oath statement is for compliance purposes and does not affect or amend the Commission interpretation of section 109. Accordingly, it concluded that there is no reason to change the oath statement.

FOR FURTHER INFORMATION CONTACT: Scott E. Koves, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-8317.

Final Part 276 Regulations Under the Natural Gas Policy Act of 1978

Issued March 18, 1980.

Before Commissioners: Charles B. Curtis, Chairman; Georgiana Sheldon, Matthew Holden, Jr., and George R. Hall.

On April 20, 1979, pursuant to § 286.102 of the Commission's Interim Regulations, the Indicated Producers filed an application for rehearing of the final rule establishing Part 276 of the Commission's regulations implementing the Natural Gas Policy Act of 1978 (NGPA).[1] In their application, Indicated Producers assert that the Commission erred in establishing its Affidavits for Filing Requirements under § 276.104,[2] which sets forth the Commission's reporting requirements with regard to first sales of gas which qualify for a maximum lawful price under section 109 of the NGPA. Section 276.104 requires a first seller to submit a statement that the natural gas sold in the reporting period was not committed or dedicated to interstate commerce on November 8, 1978; or if such natural gas was so committed or dedicated, a just and reasonable rate was not in effect under the Natural Gas Act on such date for the natural gas (including the basis for such conclusion); and with respect to any natural gas sold in the reporting period which was not committed or dedicated to interstate commerce on November 8, 1978, the natural gas sold in the reporting period is not subject to an existing intrastate contract as defined in § 270.102(b)(8) or intrastate rollover contract as defined in § 270.102(b)(11).[3]

These provisions parallel the language of paragraphs (1)–(3) of § 109.

On May 21, 1979, the Commission granted Indicated Producer's application for rehearing solely for purposes of further consideration of § 276.104. In their application the Indicated Producers note that § 276.104 provides no opportunity for a producer to file a statement that natural gas sold in a first sale qualifying for a section 109 price under the applicable Commission regulations [4] is not subject to a maximum lawful price under any section of Title I of the NGPA. In other words, the Affidavit for Filing contain no provision which parallels the language in subsection (a) of section 109 which language makes 109 applicable to natural gas not covered by any other section of Title I. In the Producers view, the effect of this provision is to exclude from the scope of section 109 gas which is not covered by any other section of the NGPA, by failing to treat such gas as a fifth category of gas subject to the section 109, in addition to the four categories of gas specifically included within the scope of section 109 by subsection (a)(1)–(4). Thus, the Indicated Producer would have us amend our regulations to conform to the Indicated Producer's view of the substantive provisions of section 109: they believe the introductory language of subsection (a) of section 109 is intended to broaden the scope of section 109, rather than to serve as a general limitation on the four categories of gas specifically enumerated in section 109(a)(1)–(4).

The Indicated Producer's interpretation of this section is contrary to the Commission's interpretation of section 109 that was embodied in §§ 271.904–276.104 of the interim regulations. In our Order Granting Rehearing, the Commission stated:

Since the oath statement prescribed by § 276.109(b), which is objected to in the application for rehearing, simply reflects the substantive requirements of § 271.904, it will change to the same extent that § 271.904 of the Interim Regulations changes.[5]

By separate order issued today in Docket No. RM80–44, we reaffirmed the interpretation of the substantive provisions of section embodied in the interim regulations, and have reissued the interim regulations as the final regulations implementing section 109. Because the substantive requirements of § 271.904 have not changed, there is no reason to modify the Affidavit for Filing under § 276.104.

In addition, the Commission emphasizes that the provisions of § 276.104 were promulgated for compliance purposes, and were not intended to parallel every substantive provision of section 109. These provisions do not affect or amend in any way the Commission's interpretation of section 109.

Accordingly, we find that, upon further consideration, Indicated Producers have raised no new facts or principles of law that warrant a modification of our order issued March 23, 1979, in Docket No. RM79–30, and that good cause exists to deny their application for rehearing of that order.

The Commission orders:

The Application of Indicated Producers For Rehearing filed April 20, 1979, in Docket No. RM79–30 is, in all respects, denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–8928 Filed 3–21–80; 8:45am]

BILLING CODE 6450–85–M

[1] § 286.102(a) of the Commission's regulations permits any person aggrieved by any order or regulation to file a petition for rehearing within 30 days after the order or regulation is issued. Part 276 was issued in Docket No. RM79–30, on March 23, 1979 (44 Fed. Reg. 18647 (March 29, 1979)).

[2] The form for submission of Affidavits for Filing Under § 276.104 is prescribed under § 276.109(b).

[3] 18 C.F.R. § 271.104(b)–(c).

[4] 18 C.F.R. Part 271, Subpart I.

[5] Order Granting Rehearing . . ., Docket No. RM79–30 (issued May 21, 1979).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 80–88]

Country of Origin Marking—Customs Regulations Amended

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Customs has become aware of a possible conflict between two sections of the Customs Regulations relating to the redelivery to Customs custody of a previously released imported article so that it may be marked with the country of origin. This document amends § 134.3 to clarify that a demand for redelivery to Customs custody of an imported article for country of origin marking must be made not later than 30 days after entry or examination of the article, as required in § 141.113. The amendment is not considered to be significant.

EFFECTIVE DATE: March 24, 1980.

FOR FURTHER INFORMATION CONTACT: Samuel A. Orandle, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202–566–8237).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that every imported article (or its container) shall be marked to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134), contains the country of the origin marking regulations.

Section 134.3, Customs Regulations (19 CFR 134.3), provides that articles previously released may be ordered redelivered to Customs custody, and articles held in Customs custody shall not be delivered—

(1) Until every imported article (or its container) previously released from Customs custody or held in Customs custody for inspection, examination, or appraisement, is marked properly; or

(2) Until estimated duties payable under 19 U.S.C. 1304(c) for failure to mark the article properly, or adequate security for those duties, are deposited.

Section 141.113, Customs Regulations (19 CFR 141.113), provides that a demand for the redelivery to Customs custody for the purpose of requiring articles to be marked legally shall be made no later than 30 days after—

(1) The date of entry, in the case of articles examined in public stores and places of arrival, such as docks, wharfs, or piers; or

(2) The date of examination, in the case of articles examined at the importer's premises or other appropriate places as determined by the district director of Customs.

Customs has become aware that these two sections of the Customs Regulations may be interpreted to be in conflict. Section 134.3 provides that redelivery to Customs custody of a previously released article may be ordered at *any* time until the article has been marked with the country of origin, or until estimated duties for failure to mark the article or adequate security for those duties are deposited. Section 141.113, however, provides that demand for the return to Customs custody of previously released articles for legal marking shall be made within *30 days* after entry or examination.

After review of the matter, Customs has determined that the existing practice of requiring that a demand for redelivery of articles for country of origin marking be made within 30 days after entry of examination should continue. Therefore, to clarify the matter, section 134.3 is being amended to provide that demand for redelivery of articles for country of origin marking must be made within the 30-day time period required in section 141.113. Failure to demand redelivery of articles for country of origin marking within 30 days after entry of examination does not affect the collection of the 10 percent additional duty as provided for in section 134.2, Customs Regulations.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely clarifies existing regulations and imposes no additional duty or burden on the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and pursuant to 5 U.S.C. 553(d)(2), a delayed effective date is not required.

Inapplicability of EO 12044

This document is not subject to the Treasury Department directive implementing Executive Order 12044, "Improving Government Regulations", because the amendment was in process before May 22, 1978, the effective date of the directive.

Drafting Information

The principal authors of this document were Shannon McCarthy and Paul G. Hegland, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendment to the Regulations

PART 134—COUNTRY OF ORIGIN MARKING

The heading and text of § 134.3, Customs Regulations (19 CFR 134.3), are amended to read as follows:

§ 134.3 Delivery withheld until marked and redelivery ordered.

(a) Any imported article (or its container) held in Customs custody for inspection, examination, or appraisement shall not be delivered until marked with its country of origin, or until estimated duties payable under 19 U.S.C. 1304(c), or adequate security for those duties (see § 134.53(a)(2)), are deposited.

(b) The district director may demand redelivery to Customs custody of any article (or its container) previously released which is found to be not marked legally with its country of origin for the purpose of requiring the article (or its container) to be properly marked. a demand for redelivery shall be made, as required under § 141.113(a) of this chapter, not later than 30 days after—

(1) The date of entry, in the case of merchandise examined in public stores and places of arrival, such as docks, wharfs, or piers; or

(2) The date of examination, in the case of merchandise examined at the importer's premises or such other appropriate places as determined by the district director.

(c) Nothing in this part shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

(R.S. 251, as amended, secs. 304, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1304, 1624))

R. E. Chasen,

Commissioner of Customs.

Approved: March 10, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 80-8923 Filed 3-21-80; 8:45 am]

BILLING CODE 4810-22-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

22 CFR Chapter XII

Establishment of Chapter and Adoption of Regulations for Employee Responsibilities and Standards of Conduct

AGENCY: United States International Development Cooperation Agency.

ACTION: Final Rule: Establishment of a Chapter.

SUMMARY: On October 1, 1979, the President established the United States International Development Cooperation Agency ("IDCA") pursuant to a Reorganization Plan and an Executive Order. IDCA establishes Chapter XII in Title 22 of the Code of Federal Regulations and adopts regulations concerning the responsibilities and standards of conduct of IDCA employees.

EFFECTIVE DATE: March 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mrs. Sylvia Rosemergy, (202) 632-9354.

SUPPLEMENTARY INFORMATION: On July 19, 1979, the President, by Executive Order 12147 (44 FR 42957, July 23, 1979) declared Sections 2, 3, and 4 of Reorganization Plan No. 2 of 1979 immediately effective to establish the positions of Director, Deputy Director, and Associate Directors of the United States International Development Cooperation Agency ("IDCA"). On October 1, 1979, the President, by Executive Order 12163 "Administration of Foreign Assistance and Related Functions" (44 FR 56673, October 2, 1979) ("the Executive Order") declared effective Sections 1, 5, 6, and 8 of Reorganization Plan No. 2 of 1979 and established IDCA. In Executive Order 12163, the President delegated (exclusive of functions reserved in the Executive Order) to the Director of IDCA the functions conferred upon him by the Foreign Assistance Act of 1961, as amended, the Latin American Development Act, Section 402 of the Mutual Security Act of 1954, Section 413(b) of the International Security Assistance and Arms Export Control

Act of 1976, and Title IV of the International Development Cooperation Act of 1979.

The Executive Order also stated: "Except to the extent inconsistent with this order, all delegations of authority, determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued, or entered into with respect to any function affected by this order and not revoked, superseded, or otherwise made inapplicable before the date of this order, shall continue in full force and effect until amended, modified or terminated by appropriate authority."

Except for technical editorial changes, the regulations concerning employee responsibilities and standards of conduct are the same as those governing the employees of the Department of State, the Agency for International Development, and the International Communications Agency (22 CFR Part 10).

Dated: March 17, 1980.

Thomas Ehrlich,

Director.

1. Accordingly, there is hereby established a new chapter in Title 22 of the Code of Federal Regulations entitled:

CHAPTER XII—UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

PART 1203—EMPLOYEE RESPONSIBILITIES AND CONDUCT

2. Pursuant to Executive Order 11222 of May 8, 1965, as amended, and 5 CFR 735.104, the United States International Development Cooperation Agency hereby establishes a new Part 1203, Employee Responsibilities and Conduct, in Chapter XII of 22 CFR.

In establishing Part 1203 of 22 CFR, Employee Responsibilities and Conduct, IDCA adopts the language of the regulations found in 22 CFR 10.735–101 through 10.735–411 as its rules for employee responsibilities and standards of conduct. The regulations in 22 CFR Part 10 remain in place. The regulations are adopted as Part 1203 of 22 CFR Chapter XII with the following amendments:

§ 1203.735–102 [Amended]

3. In § 1203.735–102, paragraph (a) is amended to read: "'Agency' means the United States International Development Cooperation Agency ("IDCA")".

§ 1203.735–103 [Amended]

4. In § 1203.735–103, paragraph (a) is amended by striking the third sentence, and inserting in lieu thereof: "The Counselor for IDCA is the General Counsel".

§ 1203.735–202 [Amended]

5. In § 1203.735–202, paragraph (c) is amended by replacing "State and ICA" where those words appear with "IDCA".

§ 1203.735–204 [Amended]

6. In § 1203.735–204, paragraph (c) is amended by replacing "(3 FAM 628, for AID see Handbook 18)" with "(see AID Handbook 18)"; and paragraph (e) is amended by replacing the last sentence with "The appropriate officer for IDCA is the Assistant Director for Administration".

§ 1203.735–206 [Amended]

7. In § 1203.735–206, paragraphs (b) and (c) are deleted as inapplicable to IDCA.

§ 1203.735–211 [Amended]

8. In § 1203.735–211, paragraph (a) is amended by replacing 'State, AID, or ICA" with "IDCA"; paragraph (e) is amended in subparagraph (1) by replacing in the last sentence "State, AID, and ICA" with "IDCA", and in subparagraph (2) by replacing the last sentence with "The appropriate officer for IDCA is the Assistant Director for Administration"; and paragraph (f) is amended by replacing "State, AID, or ICA" with "IDCA".

§ 1203.735–217 [Amended]

9. In § 1203.735–217, paragraph (a) is amended in the second sentence by inserting "the Director for IDCA", immediately after the colon and by deleting the rest of the sentence.

§ 1203.735–401 [Amended]

10. In § 1203.735–401, the first paragraph is amended by replacing "State, AID, and ICA" with "IDCA"; and paragraph (c)(4) is amended by deleting the lists of position titles for State, AID and ICA immediately after the colon, and by replacing the colon with a period.

§ 1203.735–405 [Amended]

11. In § 1203.735–405, paragraph (b) is amended by deleting, "Form OF–107 for State and ICA, Form AID 4–450 for AID" and inserting in lieu thereof "Form AID 4–450 for IDCA".

§ 1203.735–407 [Amended]

12. In § 1203.735–407, paragraph (b) is amended by striking the last sentence.

The complete text of the regulations as adopted above will appear in Chapter XII of Title 22 of the Code of Federal Regulations.

The table below reflects the section numbers in the newly adopted Part 1203, and the section numbers in Part 10 to which the new Part 1203 provisions correspond.

Part 10	*Part 1203*
10.735–101	1203.735–101
10.735–102	1203.735–102
10.735–103	1203.735–103
10.735–104	1203.735–104
10.735–105	1203.735–105
10.735–201	1203.735–201
10.735–202	1203.735–202
10.735–203	1203.735–203
10.735–204	1203.735–204
10.735–205	1203.735–205
10.735–206	1203.735–206
10.735–207	1203.735–207
10.735–208	1203.735–208
10.735–209	1203.735–209
10.735–210	1203.735–210
10.735–211	1203.735–211
10.735–212	1203.735–212
10.735–213	1203.735–213
10.735–214	1203.735–214
10.735–215	1203.735–215
10.735–216	1203.735–216
10.735–217	1203.735–217
10.735–301	1203.735–301
10.735–302	1203.735–302
10.735–303	1203.735–303
10.735–304	1203.735–304
10.735–305	1203.735–305
10.735–306	1203.735–306
10.735–401	1203.735–401
10.735–402	1203.735–402
10.735–403	1203.735–403
10.735–404	1203.735–404
10.735–405	1203.735–405
10.735–406	1203.735–406
10.735–407	1203.735–407
10.735–408	1203.735–408
10.735–409	1203.735–409
10.735–410	1203.735–410
10.735–411	1203.735–411

[FR Doc. 80–8779 Filed 3–21–80; 8:45 am]

BILLING CODE 4710–02–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 880

[Docket Number R–80–663]

Section 8 Housing Assistance Payments Program for New Construction

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

ACTION: Final rule.

SUMMARY: On October 15, 1979, a revision to the Section 8 new construction program regulation was published which amended Part 880 in its entirety. Subsequent to publication of the final rule, concern was expressed to the Department regarding an incongruity in the provisions of the regulation related to advanced marketing to lower-income families from impacted jurisdictions. A change is now being made to correct this. A change is also

being made to permit increases in the replacement cost limits in high cost areas from 50 percent to an amount not to exceed 75 percent to make the Section 8 program consistent with the HUD mortgage insurance programs in this respect. In addition, several miscellaneous corrections to the October 15, 1979 publication are being made.

EFFECTIVE DATE: April 23, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. George O. Hipps, Jr., Office of Multifamily Housing Development, Room 6128, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, 202–755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: A proposed rule for the Section 8 new construction program to amend the program regulations in their entirety was published on June 12, 1979. This rule, among other things, proposed to prohibit residency preferences and required marketing to non-elderly families from impacted jurisdictions in advance of marketing to other prospective tenants in order to expand housing opportunities for lower-income families. These provisions in the proposed rule generated an exceptionally large volume of comments, including many lengthy and thoughtful comments on these specific issues. In light of the comments and concerns expressed by the Congress and others, the provision relative to the prohibition of residency preferences was changed substantially in the final rule published October 15, 1979. The advanced marketing requirement remained essentially the same.

After publication of the final rule, it became apparent that the change relative to residency preferences and its relation to the advanced marketing requirement created a certain incongruity in the potential operation of these two associated provisions.

On November 9, 1979 a Notice of Suspension of Enforcement was published with respect to the requirement for advanced marketing to lower-income families from impacted jurisdictions contained in § 880.601(a)(3) pending issuance of a clarification of the nature and extent of this requirement and its relation to other aspects of the new construction program. Upon further consideration of the concerns expressed over this issue and an examination of the practical mechanics of implementing this rule as originally written or with additional clarification, the Department has determined that a change to the rule offers the best solution and will render unnecessary a clarification as described in the November 5 Notice of Suspension of Enforcement. The requirement for advanced marketing to families from impacted jurisdictions is, therefore, being deleted. However, the Department does not wish to indicate by this change that there is any lessening of our efforts to meet statutory objectives and requirements to provide increased housing opportunities for lower-income families, particularly minority families.

With respect to the change from 50 percent to 75 percent in the permitted increase in the limitation on replacement cost, Section 314 of the Housing and Community Development Amendments of 1979 amended the National Housing Act to raise the high cost area maximum mortgage amounts for HUD mortgage insurance programs by an amount not to exceed 75 percent. The amendment also permits the Secretary to increase the mortgage amount limitations on a project by project basis by an amount not to exceed 90 percent in such high cost areas.

Because of the Department's desire to make the Section 8 and mortgage insurance programs as consistent as possible in appropriate processing procedures and programmatic requirements, a conforming change is being made to § 880.204(c)(iii) to raise the 50 percent high cost factor to 75 percent. Final implementing regulations for the HUD mortgage insurance programs were published in the **Federal Register** on January 21, 1980, pursuant to the amendment to the National Housing Act. With respect to the Section 8 program, the Department finds it unnecessary to include the provision for a 90 percent high cost factor when warranted on a project by project basis since the Assistant Secretary for Housing may grant waivers to the Section 8 regulation on a case by case basis under current authority. This waiver authority is not found in the mortgage insurance program regulations.

In addition, the October 15, 1979 publication contained several minor errors which are now being corrected.

The undersigned has determined that notice and prior public procedure are unnecessary for this rule because of its history as outlined above. The advanced marketing requirement was subjected to public comment as part of a proposed rule published June 12, 1979. Substantial objection to the provision ultimately resulted in its suspension on November 5, 1979. The requirement is now being withdrawn permanently. There would be no reason to solicit further comment on this action.

It should also be noted that this rule provides benefits and relieves existing restrictions in regard to replacement cost limits in high cost areas. In light of the current economic situation, it is urgent that these benefits be made available as soon as possible. Publishing a notice of proposed rulemaking and giving the public an opportunity to comment on this rule would cause a substantial delay in making urgently needed benefits available. Therefore, the undersigned also finds that prior notice and public procedure on this rule would be contrary to the public interest and that it is not necessary to delay its effective date for the 30 day period provided in 5 U.S.C. 553(d).

HUD has made a Finding of Inapplicability regarding requirements under the National Environmental Policy Act of 1969 in accordance with HUD procedures. A copy of this Finding of Inapplicability is available for public inspection during regular business hours at the office of the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044.

Accordingly, Part 880 is amended as follows:

§ 880.102 [Amended]

1. In § 80.102(c), sixth line, change "that" to "than."

2. Section 880.201, *Definitions,* is revised to delete the definition of "Impractical Jurisdiction."

§ 880.204 [Amended]

3. In § 880.204(c)(iii), the phrase "by up to 50 percent" is changed to "by an amount not to exceed 75 percent."

§ 880.205 [Amended]

4. In § 880.205, the second paragraph (6) should be (b).

§ 880.205 [Amended]

5. In § 880.205(f), fourth line, change "paragraphs (b) through (c)" to "paragraphs (b) through (d)."

§ 880.210 [Amended]

6. In § 880.210(d), ninth line, change "within" to "with."

7. Paragraph (h) of § 880.305, *Contents of preliminary proposal,* is revised as follows:

§ 880.305 Contents of preliminary proposals

* * * * *

(h) A signed certification on the prescribed form of the owner's intention to comply with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil

Rights Act of 1968, Executive Order 11063, Executive Order 11246, and Section 3 of the Housing and Urban Development Act of 1968, and that the owner will undertake marketing activities as required by § 880.601(a).

§ 880.301 [Amended]

* * * * *

8. In § 880.307(b), twentieth line, delete the semicolon after "extent of displacement" in the phrase "extent of displacement and feasibility of relocation;" * * *"

9. Paragraph (a)(5) of § 880.308, *Contents of final proposal,* is revised as follows:

§ 880.308 Contents of final proposal.

(a)* * *

(5) A statement of the marketing activities the owner intends to take in accordance with the requirements of § 880.601(a)(3). Such efforts might include: Participation in regional or sub-regional application pools and clearinghouses; establishment of a referral system with PHAs, other public agencies and Section 8 owners/managers in the surrounding area; and contact with and provision of information about the project to employers and their employees, labor unions, State or areawide employment service centers and interested community groups.

§ 880.403 [Amended]

10. In § 880.403, delete the word "or" at the end of paragraph (a)(4), change the period at the end of paragraph (a)(5) to a semicolon, and insert the word "or" at the end of paragraph (a)(5).

§ 880.502 [Amended]

11. In § 880.502(a)(2), sixth line, change "(ii) 30 years, or (iii) 40 years * * *" to "(ii) 30 years, or 40 years * * *"

12. Paragraph (a)(3) of § 880.601, *Responsibilities of Owner,* is revised as follows:

§ 880.601 Responsibilities of Owner.

(a)* * *

(3) With respect to non-elderly family units, the owner must undertake marketing activities in advance of marketing to other prospective tenants in order to provide opportunities to reside in the project to non-elderly families who are least likely to apply, as determined in the Affirmative Fair Housing Marketing Plan, and to non-elderly families expected to reside in the community by reason of current or planned employment.

* * * * *

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., March 17, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 80-8824 Filed 3-21-80; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[CGD 77-183]

Navigation Safety Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing carriage of continuous depth sounding recording equipment and testing of other equipment by vessels of 1600 or more gross tons before entering or getting underway on United States waters on the Great Lakes. The lack of depth contours below 30 feet on charts of the Great Lakes and absence of demonstrated utility of a continuous echo depth sounding recorder on the Great Lakes makes required carriage of this equipment unnecessary. In addition, strict compliance with the existing equipment testing regulations requires vessels to unnecessarily re-test equipment every time they re-enter United States waters incident to a single passage. Strict compliance would require vessels entering the Great Lakes via the St. Lawrence Seaway to test their steering gear and other critical equipment while transiting the relatively confined channels of the St. Lawrence River, a practice which may create an unsafe condition.

This regulation eliminates the requirement that vessels navigating on the Great Lakes be equipped with a device which can continuously record the readings of the vessel's echo depth sounding device, allows vessels which have initially complied with equipment testing requirements of Part 164 to continue to their next port of call on the Great Lakes without re-testing, and allows vessels entering the Great Lakes from the St. Lawrence Seaway to complete equipment test requirements within one hour of passing Wolfe Island. The result of this rulemaking is a more reasonable and safe approach to navigation requirements on the Great Lakes.

EFFECTIVE DATE: March 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy E. Foley, Office of Marine Environment and Systems (G-WLE-4/11), Room 1608, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593, (202) 426-4958. Normal office hours are between 7:30 a.m. and 4:30 p.m. Monday through Thursday.

SUPPLEMENTARY INFORMATION: On Tuesday, September 4, 1979, the Coast Guard published a proposed rule (44 FR 51620) concerning these amendments. The public was given until October 17, 1979 to submit comments. Two comments were received.

Drafting Information

The principal persons involved in drafting this proposal are: Mr. Timothy E. Foley, Project Manager, Office of Marine Environment and Systems and Lieutenant Jack Orchard, Project Counsel, Office of the Chief Counsel.

Discussion of Major Comments

One commenter expressed support for the amendment eliminating the requirement that vessels re-test their equipment each time a vessel re-enters the United States waters on the Great Lakes and considers the present testing requirements impractical because Great Lakes sailing courses frequently cross the international boundary line between the United States and Canada. The commenter finds it particularly impractical in confined waters where the performance of such tests could increase the risk of collision or grounding. Both commenters supported the amendment which would eliminate the requirement that vessels navigating on the Great Lakes be equipped with a continuous echo depth sounding recorder. One commenter considered the continuous recording device to be of dubious benefit while the other considered it expensive to install and maintain while providing no useful navigational information. No comments directly concerning the proposal to amend the equipment testing requirements for vessels entering United States waters via the St. Lawrence River were received.

Evaluation

The Coast Guard has evaluated this final rule under the Department of Transportation's "Regulatory Policies and Procedures", published on February 26, 1979 (44 FR 11034). A copy of the Final Evaluation may be obtained from Commandant (G-CMC/24), U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593.

This rule finalizes an exemption to the current regulations and is thus given an immediate effective date under the authority of 5 U.S.C. 553(d)(1).