Sunshine Act Meetings

Federal Register
Vol. 54, No. 245
Friday, December 22, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY, NATIONAL HERITAGE CORRIDOR COMMISSION

Meeting

Notice is hereby given in accordance with section 552b of title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, January 4, 1990.

The Commission was established pursuant to Public Law 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the Grafton Municipal Building, 30 Providence Road (Route 122), Grafton, Massachusetts for the following reasons:

1. Report of the Chairman;
2. Report of the Executive Director;
3. Report of the Treasurer;
4. Committee Reports;
5. Report on the Cultural Heritage and Land Management Plan;
6. Discussion of Orientation Program for Ad Hoc Committees on Plan Implementation;
8. Discussion of Policy for Responding to Requests Made to Commission;
9. Discussion of Commission Staffing/ Consulting Needs;
10. Public Comments.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone (508) 278-9400 or (508) 278-5124.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

James Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 89-29911 Filed 12-20-89; 3:07 am]

BILLING CODE 4310-70-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 19, 1989, 9:30 a.m.

PLACE: 999 E Street NW., Washington, D.C.

Due to extraordinary circumstances, and in accordance with 11 CFR 2.7(b), the Commission held a special closed meeting for the purpose of considering the selection of an Inspector General, pursuant to 11 CFR 2.4(b)(1).

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Federal Election Commission.

[FR Doc. 89-29917 Filed 12-20-89; 3:08 pm]

BILLING CODE 6715-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 51971, December 19, 1989].

STATUS: Open meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, December 14, 1989.

CHANGE IN THE MEETING: Deletion.

The following item will not be considered at an open meeting to be held on Thursday, December 21, 1989, at 11:00 a.m.:

Consideration of whether to grant Delta Government Options Corp. registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934. For further information, please contact Richard Konrath at (202) 272-2388 or Gordon K. Fuller at (202) 272-2414.

Please also note that the open meeting on the above date has been rescheduled from 10:00 a.m. to 11:00 a.m.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Anthony Ain at (202) 272-2400.

Dated: December 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29836 Filed 12-19-89; 4:45 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 245
Friday, December 22, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 90365-9065]

Proposed Revision of FIPS PUB 151, Posix; Portable Operating System Interface for Computer Environments

Correction

In notice document 89-8814 beginning on page 14829 in the issue of Thursday, April 13, 1989, make the following correction:

On page 14831, in the first column, in the third complete paragraph, in the second line, remove "October 13, 1989" and insert "6 months after publication in the Federal Register".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150-AD23

Revision of Fee Schedules: Radioisotope Licenses and Topical Reports

Correction

In proposed rule document 89-28157 beginning on page 49763 in the issue of Friday, December 1, 1989, make the following corrections:

1. On page 49763, in the third column, in the third line, "NCR" should read "NRC".

2. On page 49764, in the first column, under "*Section 170.11 Exemptions*", in the seventh line, insert "the" after "under".

3. On the same page, in the same column, under "*Section 170.11 Exemptions*", in the second paragraph, in the 12th line, "institutions" should read "institution".

4. On the same page, in the second column, under "*Section 170.12 Payment of Fees*", in the second paragraph, in the fourth line, "were" should read "where".

5. On the same page, in the third column, in the last complete paragraph, in the first line, insert "which" after "method".

6. On page 49766, in the first column, under "VI. REGULATORY ANALYSIS, in the fourth line, "(32 U.S.C. 9701) should read (31 U.S.C. 9701).

7. On the same page, in the third column, in the fourth complete paragraph, in the fifth line, "533" should read "553".

8. On page 49767, in the third column, under § 170.12(h), in the seventh line, "licenses" should read "licensees".

9. On page 49768, in the second column, in the table of "Schedule of Materials Fees", under entry 1.A., in the fifth line, "ore" should read "more".

10. On the same page, in the same column, in the same table, under entries 1.C. and 1.D., in the sixth and ninth lines after the "colon" add footnote 4.

11. On page 49769, in the third column, in the same table, under entry 3.O., in the fifth line, after the "colon" add footnote 5.

12. On page 49770, in the first column, the entry for 5.A. should read "Licenses specifically authorizing use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:"

13. On the same page, in the same column, the entry for 5.B. should read "Licenses specifically authorizing use of byproduct material for field flooding tracer studies:"

14. On the same page, in the same column, under entry 7.B., in the 12th line, "devices" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 13, 21, 67, 137, 199

[Docket No. 26020; Amdt. Nos. 11-32, 21-67, 129-19, 137-13, 199-2]

RIN 2120-AD24

Organizational Changes and Delegations of Authority

Correction

In rule document 89-22317 beginning on page 39288 in the issue of Monday, September 25, 1989, make the following corrections:

§ 11.25 [Corrected]

1. On page 39290, in the first column, under § 11.25, in the first line, "11.25(b)(iv)" should read "11.25(b)(2)(iv)".

§ 21.215 [Corrected]

2. On page 39291, in the first column, under § 21.215, in the first line, "Application" should read "Applications".

§ 67.19 [Corrected]

3. On page 39292, in the first column, under § 67.19, in the last line, "Managers" should read "Manager".

§ Appendix A to Part 129 [Corrected]

4. On page 39294, in the first column, under "Appendix A to Part 129", in the second line, "(0)" should read "(b)".

§ 137.77 [Corrected]

5. On the same page, in the third column, under § 137.77, in the first line, the (c) should be removed.

§ 199.27 [Corrected]

6. On page 39296, in the third column, under § 199.27, in the second line, insert quotation marks (") after the word "function".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ANE-35; Amdt. 39-6411]

Airworthiness Directives; General Electric Company (GE) CF6-6 Series Turbofan Engines

Correction

In rule document 89-28933 beginning on page 51015 in the issue of Tuesday, December 12, 1989, make the following corrections:

§ 39.13 [Corrected]

1. On page 51016, in the third column, in § 39.13, under **General Electric Company:**, in the ninth line, "Step" should read "Stage".

2. On the same page, in the same column, in § 39.13, in the last line, "Table 3" should read "Table 1".

BILLING CODE 1505-01-D

federal register

Friday
December 22, 1989

Part II

Department of Agriculture

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 709, 1403, 1404, and 1408

Debt Settlement Policies and Procedures; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 709, 1403, 1404, and 1408

RIN 0560-AA38

Debt Settlement Policies and Procedures

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: A proposed rule was published on June 19, 1989 at 54 FR 25718 with respect to the financial management practices of the Agricultural Stabilization and Conservation Service (ASCS) and the Commodity Credit Corporation (CCC). This final rule adopts, with minor changes, the provisions of the proposed rule. Accordingly, this final rule amends 7 CFR parts 709, 1403 and 1408 which relate to the administration of ASCS and CCC programs in order to set forth the policies and procedures of CCC regarding delinquent debts arising out of domestic transactions and the policies and procedures of CCC and ASCS regarding the assignment of payments. This rule sets forth the policies and procedures CCC will use to settle debts owed to CCC and other agencies of the United States. To the extent practicable, the final rule provides that CCC policies and procedures conform to the general guidelines set forth in the Federal Claims Collection Act, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3711, *et seq.*). To the extent practicable, CCC will also follow the provisions of the Federal Claims Collection Standards (4 CFR parts 101–105) with respect to administrative actions undertaken by CCC to settle claims. In addition, this final rule sets forth the manner in which CCC and ASCS payments may be assigned at 7 CFR part 1404 and deletes the current provisions at 7 CFR part 709.

EFFECTIVE DATE: December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Paula Roney, Claims Administration and Contract Procedures Branch, Fiscal Division, ASCS, (202) 447–4061.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs and prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under DR 1512–1. No sunset review date has been set for this regulation because review is ongoing.

This action will not increase the federal paperwork burden for individuals, small businesses, and others and will not have a significant impact on a substantial number of small entities. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

The Federal Claims Collection Act of 1966 (the Act), as amended by the Debt Collection Act of 1982 (31 U.S.C. 3711, *et seq.*), and the joint regulations promulgated thereunder by the Comptroller General and the Attorney General (4 CFR Parts 101–105) provide minimum standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. The CCC Charter Act, as amended (15 U.S.C. 714, *et seq.*), provides that CCC shall have authority to make final and conclusive settlement and adjustment of any claims by or against it irrespective of the amount at issue. CCC is, therefore, not subject to the provisions of the Federal Claims Collection Act or its implementing regulations. However, it has been CCC policy to follow the Federal Claims Collection Standards (FCCS) to the maximum practicable extent. The FCCS require each federal agency to take aggressive action to collect debts owed it, and to cooperate with other federal agencies in their debt collection activities. Federal agencies are required to promulgate regulations consistent with the standards.

Currently, CCC follows procedures at 7 CFR part 13 for the offset or withholding of amounts approved by ASCS county committees for disbursement to agricultural producers. In all other cases, offset, withholdings, and stop payment policies at 7 CFR part 1408 are applicable. For procedures governing referrals of claims to the Department of Justice or the General Accounting Office the procedures in FCCS (4 CFR parts 101–105) may be followed. The regulations at 7 CFR part 1403 currently govern CCC policies regarding the assessment of late payment charges, referral of delinquent debts to credit reporting agencies, and referral of delinquent debts to IRS for tax refund offset.

This final rule deletes 7 CFR part 1408 which sets forth the setoff, withholding and stop payment policies of CCC and establishes under a single heading at 7 CFR part 1403, CCC policies and procedures governing the administrative collection, discharge, and referral of debts.

This regulation is necessary to protect the financial integrity of many federal agricultural programs by ensuring the Government will be able to collect, or otherwise settle, debts owed it by various individuals, organizations, and corporations.

This rule protects the right of CCC and ASCS to collect delinquent debts when payments have been assigned by allowing offset of any debts owed to CCC or ASCS by an assignor before payment is made to an assignee in accordance with the provisions of agricultural programs administered by county and State ASCS committees. Currently, offset may only be made of those debts entered on the applicable debt record prior to the date an assignment was accepted by CCC or ASCS. This change in policy would deter the circumvention of offset by such practices as the assignment of payments to friends, relatives, partners, or subsidiary corporations, as well as increase the ability of CCC and ASCS to recoup delinquent debts. This change would apply only to those debts owed to CCC and ASCS; the current procedures would continue to apply to requests for offset received from other federal agencies.

Under the final rule, the late payment interest rate CCC uses is a departure from the standard late payment rate prescribed by 31 U.S.C. 3717, which is based on the Treasury Department's current value of funds rate, as well as a change from the rate published in the proposed rule. Currently, the late payment interest rate is set by CCC in a notice published in the **Federal Register**. Such rate has been set at a fixed 13 percent and remained constant in spite of a dramatic fluctuation in interest rates in the past six years. The proposed rule provided that the late payment rate assessed on delinquent debts be based upon the rate CCC pays Treasury for funds. It was proposed that late payment interest be assessed at a rate three percentage points higher than the CCC borrowing rate in effect on the date the debt became delinquent. In addition, for debts which remained delinquent for ninety (90) days, interest at an additional six percent would have been assessed.

Upon receipt of a comment on the proposed rule which asserted that the proposed late payment interest and additional interest rates were excessively high and would drive farmers deeper into debt, further review was made of CCC's proposed interest rates. Following this review it has been determined that CCC's late payment interest rate should be lowered to equal the rate of interest assessed under the Prompt Payment Act. Also, it was determined that for debts which remain delinquent for ninety (90) days, the additional interest assessed will be reduced from six percentage points to three percentage points above the late payment interest. With these changes, debtors will have an incentive to pay their debts timely without substantially increasing the amount of their debt. Furthermore, since the Prompt Payment Act rate has consistently been higher than CCC's borrowing rate, CCC will still be able to recover its borrowing costs. In addition, by charging debtors the same rate of interest on late payments as CCC pays if its payments are late, the problem of unequal treatment is eliminated.

This final rule also deletes 7 CFR part 709, which sets forth the manner in which ASCS and CCC payments may be assigned, and sets forth at 7 CFR part 1404 the criteria applicable to the assignment of ASCS and CCC program payments.

Three comments were received in response to the proposed rule published in the **Federal Register** on June 19, 1989 (54 FR 25718). One comment requested that the regulations include provisions to implement the requirement of the Agricultural Credit Act of 1987 that each loan program under the jurisdiction of the Secretary of Agriculture participate in state agricultural loan mediation programs. Since the requirement applies only to loan programs, provisions to implement it have been included in a proposed rule published in the **Federal Register** on August 22, 1989 (54 FR 34773) amending 7 CFR part 1405, rather than in the debt settlement policies and procedures. The regulations at 7 CFR part 1405 set forth general provisions applicable to CCC loans, purchases and other operations.

This commenter also felt that § 1403.6, which states that an accountant-certified financial statement may be required before an installment arrangement will be considered, could cause debtors to incur a large expense while attempting debt settlement. After examination of the requirement, it has been determined that CCC would be adequately protected by requiring a financial statement which is attested to as accurate by the preparer, under penalty of perjury, whether debtor-certified or accountant-certified. Therefore, the section has been amended to state only that a certified financial statement will be required.

The same commenter asserted that the proposed late payment interest and additional interest rates were excessively high and would drive farmers deeper into debt. As discussed previously, after further review it was determined that CCC would use a lower rate of applicable interest.

This commenter further requested a reconsideration of the provision of § 1404.3 which states that, "[n]othing contained herein shall be construed to authorize an assignment given to secure the payment of the whole or any part of the purchase price of a farm * * *" This provision was derived from the statutory requirement of 16 U.S.C. 590h(g) that assignments may only be made to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice. Since assignments to secure payment of the purchase price of a farm or a fixed commodity rent are not included in the statute, they were specifically excluded from the regulations. However, since the section already provides that payments made in accordance with 7 CFR parts 701 and 1413 may only be assigned to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice for the current year, the further exclusion is unnecessary and has been deleted from these regulations.

This commenter also takes exception to the provision of § 1404.6 which provides that all debts due ASCS or CCC may be offset without regard to assignments which may have been filed, as well as § 1404.8 which states that USDA shall not be liable in any suit if payment is not made to the assignee. The provision of § 1404.6 was developed to increase the ability of CCC and ASCS to recoup delinquent debts and to deter the circumvention of offset by such practices as the assignment of payments to friends, relatives, partners, or subsidiary corporations. Taking an assignment of a CCC or ASCS program payment as security for a debt has never been without risk. There has always been the possibility that a payment will not be made, e.g., if a producer fails to comply with contract requirements, as well as the possibility that an assignment will not be recognized because payment is made with commodity certificates which are not subject to assignment. Therefore, it was determined that any heightened risk to lenders is outweighed by the benefit to the government in the increased ability to collect delinquent debts. With respect to the second provision, the language in § 1404.8 was taken directly from 16 U.S.C. 590h(g) which authorizes the assignment of many ASCS and CCC program payments and thus is not subject to change.

Another comment requested that examples be provided of how, when and what interest rates would be applicable to delinquent debts. Under § 1403.9 late payment interest will accrue from the date of delinquency at the rate of interest applicable under the Prompt Payment Act, but, if payment is made within thirty days from the date of delinquency, collection of the late payment interest will be waived. An additional interest rate of three percent per annum will be assessed from the date of delinquency on any portion of the debt which remains unpaid ninety days after the date of delinquency. However, if a statute, regulation, agreement or contract specifies the interest applicable to the debt involved, these regulations shall not apply. As such possibilities are endless, it is not feasible to give examples of all of the variations which are possible. Accordingly, in order not to mislead affected parties, examples are not included in this final rule.

The third commenter submitted a copy of a complaint filed April 18, 1989, in the U.S. District Court for the District of Minnesota as their comments on the proposed regulations. Since the complaint was filed prior to publication of the proposed rule, it was not responsive to the contents of the regulations. Furthermore, since the complaint is being answered as part of the judicial process, it is not appropriate to respond to it here.

List of Subjects

7 CFR Part 709

Assignment of payment.

7 CFR Part 1403

Interest on delinquent debts.

7 CFR Part 1404

Assignment of payment.

7 CFR Part 1408

Setoff, Withholding and stop payment policies of Commodity Credit Corporation.

Accordingly, title 7 of the Code of Federal Regulations is amended as follows:

PART 709—[REMOVED]

1. 7 CFR part 709 is removed.

2. 7 CFR part 1403 is revised to read as follows:

PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

Authority: 15 U.S.C. 714b and 714c.

§ 1403.1 Applicability.

Except as may otherwise be provided by statute, this part sets forth the manner in which the Commodity Credit Corporation (CCC) will settle and collect debts by and against CCC arising out of domestic transactions.

§ 1403.2 Administration.

The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC and the Administrator, Agricultural Stabilization and Conservation Service (ASCS).

§ 1403.3 Definitions.

The following definitions shall be applicable to this part:

"Administrative charges" means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

"Administrative offset" means deducting money payable or held by the United States Government, or any agency thereof, to satisfy in whole or in part a debt owed the Government, or any agency thereof.

"ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture (USDA).

"Carrier" means a company or person, including but not limited to railroads, motor carriers, ocean carriers or piggyback companies, providing transportation of USDA commodities or other transportation related service for compensation.

"Certified financial statement" means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by the preparer, under penalty of perjury.

"CCC" means the Commodity Credit Corporation.

"Claim" means an amount of money or property which has been determined by CCC, after a notice of delinquency and a demand for the payment of the debt has been made by CCC, to be owed to CCC by any person other than a Federal agency.

"Credit reporting agency" means:

(1) A reporting agency as defined at 4 CFR 102.5(a), or

(2) Any entity which has entered into an agreement with USDA concerning the referral of credit information.

"Debt" means any amount owed to CCC or owed by CCC which has not been satisfied through payment or otherwise.

"Debt record" refers to the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to CCC, ASCS, or any other Government Agency with respect to which collection action is being pursued, and which is maintained in an ASCS office.

"Delinquent debt" means: (1) Any debt owed to CCC that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or (2) Any debt that has not been paid by the date specified in an initial notification of indebtedness mailed or hand-delivered pursuant to § 1403.4.

"Discharged debt" means any debt, or part thereof, which CCC has determined is uncollectible.

"IRS" means the Internal Revenue Service.

"Late payment interest rate" means the amount of interest charged on delinquent debts and claims. The late payment interest rate shall be determined as of the date a debt becomes delinquent and shall be equal to the rate of interest assessed under the Prompt Payment Act.

"Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, the Federal Government or a State government, or any agency thereof.

"Salary offset" means the deduction of money from the current pay account of a present or former Government employee payable by the United States Government to, or held by the Government for, such person to satisfy a debt that person owes the Government.

"Settlement" means any final disposition of a debt or claim.

"Shipment" means a carload, truckload, containerload, or other conveyance load of freight shipped from one location in one calendar day by one shipper for delivery. It shall be moved in accordance with the terms of a commercial or ocean bill of lading, or other similar agreement between the carrier and USDA.

"System of records" means a group of any records under the control of CCC or ASCS from which information is retrieved by the name of the individual, organization or other entity or by some identifying number, symbol, or other identification assigned to the individual, organization or other entity.

"Withholding" means the taking of action to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.

§ 1403.4 Demand for payment of debts.

(a) When a debt is due CCC, an initial written demand for payment of such amount shall be mailed or hand-delivered to the debtor. If the debt is not paid in full by the date specified in the initial demand letter, or if a repayment schedule acceptable to CCC has not been arranged with the debtor, the initial demand shall be followed by two subsequent written demands at approximately 30-day intervals, unless it is determined by CCC that further demands would be futile and the debtor's response does not require rebuttal. The initial or subsequent demand letters shall specify the following:

(1) The basis for and the amount of the debt determined to be due CCC, including the principal, applicable interest, costs and other charges;

(2) CCC's intent to establish an account on a debt record 30 days after the date of the letter, or other applicable period of time, if the debt is not paid within that time;

(3) The applicable late payment interest rate.

(i) If a late payment interest rate is specified in the contract, agreement or program regulation, the debtor shall be informed of that rate and the date from which the late payment interest has been accruing;

(ii) If a late payment interest rate is not specified in the contract, agreement or program regulation, the debtor shall be informed of the applicable late payment interest rate set out in § 1403.9.

(4) CCC's intent to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or ASCS payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) If not previously provided, the debtor's right to request administrative review by an authorized CCC official, and the proper procedure for making such request. If the request relates to the:

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter;

(ii) Appropriateness of reporting to a credit reporting agency, it must be made within 30 days from the date of the letter; or

(iii) Appropriateness of referral to IRS for tax refund offset, it must be made within 60 days from the date of the letter.

(6) The debtor's right to a full explanation of the debt and to dispute any information in the records of CCC concerning the debt;

(7) That CCC maintains the right to initiate legal action to collect the amount of the debt;

(8) That if any portion of the debt remains unpaid or if a repayment schedule satisfactory to CCC has not been arranged 90 days after the due date, an additional interest rate shall be assessed on the unpaid balance of the debt as prescribed in § 1403.9(e);

(9) CCC's intent, if applicable, under § 1403.16, to report any delinquent debt to a credit reporting agency no sooner than 60 days from the date of the letter;

(10) CCC's intent, if applicable, under § 1403.18, to refer any delinquent debt to the IRS, no sooner than 60 days from the date of the letter, to be considered for offset against any tax refund due or to become due the debtor.

(b) When CCC deems it necessary to protect the Government's interest, written demand may be preceded by other appropriate actions.

§ 1403.5 Collection by payment in full.

Except as CCC may provide in accordance with § 1403.6, CCC shall collect debts owed to the Government, including applicable interest, penalties, and administrative costs, in full, whenever feasible whether the debt is being collected by administrative offset or by another method, including voluntary payment. If a debt is paid in one lump sum after the due date, CCC will impose late payment interest, as provided in § 1403.9, unless such interest is waived as provided in § 1403.10.

§ 1403.6 Collection by installment payments.

(a) Payments in installments may be arranged, at CCC's discretion, if a debtor furnishes satisfactory evidence of inability to pay a claim in full by the specified date. The size and frequency of installment payments shall:

(1) Bear a reasonable relation to the size of the debt and the debtor's ability to pay; and

(2) Normally be of sufficient size and frequency to liquidate the debt in not more than three years.

(b) Except as otherwise determined by CCC, no installment arrangement will be considered unless the debtor submits a certified financial statement which reflects the debtor's assets, liabilities, income, and expenses. The financial statement shall not be required to be submitted sooner than 15 business days following its request by CCC.

(c) All installment payment agreements shall be in writing and may require the payment of interest at the late payment interest rate in effect on the date such agreement is executed. The installment agreement shall specify all the terms of the arrangement and include provision for accelerating the debt in the event the debtor defaults. A confession of judgment provision may be included in the agreement.

(d) CCC may deem a repayment plan to be abrogated if the debtor fails to comply with its terms.

(e) If the debtor's financial statement or other information discloses the ownership of assets which are not encumbered, the debtor may be required to secure the payment of an installment note by executing a security agreement and financing agreement which provides CCC a security interest in the assets until the debt is paid in full.

(f) If the debtor owes more than one debt to CCC, CCC may allow the debtor to designate the manner in which a voluntary installment payment is to be applied. If the debtor does not designate the application of a voluntary installment or partial payment, the payment will be applied to such debts as determined by CCC.

§ 1403.7 Collection by administrative offset.

(a) The provisions of this section shall apply to all debts due CCC except as otherwise provided in this part and part 1404 of this Chapter. This section is not applicable to:

(1) CCC requests for administrative offset against money payable to a debtor from the Civil Service Retirement and Disability Fund and CCC requests for salary offset against a present or former employee of the Federal Government which shall be made in accordance with regulations at part 3 of this title;

(2) CCC requests for administrative offset against a Federal income tax refund payable to a debtor which shall be made in accordance with § 1403.18;

(3) Cases in which CCC must adjust, by increasing or decreasing, a payment which is to be paid under a contract in order to properly make other payments due by CCC; and

(4) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by statute.

(b) Debts due CCC may be collected by administrative offset from amounts payable by CCC when:

(1) The debtor has been provided written notification of the basis and amount of the debt and has been given an opportunity to make payment. Such written notification and opportunity includes notice of the right to pursue an administrative appeal in accordance with Part 780 of this Title or any other applicable appeal procedures, if not previously provided;

(2) The debtor has been provided an opportunity to request to inspect and copy the records of CCC related to the debt;

(3) The debtor has been notified in writing that the debt will be collected by administrative offset if not paid; and

(4) The debt has not been delinquent for more than ten years or legal action to enforce the debt has not been barred by an applicable period of limitation, whichever is later.

(c) Administrative offset shall also be effected against amounts payable by CCC:

(1) When requested or approved by the Department of Justice; or

(2) When a person is indebted under a judgment in favor of CCC.

(d) Debts due CCC from carriers for overcharges shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(2) The period of limitation prescribed at 49 U.S.C. 11706(f) has not expired.

(e) Debts due CCC from carriers for loss or damage shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) Timely demand for payment was made on the carrier;

(2) The carrier has declined payment of the debt without reasonable justification or has ignored the claim; and

(3) The period of limitation prescribed at 49 U.S.C. 11707(e) has not expired.

(f) Any overcharge or loss or damage debt due CCC on which the applicable period of limitation has run may be offset against any amounts owing by CCC to the carrier which are subject to a defense of limitation.

(g) A payment due any person may be offset when there is a breach of a contract or a violation of CCC program requirements, and offset is considered necessary by CCC to protect the financial interests of the Government.

(h) In the case of any procurement contract with CCC which provides for invoicing at the time of shipment with delivery to be made at designated destination points when:

(1) Payment is made to the contractor prior to receipt of evidence of delivery, and

(2) CCC thereafter determines that the Contractor is indebted to CCC because of losses sustained from shortage, damage to or deterioration of the commodity while in transit and prior to delivery, CCC may offset such indebtedness against amounts due and payable to the Contractor under any other contract with CCC providing the Contractor has not assigned the proceeds of such contract in accordance with part 1404 of this chapter.

(i) CCC may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by (b)(1–3) of this section if:

(1) Failure to take the offset would substantially prejudice CCC's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(j)(1) Debts due any agency other than CCC shall be offset against amounts payable by CCC to a debtor when an agency of the U.S. Government has submitted a written request for offset which is mailed or hand-delivered to the appropriate ASCS State office, Kansas City Management Office or Kansas City Commodity Office. Such written request must:

(i) Bear the signature of an authorized representative of the requesting agency;

(ii) Include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with;

(iii) State the name, address (including county), and, where legally available, the social security number or employer ID number of the debtor and a brief description of the basis of the debt, including identification of the judgment, if any.

(iv) State the amount of the debt separately as to principal, interest, penalties, and administrative costs. Interest, if any, shall be computed on a daily basis to a date shown in the request. The amount to be offset shall not exceed the principal sum owed by the debtor, plus interest computed in accordance with the request, and any late payment interest, penalties and administrative costs that have been assessed;

(v) Certify that the debtor has not filed for bankruptcy. If the debtor has filed for bankruptcy, a copy of the order of the bankruptcy court relieving the agency from the automatic stay must be included; and

(vi) State the name, address, and telephone number of a contact person within the agency and the address to which payment should be sent.

(2) Unless prohibited by law, the head of an agency, or a designee, may defer or subordinate in whole or in part the right of the agency to recover through offset all or part of any indebtedness to such agency, or may withdraw a request for offset. Notice of such action must be sent to the appropriate ASCS office.

(k)(1) After CCC has complied with the provisions of this part, CCC may request other agencies of the Government to offset amounts payable by them to persons indebted to CCC.

(2) In the case of a request to IRS for a tax refund offset, the provisions at § 1403.18 shall apply.

(l)(1) Debts shall be collected by offset in the following order of priority without regard to the date of the request for such collection:

(i) Debts to CCC.

(ii) Debts to other agencies of USDA as determined by CCC.

(iii) Debts to other government agencies as determined by CCC.

(2) In the case of multiple debts involving the same debtor, CCC may, at its discretion, deviate from the usual order of priority in applying recovered amounts to debts owed other agencies when considered to be in the Government's best interest. Such decision shall be made by CCC based on the facts and circumstances of the particular case.

(m)(1) No amounts payable to a debtor by CCC shall be paid to an assignee until there have been collected any amounts owed by the debtor except as provided in this subsection.

(2) A payment which is assigned in accordance with Part 1404 of this Chapter by execution of Form CCC–36 shall be subject to offset for any debt owed to CCC or ASCS without regard to the date notice of assignment was accepted by CCC or ASCS.

(3) A payment which is assigned in accordance with Part 1404 of this Chapter by execution of Form CCC–252 shall be offset:

(i) Against any debt of the assignor entered on the debt record of the applicable ASCS office prior to the filing of such form with CCC or ASCS, or

(ii) At anytime, regardless of the date of filing of such form with CCC or ASCS, if the debt which is the basis for the offset arises under the same contract under which the payment is earned by the assignor.

(4) Offset shall be made, if the Internal Revenue Service so requests or has served a Notice of Levy, of any amounts for which the assignor is indebted to the United States for taxes, for which a notice of lien was filed in accordance with the provisions of the Internal Revenue Code prior to the date the notice of assignment was accepted by CCC or ASCS. The burden of determining whether a notice of lien has been filed shall be upon the assignee.

(5) With respect to all other Federal agencies, offset shall be made of any amounts due any other Federal agency which are entered on the debt record of the appropriate ASCS office prior to the date the notice of assignment was accepted by CCC or ASCS.

(6) Any amount due and payable to the assignor which remains after deduction of amounts paid to the assignee shall be available for offset.

(n) Amounts recovered by offset for CCC and ASCS debts but later found not to be owed to the Government shall be promptly refunded.

(o) The debtor shall be notified whenever any offset action has been taken.

(p) Offsets made pursuant to this section shall not deprive a debtor of any right he might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(q) Any action authorized by the provisions of this section may be taken against amounts payable to a debtor who operates under more than one name, provided there is identical ownership, or CCC determines that the debtor has established an entity for the purpose of avoiding the payment of the claim or debt.

(r) The amount to be offset shall not exceed the actual or estimated amount of the debt, including interest, administrative charges, and penalties, unless the Department of Justice requests that a larger specified amount be offset.

(s) Offset action will not be taken against payments when:

(1) The payment represents loan or purchase proceeds for a commodity which is subject to the rights of the holder of a prior valid enforceable lien. However, any amount that exceeds the amount of the prior lien shall be available for offset.

(2) A debt has been discharged as provided in § 1403.15.

(3) The amount payable to the debtor is used to satisfy a prior lien on property pledged as collateral for a CCC loan or sold to CCC. However, any amount exceeding the amount of the prior lien shall be available for offset.

(4) CCC determines such action will unduly interfere with the administration of a CCC or ASCS program.

(5) The debt has been delinquent for more than ten years or legal action to enforce the debt due CCC is barred by an applicable period of limitation, whichever is later.

§ 1403.8 Withholding.

(a) Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by CCC to ensure that the interests of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States only if CCC determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC;

(2) There is substantial evidence of violations of criminal or civil frauds statutes and criminal prosecution or civil frauds action is of primary importance to program operations of CCC;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of CCC;

(5) The facts available to CCC are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of CCC has been obtained; or

(7) Such action has been requested by the Department of Justice.

(c) Except for debts due CCC or ASCS, withholding action by CCC on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

§ 1403.9 Late payment interest and administrative charges.

(a)(1) The provisions of this section are applicable to all persons whose debt to CCC becomes delinquent after January 1, 1990, unless the debtor and CCC agree otherwise.

(2) Late payment interest provisions of this section shall not apply:

(i) To debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities shall be charged in accordance with applicable statutes or, if none are applicable, at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent;

(ii) If an applicable statute, regulation, agreement or contract either prohibits the charging of such interest or specifies the interest or charges applicable to the debt involved;

(iii) If the late payment interest is waived by CCC.

(b) CCC will assess late payment interest on the full amount of delinquent debts. For purposes of this section, the term "full amount of the delinquent debt" means the sum of the principal, accrued regular loan interest or accrued program interest, and any other charges which are otherwise due and owing to CCC on the delinquent debt at the time the late payment interest is assessed, except as provided in paragraphs (a)(2) and (d)(3) of this section.

(c) The late payment interest shall be expressed as an annual rate of interest which CCC charges on delinquent debts. The late payment interest rate shall be equal to the rate of interest assessed under the Prompt Payment Act, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section.

(d)(1) When a debt results from a statute, regulation, contract or other agreement with specific provisions for late payment interest and payment due date, late payment interest shall accrue on the amount of the debt from the first day the debt became delinquent, unless otherwise provided by statute.

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor.

(3) The rate of late payment interest initially assessed will be fixed for the duration of the indebtedness, except when a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. CCC may then set a new rate of interest which reflects the late payment interest rate in effect at the time the new agreement is executed. All charges which accrued, but which were not collected under the defaulted agreement, shall be added to the principal to be paid under a new repayment agreement.

(4) The late payment interest on delinquent debts will accrue on a daily basis.

(e) Except as specified in paragraph (a)(2) of this section, an additional interest rate of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid ninety (90) days after the date described in paragraphs (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to CCC has been agreed upon. Such rate will be assessed retroactively from the date of delinquency and applied on a daily basis to all amounts due on the debt including the principal balance of the debt plus regular interest, late payment interest and other charges. Such rate shall continue to accrue until the delinquent debt has been paid.

(f) CCC shall assess as administrative charges the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

(g) When a debt is paid in partial or installment payments, payments will be applied first to additional interest assessed in accordance with paragraph (e) of this section and administrative charges, second to assessed late payment interest, and third to outstanding principal.

§ 1403.10 Waiver of late payment interest, additional interest and administrative charges.

(a) CCC shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) CCC shall waive the collection of additional interest on debts which are appealed in accordance with 7 CFR Part 780 or other applicable appeal procedures from either the date of the appeal or the date such interest began to accrue, whichever is later, until the date a final administrative determination is issued. Such waiver shall not apply for any delay due to:

(1) The appellant's request for a postponement of the scheduled hearing;

(2) The appellant's request for an additional time following the hearing to present additional information or a written closing statement; or

(3) The appellant's failure to timely present information to the reviewing authority.

(c) Assessment and collection of late payment interest, additional interest and administrative charges under this Part may be waived by CCC in full, or in part, if it is determined that such action is in the best interest of CCC.

§ 1403.11 Administrative appeal.

If the opportunity to appeal the determination has not previously been provided under parts 24 or 780 of this title or any other appeal procedure, a debtor may obtain an administrative review under part 780 of this title of CCC's determination concerning the existence or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of CCC's initial demand letter.

§ 1403.12 Additional administrative collection action.

Nothing contained in this part shall preclude the use of any other administrative remedy which may be available to CCC to collect debts owed to the Government.

§ 1403.13 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, CCC may contact the employing agency to arrange for payment of the debt by allotment or otherwise, in accordance with section 206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469.

§ 1403.14 Prior provision of rights with respect to debt.

CCC will not provide an administrative appeal with respect to issues which were subject to administrative review at the debtor's request as provided under another statute or regulation before:

(a) Effecting administrative offset;

(b) Referring the debt to private collection or credit reporting agencies;

(c) Referring the debt to the Office of Personnel Management (OPM) for salary offset against the current pay of a present or former Government employee; or

(d) Referring the debt to IRS for tax refund offset.

§ 1403.15 Discharge of Debts.

(a) Except as required by other applicable regulation or statute, a debt or part thereof owed CCC shall be discharged and the records and accounts on that debt closed in the following situations:

(1) When an obligation or part thereof is discharged in bankruptcy;

(2) When an obligation or part thereof is the subject of a final judgment entered by a court of competent jurisdiction which is adverse to CCC;

(3) When a debt or part thereof is compromised and paid, the amount of such compromise;

(4) When collection of a debt by administrative offset is barred in accordance with § 1403.7(s)(5).

(b) A debt or part thereof owed CCC may be discharged and the records and accounts on that debt closed when the Controller, CCC, has determined that such action is in the best interest of CCC.

(c) A claims official or claims officer may discharge a delinquent debt if such debt arises under the terms of the authority delegated to such official or officer in the following circumstances:

(1) The delinquent debt is owed by an entity which has been liquidated or dissolved and no legal remedy is feasible.

(2) The delinquent debt is owed by an individual who:

(i) Is declared legally insane or incompetent;

(ii) Possessed of no assets or other means of payment; and

(iii) Possessed of no reasonable prospects of being able to pay the debt in the future.

(3) The delinquent debt was incurred by an individual who is deceased, and from whose estate recovery cannot be made.

(d) Debts discharged in accordance with this section may be reported to the Internal Revenue Service pursuant to § 1403.19.

§ 1403.16 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by CCC and the rights that will be afforded to debtors when CCC reports delinquent debts to credit reporting agencies.

(b) Before disclosing information to a credit reporting agency in accordance with this part, CCC shall review the claim and determine that it is valid and delinquent.

(c) Before a debt may be referred to a credit reporting agency, the debtor must be notified, pursuant to § 1403.4, of CCC's intent to make such a report. Such notification shall include:

(1) CCC's intent to disclose to a credit reporting agency that the debtor is responsible for the debt, and that such disclosure will be made not less than 60 days after notification to such debtor.

(2) The information intended to be disclosed to the credit reporting agency under paragraph (g)(1) of this section.

(3) The debtor's right to enter a repayment agreement on the debt, including, at the discretion of CCC, installment payments, and that if such an agreement is reached, the debt will not be referred to a credit reporting agency.

(4) The debtor's right to review of this action in accordance with paragraph (i) of this section.

(d) The debtor shall be notified, in writing at the debtor's last known address, when CCC has reported any delinquent debt to a credit reporting agency.

(e)(1) CCC shall notify each credit reporting agency to which an original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim.

(2) CCC shall promptly verify or correct, as appropriate, information about the debt on request of a credit reporting agency. The records of the debtor shall reflect any correction resulting from such request.

(f) Information reported to a credit reporting agency on delinquent debts shall be derived from the system of records maintained by CCC.

(g) CCC shall limit delinquent debt information disclosed to credit reporting agencies to:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

(h) Reasonable action shall be taken to locate a debtor for whom CCC does not have a current address before reporting delinquent debt information to a credit reporting agency.

(i)(1) Before disclosing delinquent debt information to a credit reporting agency, CCC shall, upon request of the debtor, provide for a review of the debt in accordance with § 1403.11. This review shall only consider defenses or arguments which were not available or could not have been available at any previous appeal proceeding permitted under § 1403.11.

(2) Upon receipt of a request for review within 30 days from the date of notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, CCC shall suspend its schedule for disclosure to a credit reporting agency until a final decision regarding the appropriateness of disclosure to a credit reporting agency is made.

(3) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, the debtor shall be notified of the scheduled date on or after which the debt will be referred to the credit reporting agency. The debtor will also be notified of any changes from the initial notification in the information to be disclosed.

(j)(1) In accordance with guidelines established by the Executive Vice President, CCC, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in paragraph (g) of this section.

(2) The agreements entered into by USDA and credit reporting agencies shall provide the necessary assurances to CCC that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(3) CCC shall not report delinquent debt information to credit reporting agencies when:

(i) The debtor has entered a repayment agreement covering the debt with CCC, and such agreement is still valid; or

(ii) CCC has suspended its schedule for disclosure of delinquent debt information pursuant to paragraph (i)(2) of this section.

(k) Disclosures made under this section shall be in accordance with the requirements of the Privacy Act, as amended (5 U.S.C. 552a).

§ 1403.17 Referral of debts to Department of Justice.

Debts which cannot be collected in accordance with these regulations may be referred to the Department of Justice for collection action.

§ 1403.18 Referral of delinquent debts to IRS or tax refund offset.

CCC may refer legally enforceable delinquent debts to IRS to be offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

§ 1403.19 Reporting discharged debts to IRS.

(a) In accordance with IRS regulations, CCC may report to IRS as discharged debts on IRS Form 1099–G only the amounts specified in paragraph (b) of this section.

(b) The following discharged debts may be reported to IRS:

(1) The amount of a debt discharged under a compromise agreement between CCC and the debtor, except for compromises made due to doubt about the Government's ability to prove its case in court for the full amount of the debt.

(2) The amount of a debt discharged by the running of the statutory period of limitation for collecting the debt by administrative offset specified in 31 U.S.C. 3716.

(3) The amount of a debt discharged by CCC in accordance with § 1403.15(b).

§ 1403.20 Referral of debts to private collection agencies.

If CCC's collection efforts have been unsuccessful after 90 days and the delinquent debt remains unpaid, CCC may refer the debt to a private collection agency for collection.

3. The following new part 1404 is added to title 7 of the Code of Federal Regulations:

PART 1404—ASSIGNMENT OF PAYMENTS

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 590h(g).

1404.1 General statement.

This part sets forth the manner in which a person may assign a cash payment which is made by the Agricultural Stabilization and Conservation Service (ASCS) or the Commodity Credit Corporation (CCC). Such payments may only be assigned in the manner set forth in this part.

§ 1404.2 Definitions.

(a)(1) *"Assignee"* means any person, including any agency of the Federal Government, to whom an assignment of an ASCS or CCC payment is made in accordance with this part.

(2) *"Assignor"* means any person who is the recipient of a payment from ASCS or CCC who assigns the payment to another person in accordance with this part.

(3) *"Payment"* means a cash payment and excludes

(i) Any payment made in accordance with part 1470 of this title;

(ii) Price support loan or purchase agreement proceeds; and

(iii) Any payments made in accordance with parts 1487, 1488, 1491, 1492, and 1493 of this title.

(b) The terms defined in parts 719, 1413, 1421 and 1427 shall also be applicable to this part.

§ 1404.3 Payments which may be assigned.

(a) Except as otherwise provided in this part or in individual program regulations, contracts and agreements entered into by ASCS or CCC, any payment due a person from ASCS or CCC may be assigned.

(b)(1) A payment which is made to a producer in accordance with 7 CFR parts 701 and 1413 may not be assigned to pay or secure any preexisting indebtedness.

(2) Payments made in accordance with 7 CFR parts 701 and 1413 may be assigned only as security for cash or advances to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice, for the current

crop year. To finance making a crop means

(i) To finance the planting, cultivating, or harvesting of a crop, including the purchase of equipment required therefor and the payment of cash rent for land used therefor, or

(ii) To provide food, clothing, and other necessities required by the producer or persons dependent upon the producer.

§ 1404.4 Execution of assignment form.

(a)(1) The assignment of any ASCS or CCC payment must be made by the execution of Form CCC–36 or Forms CCC–251 and CCC–252. Form CCC–36 is applicable to payments made under programs administered in accordance with 7 CFR parts 701, 704, 1413, 1430, 1468, 1472 and 1475. Such form is also applicable to any other program which is administered by a county ASC committee. Forms CCC–251 and 252 are applicable to all other CCC or ASCS programs and contracts.

(2)(i) To be recognized by ASCS or CCC, Form CCC–36 must be filed in the county ASCS office prior to the time the county committee approves the making of the payment covered by the assignment. To be recognized by ASCS or CCC, Forms CCC–251 and 252 must be filed with the ASCS or CCC office from which the payment will be made prior to the making of the payment.

(ii) Form CCC–36 or Forms CCC–251 and 252 must be signed by both the assignor and the assignee. With respect to Form CCC–36, the assignor's signature must be witnessed by a member of the county ASC committee for the county where the farm is located, or by an employee of the county committee, unless the assignee is a bank whose deposits are insured by the Federal Deposit Insurance Corporation, the Farmers Home Administration, or a production credit association supervised by the Farm Credit Administration, in which case the assignment may be witnessed by a bonded officer of such lending institution.

(3) The assignor and the assignee shall promptly notify the appropriate ASCS or CCC office of any change affecting the assignment.

§ 1404.5 Payment assigned not to be discounted.

(a) With respect to assignments made by execution of Form CCC–36, if interest is charged by the assignee on the amount advanced, the rate of interest must not be in excess of the maximum rate lawfully chargeable under the law of the State where the farm is located.

(b) The payment assigned shall not be discounted by charging the assignor more than the current cash price for any supplies furnished or in any other manner whatsoever. Interest may be deducted by the assignee in advance from any cash advancement.

§ 1404.6 Payment to the assignee.

(a) The assignee shall be paid the smaller of the amount specified on Form CCC–36 or CCC–251 or the amount of the payment earned under the program or contract covered by the assignment. Any indebtedness owed by the assignor to CCC, ASCS, or any other agency of the United States shall be subject to offset.

(b) Any indebtedness owed by the assignor to CCC or ASCS shall be offset from any payment which is owed by CCC or ASCS without regard to the date of filing of a Form CCC–36 with the applicable ASCS or CCC office. Except as provided in paragraph (d) of this section, any indebtedness owed by the assignor to CCC or ASCS shall be offset from any payment which is owed by CCC or ASCS if such indebtedness was entered on the debt record of the applicable ASCS or CCC office prior to the date of the filing of Forms CCC–251 and 252 with the applicable ASCS or CCC office.

(c) Any indebtedness owed by the assignor to any agency of the United States other than CCC or ASCS which was entered on the debt record of the applicable ASCS or CCC office prior to the date of filing of the Form CCC–36 or Forms CCC–251 and 252 with such office shall be offset prior to the making of any payment to the assignee.

(d) Any indebtedness arising under a contract between the assignor and ASCS or CCC which is the subject of the assignment shall be offset from the payment prior to the making of any payment to the assignee under such contract without regard to the date of the filing of Form CCC–36 or Forms CCC–251 and 252 with the appropriate ASCS or CCC office.

§ 1404.7 Misrepresentations.

If ASCS or CCC has reason to believe that any material misrepresentation was made by the assignor or the assignee in executing Forms CCC–36, CCC–251 or CCC–252, ASCS or CCC shall give notice thereof to the assignor and the assignee. If, after investigation and opportunity for the assignor and assignee to be heard, ASCS or CCC finds that any material misrepresentation was in fact made, ASCS or CCC shall notify the assignor and the assignee of such finding, and void such assignment, and insofar as concerns ASCS, CCC or any other agency of the United States, the assignment shall be of no effect.

§ 1404.8 Liability of the Secretary or disbursing agents.

Neither the United States, the CCC, the Secretary nor any disbursing agent shall be liable in any suit if payment is made to the assignor without regard to the existence of any assignment, and nothing contained herein shall be construed to authorize any suit against the United States, the CCC, the Secretary or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

§ 1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 35 and have been assigned OMB control number 0560–0004.

PART 1408—[REMOVED]

4. 7 CFR part 1408 is removed.

Signed at Washington, DC, on December 15, 1989.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–29687 Filed 12–21–89; 8:45 am]

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federal register

Friday
December 22, 1989

Part III

Department of Energy

10 CFR Parts 500 et al.

Powerplant and Industrial Fuel Use Act of 1978; Issuance of Final Rules; Notice of Final Rulemaking

DEPARTMENT OF ENERGY

10 CFR Parts 500, 501, 503, 504, 508, and 516

Powerplant and Industrial Fuel Use Act of 1978; Issuance of Final Rules

AGENCY: Department of Energy.

ACTION: Notice of final rulemaking.

SUMMARY: The Office of Fossil Energy (OFE) of the Department of Energy (DOE) is revising its final rules implementing the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act). On January 25, 1989, the Economic Regulatory Administration (ERA) of the DOE published a notice of proposed rulemaking (54 FR 3726) in order to (1) incorporate legislative amendments of certain FUA sections into the regulations; (2) revise and clarify calculations as well as fuel price and inflation indices used in the cost test calculations supporting exemptions based on a lack of alternate fuel at a cost which does not substantially exceed the cost of using imported petroleum; and (3) revise and update the oil/gas use estimates used in determining eligibility for exemptions based on cogeneration.

On January 6, 1989, the functions of the ERA with respect to the Fuel Use Act were transferred to the DOE's Assistant Secretary for Fossil Energy. OFE is issuing this final rule.

DATE: These rules shall become effective December 22, 1989.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell (Office of Fuels Programs), Office of Fossil Energy, Department of Energy, Room 3F-094, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9624.

Anthony J. Como (Office of Fuels Programs), Office of Fossil Energy, Department of Energy, Room 3H-087, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5935.

Steven E. Ferguson (Office of General Counsel), Department of Energy, Room 6B-144, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6947.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, 1989, the Department of Energy's Economic Regulatory Administration issued a Notice of Proposed Rulemaking (NOPR) (54 FR 3726) to revise rules implementing the Powerplant and Industrial Fuel Use Act of 1978 (FUA) in order to address certain amendments to FUA made on May 21, 1987, by the Powerplant and Industrial Fuel Use Act of 1978, Amendments, Public Law 100-42. On January 6, 1989, the Department of Energy's FUA functions were transferred from ERA to the Office of Fossil Energy (OFE). OFE is issuing this final rule.

The amendments repealed certain sections of the Act and amended other sections. Repealed were section 202, New Major Fuel-Burning Installations; section 302, Existing Major Fuel-Burning Installations, section 401, Authority to Prohibit Use of Natural Gas in Certain Boilers Used for Space Heating; section 402, Prohibition on Use of Natural Gas for Decorative Outdoor Lighting; section 405, Authority to Restrict Increased Use of Petroleum by Existing Powerplants; title 5, System Compliance Options; and section 801, Coal Reserve Disclosure. Section 201 was amended by removing the prohibition against the use of oil or natural gas in new powerplants or industrial facilities, and creating a prohibition against construction or operation of new baseload electric powerplants without the capability to use coal or another alternate fuel as a primary energy source. In addition the Congress added a self-certification procedure for declaring new units to be capable of using alternate fuels.

The original statute was enacted following severe shortages of natural gas in the interstate market in the winter of 1976-1977. At the time, Congress sought to reduce oil imports and to conserve natural gas and oil for uses other than electric utility generation or commercial generation of steam. In order to achieve its purpose, FUA prohibited the use of oil and natural gas in both new major fuel burning installations (MFBI) and new electric powerplants unless an exemption for such use had been granted, and prohibited the construction of new MFBIs and powerplants without the capability of using an alternate fuel.

Domestic energy markets have fundamentally changed since the 1978 enactment of FUA. Phased decontrol of natural gas has resulted in substantial increased availability of natural gas in the interstate market. The use of natural gas has proved to be a cost effective way to expand electric generating capacity while meeting environmental requirements. The result has been a growth in inter-fuel competition and new markets for domestic oil and gas producers.

The amended FUA offered additional flexibility to utilities while preserving the "coal option" for new baseload electric powerplants by repealing of the categorical prohibition against the use of oil or gas contained in section 201 of the original statute, and substituting a requirement that new baseload powerplants be capable of using coal or another alternate fuel as a primary energy source. Utilities which do not wish to construct "alternate fuel capable" units may still petition for exemptions, as provided by the 1978 Act.

Advances in gas combustion turbine technology have made it possible for powerplant owners or operators to install an efficient simple cycle or combined cycle gas unit that could be altered at a later date if a decision were then made to add a gasifier to run the combustion turbine on clean, medium-Btu synthetic gas derived from coal. This type of powerplant is, for purposes of the amended Act, "alternate fuel capable;" that is, the unit itself could be altered at a later date by installing different tubing, nozzles, ducts, vanes, etc., so that it is capable of handling the larger volumes of medium-Btu coal gas.

These new high efficiency powerplants may be the technology of choice for future capacity additions. Such capacity can be added more rapidly and in smaller increments than direct coal-fired capacity, resulting in significant savings to consumers. Subsequently, if economic conditions warrant, a coal gasifier could be added to such plants, either on- or off-site, to produce clean synthetic coal gas that could be used in such combined-cycle powerplants. The May 21, 1987, amendment permits owners or operators of new powerplants to self-certify the alternate fuel capability of their powerplants. Since that time, self-certifications have been submitted for 113 new gas-fired electric powerplants resulting in an increased generating capacity of over 15,000 megawatts. No requests for exemptions have been received since FUA was amended.

The purpose of the NOPR was threefold. First, the NOPR proposed to implement the May 1987 amendments to FUA. Consistent with the amendments, the NOPR proposed to remove industrial facilities and non-baseload electric powerplants from FUA coverage, leaving only baseload electric powerplants subject to the prohibitions of FUA. The NOPR also discussed the amendment's certification process by which baseload powerplants could comply with the alternate fuel capability requirements of the Act.

Second, the NOPR sought comment on proposed changes to calculations used for cost test exemptions as well as parameters and indices used in the fuel price computation methodology of appendix II to 10 CFR parts 503 and 504. Changes in energy markets and the convergence of the costs of low sulfur residual oil and natural gas caused the parameters and methodologies used in the previous FUA cost test regulations to become outdated. OFE found that current data indicate that a close pricing relationship has developed between imported petroleum and natural gas that did not exist when the initial criteria for the fuel price computations were adopted. For that reason, the OFE will now require an applicant to compare directly the cost of using coal in its planned facility with the cost of using its fuel of choice rather than comparing the cost of using coal with the price of using imported petroleum with a $1.00 added premium.

Third, the NOPR proposed to update the table in § 503.37 showing State-by-State estimates of oil and gas usage for determining the oil and gas savings when applying for a cogeneration exemption. When originally adopted on December 7, 1981 (46 FR 59872), this table contained data based upon 1980 regional oilgas use. The revised table is based on actual 1987 oil/gas and electricity statistics published by the DOE's Energy Information Administration (EIA) in its "Electric Power Annual 1987" [publication DOE/EIA-0348(87)].

Public comments received by OFE reflected an overwhelming endorsement of the foregoing proposals. Most commenters believed that the changes proposed were consistent with the intent of the FUA amendments. After considering the comments received, OFE is today adopting the foregoing proposals with changes discussed below. OFE believes that these final rules are fully responsive to the comments received.

II. Comments

A. General

Numerous non-substantive changes modifying the regulations to comport with the 1987 FUA amendments and DOE organizational changes were offered in the NOPR. Specific comments were not received from the public with regard to any of these proposed changes. Therefore, the OFE is adopting "housekeeping" changes that include removing all reference to terms that are no longer relevant including "new or existing major fuel burning installations," "installations," "MFBI," "process life," "refinery operations," and "alternate fuels determinations". In addition, references to "intermediate load" and "peakload" powerplants have been removed from the final regulations. Where appropriate, certain sections of the rules have been consolidated or combined to eliminate provisions or requirements that are repetitious or that experience has shown to be unnecessary, and reference to the Economic Regulatory Administration and ERA have been changed to Office of Fossil Energy and OFE.

B. Definitions (part 500)

Capability to use alternate fuel. An important change made by the 1987 FUA amendments was to redefine coal or alternate fuel capability. The definition adopted herein is taken verbatim from the FUA amendment. A powerplant now is considered to be alternate fuel capable if it has the inherent design characteristics to permit the *addition of equipment* (including pollution devices) to render the unit coal or alternate fuel capable, *and* if it is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source. This "coal capability" is not to be interpreted to mean that the unit is capable of using coal or another alternate fuel on its initial day of operation.

For explanatory purposes, the following example was presented in the NOPR:

Example: A natural gas-fired, combined-cycle cogeneration facility is considered "coal capable" if the unit is physically, structurally, and technically capable of being modified at a future date to burn an alternate fuel, such as gasified coal.

One commenter proposed, and OFE adopted in its final regulations, an added explanatory sentence to the definition of "coal capability" which states that "(T)he owner or operator of a baseload powerplant need not have adequate space for either a coal gasifier or any facilities for handling coal or related fuels." The intent of this addition is to make it quite clear that the owner or operator of a proposed powerplant need not have adequate on-site space for either a coal gasifier or any facilities for handling coal or related fuels.

C. Administrative Procedures and Sanctions (part 501)

1. General Provisions (subpart A)

The OFE has added a subparagraph (b) (Effective date of orders or rules) to § 501.9 of these final regulations that is extracted from the FUA amendment. The new paragraph provides that an exemption shall not take effect until all State regulatory approvals relating to the construction of the new facility have been obtained.

On a related issue, one commenter wrote that owners and operators of new baseload powerplants need regulatory certainty to obtain financing for self-certified baseload powerplants, and lenders may be unwilling to provide non-recourse financing for gas-fired, baseload electric generating facilities if there is a risk that certification can later be withdrawn. The commenter proposed that DOE add a regulatory provision specifying that self-certification filings are final and irrevocable at a time certain unless the DOE subsequently finds that the applicant knowingly made false or misleading statements in its certification, or unless, at some future date, the facility's inherent design characteristics are subsequently changed so that it becomes incapable of using alternate fuels.

DOE interprets the legislative intent of the certification procedure as offering the applicant certainty and protection while complying with the Act. A certification immediately triggers the applicant's compliance with FUA. The DOE retains the right to collect additional information from the applicant within 60 days of submission, but the certification is effective upon filing. Therefore, the DOE determined that inclusion of the commenter's suggested language was unnecessary.

A commenter proposed that the DOE retain the exclusion from FUA for "commercially unmarketable" energy sources. The commenter offered the example that if sufficient pipeline capacity is not constructed in time, additional volumes of liquefied natural gas (LNG) may someday be needed, at least temporarily, for power generation in New England. Such LNG might well be "commercially unmarketable", in the sense that it could be priced above the level that would prevail in a marketplace where energy supplies are not artificially constrained.

OFE remains convinced that the amendments to the Act eliminated the need for an exclusion for commercially unmarketable fuels. The amended Act does not prohibit the use of any fuels in new baseload powerplants. In fact, the amendment encourages flexibility in fuel choices on the part of the owner or operator. The amendment requires that the unit have the inherent design characteristics to permit the addition of equipment necessary to render the unit alternate fuel capable, and that the unit not be physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source. Once that requirement is met (or once an exemption from the requirement is obtained), the owner or operator may use any fuel desired in the unit, including a "commercially unmarketable" fuel. Therefore, the final rule removes the exclusion for "commercially unmarketable" fuels, as originally proposed.

The addresses set forth in § 501.11 for filing documents, and the location of the public reading room for reviewing or copying documents, have been changed since publication of the NOPR.

2. Exemptions and Certifications (subpart F)

The FUA amendments provide for a self-certification procedure to meet the alternate fuel capability requirement of the new section 201(a). § 501.61 of these rules adopts, without change, the original proposal that the following information be submitted in addition to the alternate fuel certification signed by a duly authorized representative of the company: (1) a description of the planned facility, including the size of the proposed unit(s) and process used (combined-cycle, simple-cycle, etc.) as well as the fuel(s) to be used; (2) identification of the owner/operator of the facility; and (3) the facility's location. For cogeneration facilities filing self-certifications, the certification is to include the name of the utility that will be purchasing the generated electricity.

D. Cogeneration Oil/Gas Savings (part 503)

The OFE has further refined the numbers presented in the NOPR for the table of estimated oil and gas savings that could be attributed to electricity backed off the grid by cogeneration, § 503.37. The previous table contained 1980 regional data that is no longer accurate. These final regulations use current State-by-State electricity offset rates that have been extracted from documents published by the DOE's Energy Information Administration. The DOE will update the data as necessary and publish notice of these updates in the **Federal Register**.

E. Cost Calculation and Fuel Price Computations (Appendix II to part 504)

FUA requires that a facility be granted an exemption to use oil or natural gas on the basis of cost when coal or another alternate fuel will not be available at a cost which, "based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum * * * *" [FUA, sections 211(a), 212(a), 311(a), 312(a), providing cost-based exemptions, and Section 103(a)(20), defining "cost"].

With respect to the fuel cost components of the cost calculations, the previous final regulations (46 FR 59872, November 30, 1981) provided equations and future fuel price indices for computing the prices of delivered fuels over the lifetime of a facility. However, those regulations contained only a crude oil price index and an alternate fuel index for coal. Since those regulations did not explicitly include natural gas or distillate oil use, when an applicant proposed to use natural gas or distillate oil, the fuel cost computation for the proposed fuel employed the cost of an equivalent energy use of No. 6 residual fuel oil plus a $1.00 premium. This was adopted originally to avoid biasing the cost comparison between gas and coal by employing an arbitrarily low natural gas price when binding wellhead price ceilings held natural gas prices below the energy-equivalent price of imported petroleum.

Since adoption of those regulations on December 7, 1981, domestic energy prices in general ceased rising and then declined under the impacts of declining world petroleum prices, increasing supplies, steady efficiency improvements in energy use, and deregulation of natural gas prices.

Market and regulatory changes have essentially eliminated the former disparity between the prices of oil and natural gas. As a result, earlier projections of future coal and oil prices used for cost comparisons in applications for exemptions are outdated and in need of revision.

Further, market forces also have essentially eradicated the earlier price gap that represented the undervaluation of natural gas relative to petroleum when natural gas prices were constrained by binding price ceilings at the wellhead. Therefore, OFE is now adopting its proposal that the price of the primary fuel to be used in the new facility, whether natural gas or petroleum, be used directly in the fuel cost computations.

1. Cost Calculation for Exemption Petitions Proposing the Use of Natural Gas

In response to three commenters, DOE is revising the previous paragraph (c) of Appendix II to part 504, Fuel Price Computation—Single Fuel. This calculation included a premium value of $1.00 per barrel of oil equivalent which was added to the price of the fuel to be burned in the new facility. There are two reasons why we adopt this proposal. First, addition of the $1.00 premium is inconsistent with the intent of the FUA amendments which encourage fuel consumers to base their fuel choices on economic and other factors rather than artificially imposed values. Second, as discussed in the NOPR, there is now demonstrated competition between natural gas and residual fuel oil allowing many facilities with dual-capability to switch back and forth between fuels based on very small changes in their relative prices. The capability for substitution between the fuels both in the short- and long-run will prevent unconstrained swings in the price of one fuel relative to the other.

The OFE is adopting its proposal that a petitioner requesting an exemption use the price of the fuel that will actually be used rather than an equivalent energy value of No. 6 residual fuel oil computing fuel price.

2. Fuel Price and Inflation Indices

Commenters generally supported the proposal contained in Appendix II Option 1 of the NOPR that provided a mechanism by which the parameters specified in paragraphs (b)(4) and (c)(4) and in Tables II–1 and II–2 of Appendix II are to be updated annually. These tables were originally used in the cost based exemptions of §§ 503.21 and 503.32 to express fuel prices and construction and operation costs in nominal dollars for the year the powerplant was to be placed in service. In previous regulations Table II–1 contained DOE's crude oil and alternative fuel price and inflation indices; Table II–2 contained rates of fuel price and inflation increases. These tables have now been combined and is now identified as Table II–1. This new table is now merely illustrative of the application of equations II–1 and II–2 that prescribe the method by which petitioners are to compute fuel and inflation indices.

Consistent with the NOPR, OFE is deleting Appendix II, Option 2.

Three commenters suggested that a petitioner, at his own discretion, should be allowed to develop fuel price indices using either the OFE methodology or his own. OFE is adopting this suggestion in Appendix II paragraph (b)(1). However, if the petitioner uses his own price index, the source or derivation of his index must be fully documented and be contained in the evidential summary.

Consistent with the NOPR, the OFE will use DOE's EIA base case, or mid-range, forecast as the basis for computing fuel price and inflation indices.

OFE is revising Appendix II to clarify that fuel price and inflation indices will change yearly with the publication of the EIA's Annual Energy Outlook (AEO). The relevant set of values for a specific petition will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

In a related matter, one commenter suggested that the DOE clarify its regulations to provide expressly that the cost comparison for permanent exemptions include the "full cost" of using each fuel considered in the comparison, including the cost of environmental compliance, as well as the cost of any loss in a powerplant's efficiency caused by such measures. The OFE believes that the current cost comparison regulations, specifically §§ 503.6(d) (2) and (3)(ii), do not preclude the accounting of environmental compliance costs or powerplant efficiency losses caused by environmental considerations.

III. Procedural Matters

A. Section 102 of the National Environmental Policy Act (NEPA)

The environmental impact of the Fuel Use Act was addressed in the programmatic Environmental Impact Statement (DOE/EIS-00381) published in April 1979. The previous final rulemaking was published on December 7, 1981 (46 FR 59872), after it was determined that those final regulations did not constitute a major federal action significantly affecting the human environment.

This final rule brings the language of the regulations into line with the amended FUA regarding the fuel price and inflation indices used in the cost calculations for an exemption, and change the fuel pricing formula for proposals to burn natural gas in a powerplant. Since this final rulemaking addresses the applicability of the FUA to only baseload powerplants and updates certain computational parameters and pricing formulae already evaluated in the programmatic EIS, the environmental impact of these regulatory changes fall within the scope of the previous EIS and its implementing rules. These amendments do not constitute a major federal action significantly affecting the quality of the human environment and neither an environmental assessment nor a supplement to the existing EIS is required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 (September 19, 1980)) requires the DOE to describe the economic impact that a rule would have on small entities or to certify that the rule would not have a significant economic impact on a substantial number of small entities.

Since these final rules reflect a reduction in the universe affected by the FUA and only change certain parameters already defined, the DOE has determined that this final rule will not negatively affect firms that are "small entities" within the meaning of the Regulatory Flexibility Act. Accordingly, the DOE certifies that this rule is not likely to have a significant impact on a substantial number of small entities within the meaning of that Act.

C. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981) requires an agency to prepare a regulatory impact analysis for any proposed major rule. At the time the existing regulations were published, the Office of Management and Budget waived the requirements of sections 3, 4, and 7 of Executive Order 12291 as they pertain to those regulations. Since this final rule reduces the universe affected by FUA and would change only a small portion of the existing regulations, no regulatory impact analysis has been prepared.

Pursuant to section 3(c)(3) of Executive Order 12291, this rule was submitted to the Office of Management and Budget for review at least 10 days prior to publication in the **Federal Register.**

D. Paperwork Reduction Act of 1980

The information collection requirements contained in 10 CFR parts 500, 501, 503, and 504 of these regulations have received Office of Management and Budget (OMB) approval under control number 1901-0297.

List of Subjects in 10 CFR parts 501, 502, 503, and 504

Business and industry, Electric power plants, Energy conservation, Natural gas, Petroleum, Reporting and recordkeeping requirements.

In consideration of the foregoing, chapter II, title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC on December 15, 1989.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

For reasons set out in the preamble, parts 500, 501, 503, 504, 508, and 516 of chapter II, title 10 of the Code of Federal Regulations are amended as follows.

PART 500—DEFINITIONS

1. The authority citation for part 500 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. § 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96-294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

§ 500.2 [Amended]

2. Section 500.2 is amended by removing "ERA", "Economic Regulatory Administration" and "Administrator" wherever those terms appear and replacing them with "OFE", "Office of Fossil Energy" and "Assistant Secretary" respectively.

3. By revising the definitions of "action" in § 500.2 to read as follows:

"Action" means a prohibition by rule or order, in accordance with sections 301(b) and (c) of FUA; any order granting or denying an exemption in accordance with sections 211, 212, 311 and 312 of FUA; a modification or rescission of any such order, or rule; an interpretation; a notice of violation; a remedial order; an interpretive ruling; or a rulemaking undertaken by DOE.

4. By revising the definition of "Capability to use alternate fuel" in § 500.2 to read as follows:

"Capability to use alternate fuel", for the purposes of Title II prohibitions relating to construction of new powerplants, means the powerplant to be constructed:

(1) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation. In addition, the owner or operator of a baseload powerplant need not have adequate on-site space for either a coal gasifier or any facilities for handling coal or related fuels.

5. By adding the definition of "Certification" in § 500.2 to read as follows:

"Certification" means a document, signed by an official of the owner or operator, notarized, and submitted to OFE, which declares that a new powerplant will have the "capability to use alternate fuel" (as defined herein).

6. By revising the definition of "cogeneration facility" in § 500.2 to read as follows:

"Cogeneration facility" means an electric powerplant that produces:

(1) Electric power; and

(2) Any other form of useful energy (such as steam, gas or heat) that is, or will be used, for industrial, commercial, or space heating purposes. In addition, for purposes of this definition, electricity generated by the cogeneration facility must constitute more than five (5) percent and less than ninety (90) percent of the useful energy output of the facility.

Note—Any cogeneration facility selling or exchanging less than fifty percent (50%) of the facility's generated electricity is considered an industrial cogenerator and is exempt from the fuel use prohibitions of FUA.

7. By revising the definition of "combined cycle unit" in § 500.2 to read as follows:

"Combined cycle unit" means an electric power generating unit that consists of a combination of one or more combustion turbine units and one or more steam turbine units with a substantial portion of the required energy input of the steam turbine unit(s) provided by the exhaust gas from the combustion turbine unit(s).

Substantial amounts of supplemental firing for a steam turbine or waste heat boiler to improve thermal efficiency will not affect a unit's classification as a combined cycle unit.

8. By revising the definition of "Costs" in § 500.2 to read as follows:

"Costs" means total costs, both operating and capital, incurred over the estimated remaining useful life of an electric powerplant, discounted to the present, pursuant to rules established in Parts 503 and 504 of these regulations.

9. By revising the definition of "Design Capability" in § 500.2 to read as follows:

"Design capability" defined in section 103(a)(7) of FUA, shall be determined as follows:

(1) *Boiler and associated generator turbines.* The design fuel heat input rate of a steam-electric generating unit (Btu/hr) shall be the product of the generator's nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the overall boiler-turbine-generator unit design efficiency (decimal); or if the generator's nameplate does not have a rating measured in kilowatts, the product of the generator's kilovolt-amperes nameplate rating, and the power factor nameplate rating; and 3412 (Btu/kWh), divided by the boiler turbine-generator unit's design efficiency (decimal). (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

(2) *Combustion turbine and associated generator.* The design fuel heat input rate of a combustion turbine (Btu/hr) shall be the product of its nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the combustion turbine-generator unit's design efficiency (decimal), adjusted for peaking service at an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) at the unit's elevation. (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

(3) *Combined cycle unit.* The design fuel heat input rate of a combined cycle unit (Btu/hr) shall be the summation of the product of its generator's nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the overall combustion turbine-generator unit's efficiency (decimal), adjusted for peaking service at an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) and at the unit's evaluation, plus the product of the maximum fuel heat input to any supplemental heat recovery steam generator/boiler in gallons or pounds per hour and the fuel's heat content. If the generator's nameplate does not have a rating measured in kilowatts, the product of the generator's kilowatt-amperes nameplate rating and power factor nameplate rating must be substituted for kilowatts. (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

10. By removing the definitions of "Existing major fuel burning installation", "Installation", "Major fuel burning installation", "New major fuel burning installation", and "MFBI" from 500.2.

11. By removing the definitions of "Intermediate load powerplant" and "Peakload powerplant" from 500.2.

12. By revising the definition of "Nonboiler" in 500.2 to read as follows:

"Nonboiler" means any powerplant which is not a boiler and consists of either a combustion turbine unit or combined cycle unit.

13. By revising the definition of "Primary energy source" in 500.2 to read as follows:

"Primary energy source" means the fuel or fuels used by any existing or new electric powerplant except:

(1) Minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses. OFE has determined that, unless need for a greater amount is demonstrated, twenty-five (25) percent of the total annual Btu heat input of a unit shall be automatically excluded under this paragraph.

(2) Minimum amounts of fuel required to alleviate or prevent:

(i) Unanticipated equipment outages as defined in § 501.191 of these regulations; and

(ii) Emergencies directly affecting the public health, safety, or welfare that would result from electric power outages as defined in § 501.191 of these regulations.

Note: (1) Any fuel excluded under the provisions of paragraph (1) of this definition is in addition to any fuel authorized to be used in any order granting a fuel mixtures exemption under Parts 503 and 504 of these rules. The exclusion of fuel under paragraph (1), together with the authority for such additive treatment, shall apply to any jurisdictional facility, regardless of whether or not it had received an order granting an exemption as of the date these rules are promulgated.

(2) If an auxiliary unit to an electric powerplant consumes fuel only for the auxiliary functions of unit ignition, startup, testing, flame stabilization, and other control uses, its use of minimum amounts of natural gas or petroleum is not prohibited by FUA. The measurement of such minimum amounts of fuel is discussed in *Associated Electric Cooperative,* et al., Interpretation 1980-42 [45 FR 82572, Dec. 15, 1980].

14. By revising the definition of "Prohibition Order" in § 500.2 to read as follows:

"Prohibition order" means:

(1) An order issued pursuant to Section 301(b) of the Act that prohibits a powerplant from burning natural gas or petroleum as its primary energy source; or

(2) An order issued pursuant to section 301(c) of the Act that prohibits excessive use of natural gas or petroleum in mixtures burned by a powerplant as its primary energy source.

15. By revising the definition of "Rated capacity" in § 500.2 to read as follows:

"Rated capacity" for the purpose of determining reduction in the rated capacity of an existing powerplant, means design capacity, or, at the election of the facility owner or operator, the actual maximum sustained energy output per unit of time that could be produced, measured in power output, expressed in kilowatts, per unit of time.

16. By revising the definition of "Reconstruction" in § 500.2 to read as follows:

"Reconstruction" means the following:

(1) Except as provided in paragraph (2) of this definition, reconstruction shall be found to have taken place whenever the capital expenditures for refurbishment or modification of an electric powerplant on a cumulative basis for the current calendar year and preceding calendar year, are equal to or greater than fifty (50) percent of the capital costs of an equivalent replacement unit of the same capacity, capable of burning the same fuels.

(2) Notwithstanding paragraph (1) of this definition, reconstruction shall not be found to have taken place whenever:

(i) The capital expenditures for refurbishment or modification of an electric powerplant, on a cumulative basis for the current calendar year and preceding calendar year, are not greater than eighty (80) percent of the capital costs of an equivalent replacement unit of the same capacity, capable of burning the same fuels and the unit, as refurbished or modified, will not have a greater fuel consumption capability than the unit it replaces;

(ii) The unit being refurbished or modified was destroyed, in whole or substantial part, in a plant accident and the unit, as refurbished or modified, will not have a greater fuel consumption capability than the unit it replaces; or

(iii) Refurbishment or modification of the unit is undertaken primarily for the purpose of increasing fuel burning efficiency of the unit, and will not result in:

(A) Increased remaining useful plant life, or

(B) Increased total annual fuel consumption.

17. By removing the definition of "Refinery operation" from § 500.2.

18. By revising the definition of "Site limitation" in § 500.2 to read as follows:

"Site limitation" means a specific physical limitation associated with a particular site that relates to the use of an alternate fuel as a primary energy scurce for the powerplant such as:

(1) Inaccessibility to alternate fuels;

(2) Lack of transportation facilities for alternate fuels;

(3) Lack of adequate land for facilities for the handling, use and storage of alternate fuels;

(4) Lack of adequate land or facilities for the control or disposal of wastes from such powerplant, including lack of land for pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(5) Lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Part 501 is amended as follows:

1. The authority citation for Part 501 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. § 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

2. By replacing the terms "ERA" and "Economic Regulatory Administration" where ever they appear with "OFE" and "Office of Fossil Energy" respectively.

3. By removing the reference "and MFBI's" in § 501.2(a).

4. By revising § 501.6 to read as follows:

§ 501.6 Service.

(a) DOE will serve all orders, notices interpretations or other documents that it is required to serve, personally or by mail, unless otherwise provided in these regulations.

(b) DOE will consider service upon a petitioner's duly authorized representative to be service upon the petitioner.

(c) Service by mail is effective upon mailing.

§ 501.7 [Amended]

5. By removing § 501.7(a)(12).

6. By redesignating § 501.7(a)(13) as § 501.7(a)(12).

7. By revising § 501.7(b) as follows:

* * * * *

(b) *Number of documents to be filed.* (1) A petitioner must file an executed original and fourteen (14) copies of all exemption requests submitted to DOE. For certification requests, an original and three (3) copies shall be submitted.

(2) Where the petitioner requests confidential treatment of some or all of the information submitted, an original and eleven (11) copies of the confidential document and three (3) copies of the document with confidential material deleted must be filed.

8. By revising the § 501.9 as follows:

§ 501.9 Effective date of orders or rules.

(a) When OFE issues a rule or order imposing a prohibition or granting an exemption (or permit) under FUA, the rule or order will be effective sixty (60) days after publication in the **Federal Register**, unless it is stayed, modified, suspended or rescinded.

(b) If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption, to the extent it applies to the prohibition under section 201 of FUA against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained.

9. By revising § 501.10 to read as follows:

§ 501.10 Order of precedence.

If there is any conflict or inconsistency between the provisions of this Part and any other provisions or parts of this chapter, except for general procedures which are unique to Part 515 of this chapter, the provisions of this part will control respect to procedure.

10. By revising § 501.11 to read as follows:

§ 501.11 Address for filing documents.

Send all petitions, self-certifications and written communications to the following address: Office of Fossil Energy, Office of Fuels Programs, Coal and Electricity Division, Mail Code FE–52, 1000 Independence Avenue, SW., Washington, DC 20585.

11. By revising § 501.12 to read as follows:

§ 501.12 Public files.

DOE will make available at the Freedom of Information reading room, Room 1E190, 1000 Independence Avenue SW., Washington, DC for public inspection and copying any information required by statute and any information that OFE determines should be made available to the public.

12. By revising § 501.14 to read as follows:

§ 501.14 Notice to Environmental Protection Agency.

A copy of any proposed rule or order that imposes a prohibition, order that imposes a prohibition, or a petition for an exemption or permit, shall be transmitted for comments, if any, to the Administrator and the appropriate Regional Administrator of the Environmental Protection Agency (EPA). The Administrator of EPA shall be given the same opportunity to comment and question as is given other interested persons.

13. By revising § 501.31(a) to read as follows:

§ 501.31 Written comments.

(a) *New facilities.* Except as may be provided elsewhere in these regulations, OFE shall provide a period of at least forty-five (45) days, commencing with publication of the Notice of Acceptance of Petition, of in the case of certification exemptions, Notice of Acceptance and availability of Certification, in the **Federal Register** in accordance with § 501.63(a), for submission of written comments concerning a petition for an exemption. Written comments shall be made in accordance with § 501.7.

* * * * *

14. By revising § 501.33(a) to read as follows:

§ 501.33 Request for a public hearing.

(a) *New facilities.* In the case of a petition for an exemption under Title II of FUA, any interested person may submit a written request that OFE convene a public hearing in accordance with section 701 of FUA no later than forty-five (45) days after publication of either the Notice of Acceptance of a petition, or in the case of a certification exemption, the publication of the Notice of Acceptance of Certification. This time period may be extended at the discretion of OFE.

* * * * *

15. By revising § 501.35(b) to read as follows:

§ 501.35 Public file.

(a) * * *

(b) *Availability.* The public file shall be available for inspection at Room 1E190, 1000 Independence Avenue SW., Washington, DC. Photocopies may be made available, on request. The charge for such copies shall be made in accordance with a written schedule.

16. Section 501.51 is amended by revising the section heading, paragraphs (a), (b) (2), and (3), (d) (2)(ii), and (3) to read as follows:

§ 501.51 Prohibitions by order—electing powerplants.

(a) OFE may prohibit by order the use of petroleum or natural gas as a primary energy source or in amounts in excess of the minimum amount necessary to maintain reliability of operation consistent with reasonable fuel efficiency in an electing powerplant, if:

(1) That facility has not been identified as a member of a category subject to a final rule at the time of the issuance of such order; and

(2) The requirements of § 504.6 have been met.

* * * * *

(b) * * *

(2) Pursuant to section 701 of FUA, prior to the issuance of a final order to an electing powerplant, OFE shall publish a proposed order in the **Federal Register** together with a statement of the reasons for the order. In the case of a proposed order that would prohibit the use of petroleum or natural gas as a primary energy source, the finding required by former section 301(b)(1) of the Act shall be published with such proposed order.

(3) OFE shall provide a period for the submission of written comments of at least three months after the date of the proposed order. During this period, the recipient of the proposed order and any other interested person must submit any evidence that they have determined at that time to support their respective positions as to each of the findings that OFE is required to make under section 301(b) of the Act. A proposed order recipient may submit additional new evidence at any time prior to the close of the public comment period which follows publication of the Tentative Staff Analysis or prior to the close of the record of any public hearing, whichever occurs later. A request by the proposed order recipient for an extension of the three-month period may be granted at OFE's discretion.

* * * * *

(d) * * *

(2) * * *

(ii) Sufficient information for OFE to make the findings required by section 301(b) of FUA.

(3) If OFE determines to accept the request, OFE shall publish a proposed order in the **Federal Register** together with a statement of the reasons for the order.

§ 501.56 [Removed and reserved]

17. By removing and reserving § 501.56.

18. The heading for subpart F is revised to read as follows:

Subpart F—Exemptions and Certifications

19. By revising § 501.60(a) (1), (2), and (3) to read as follows:

§ 501.60 Purpose and scope.

(a) (1) If the owner or operator plans to construct a new baseload powerplant and the unit will not be in compliance with the prohibition contained in section 201(a) of FUA, this subpart establishes the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA.

(2) Self-certification alternative. If the owner or operator plans to construct a new baseload powerplant not in compliance with the prohibitions contained in section 201(a) of FUA, this subpart establishes the procedures for the filing of a self-certification under section 201(d) of FUA.

(3) If the petitioner owns, operates or controls a new powerplant, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under sections 211 or 311 of FUA.

* * * * *

20. By adding a new § 501.61 to read as follows:

§ 501.61 Certification Contents.

(a) A self-certification filed under section 201(d) of FUA should include the following information:

(1) Owner's name and address.

(2) Operator's name and address.

(3) Plant location and address.

(4) Plant configuration (combined cycle, simple cycle, topping cycle, etc.)

(5) Design capacity in megawatts (MW).

(6) Fuel(s) to be used by the new facility.

(7) Name of utility purchasing electricity from the proposed facility and percent of total output to be sold.

(8) Date unit is expected to be placed in service.

(9) Certification by an officer of the company or his designated representative certifying that the proposed facility:

(i) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(ii) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

(b) A self-certification filed pursuant to § 501.61(a) shall be effective to establish compliance with the requirement of section 201(a) of FUA as of the date filed.

(c) OFE will publish a notice in the **Federal Register** within fifteen days reciting that the certification has been filed. Publication of this notice does not serve to commence a public comment period.

(d) OFE will notify the owner or operator within 60 days if supporting documentation is needed to verify the certification.

21. By revising § 501.63(a)(2) to read as follows:

§ 501.63 Notice of the commencement of an administrative proceeding on an exemption petition.

(a) (1) * * *

(2) OFE will notify the appropriate State agency having apparent primary authority to permit or regulate the construction or operation of a powerplant that an exemption proceeding has commenced and will consult with this agency to the maximum extent practicable. Copies of all accepted petitions also will be forwarded to EPA, as provided in § 501.14(a).

* * * * *

22. By revising § 501.65 to read as follows:

§ 501.65 Publication of notice of availability of draft EIS.

A Notice of Availability of any draft EIS will be published in the **Federal Register** and comments thereon will also be solicited. Interested persons may request a hearing on any draft EIS. Such hearing must be requested within thirty (30) days of publication of the Notice of Availability of the draft EIS.

23. By revising § 501.68(d) to read as follows:

§ 501.68 Decision and Order.

* * * * *

(d) OFE may design any terms and conditions included in any temporary exemption issued or extended under Section 211 of FUA, to ensure, among other things, that upon expiration of the exemption the persons and powerplant covered by the exemption will comply with the applicable prohibitions under FUA. For purposes of the provision, the subsequent grant of a permanent exemption to the subject unit shall be deemed compliance with applicable prohibitions.

24. By revising § 501.103(c) to read as follows:

§ 501.103 OFE decision.

* * * * *

(c) OFE will serve the rule or order granting or denying the request for modification or rescission upon the requester, or, if the action was initiated by OFE, upon the owner or operator of the affected powerplant. OFE will publish a notice of the issuance of a rule or order modifying or rescinding a rule or order in the **Federal Register**.

25. By revising § 501.190 to read as follows:

§ 501.190 Purpose and scope.

(a) If a person operates a powerplant covered by any of the prohibitions of Titles II, III, or IV of FUA, § 501.191 of this subpart establishes procedures to be followed for the use of minimum amounts of natural gas or petroleum under FUA section 103(a)(15)(B) in order to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public health, safety, or welfare that would result from electric power outages.

(b) *Explanatory note:* If a person operates a rental boiler as a powerplant covered by any of the prohibitions of Titles II, III, or IV of FUA, he may be able to use the provisions of this subpart for the emergency use of natural gas or petroleum.

26. By revising § 501.191(a) to read as follows:

§ 501.191 Use of natural gas or petroleum for certain unanticipated equipment outages and emergencies defined in section 103(a)(15)(B) of the act.

(a) In the event of the occurrence or imminent occurrence of an emergency, or of the occurrence or imminent occurrence of an unanticipated equipment outage in the unit, an owner or operator of a powerplant is automatically permitted to use minimum amounts of natural gas or petroleum in the unit or in a substitute unit to prevent or alleviate the outage or to prevent or alleviate the emergency if he complies with procedures contained in paragraph (b) of this section.

* * * * *

§ 501.192 [Reserved]

27. By removing and reserving § 501.192.

Part 503 is amended as follows:

PART 503—NEW FACILITIES

1. The authority citation for part 503 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. § 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

2. By replacing "ERA" and "Economic Regulatory Administration" wherever they appear with "OFE" and "Office of Fossil Energy" respectively.

3. By revising the heading of Subpart A to read as follows:

Subpart A—General Prohibition

4. By revising § 503.1 to read as follows:

§ 503.1 Purpose and scope.

This subpart sets forth the statutory prohibition imposed by the Act upon new powerplants. The prohibition in the subpart applies to all new baseload electric powerplants unless an exemption has been granted by OFE under subparts C and D of this part. Any person who owns, controls, rents, leases or operates a new powerplant that is subject to the prohibition may be subject to sanctions provided by the Act or these regulations.

5. By revising § 503.2 to read as follows:

§ 503.2 Prohibition.

Section 201 of the Act prohibits, unless an exemption has been granted under subpart C or D of this part, any new electric powerplant from being constructed or operated as a baseload powerplant without the capability to use coal or another alternate fuel as a primary energy source.

§ 503.3 [Removed and reserved]

6. By removing and reserving § 503.3.

7. By removing the footnote and revising the definition for "IX_i" in § 503.6(b)(4) and by removing the footnote in (d)(1) and removing the footnote and revising (d)(4) to read as follows:

§ 503.6 Cost calculations for new powerplants.

* * * * *

(b) * * *

(4) * * *

IX_i = Inflation index value for year i (see Appendix II to Part 504 for method of computation).

* * * * *

(d) * * *

(4) The discount rate (k) for analyses is 2.9 percent or that which is computed as specified in Appendix I. The method of computing the inflation index (IX) is shown in Appendix II to Part 504. OFE will modify these specified rates from time to time as required by changed conditions after public notice and an opportunity to comment. However, the relevant set of specified rates for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever set is more favorable to the petitioner.

* * * * *

8. By revising § 503.8(a) to read as follows:

§ 503.8 No alternate power supply—general requirement for certain exemptions for new powerplants.

(a) *Application.* To qualify for an exemption, except in the case of an exemption for cogeneration units, section 213(c) of the Act requires a demonstration that, despite reasonable good faith efforts, there is no alternative supply of electric power available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service. If a petitioner is unable to demonstrate that there is no alternate supply during the first year of operation, OFE will conclude that the absence of the proposed powerplant will not impair short-term reliability of service, and as a result will not grant the exemption. Such action would not impair long-term reliability of service, since a petition may be submitted for a powerplant that would begin operation in a subsequent year.

* * * * *

9. By revising § 503.9(a) to read as follows:

§ 503.9 Use of mixtures—general requirement for certain permanent exemptions.

(a) *Criteria.* To qualify for a permanent exemption, except in the case of an exemption for fuel mixtures, section 213(a)(1) of the Act requires a demonstration that the use of a mixture of natural gas and petroleum and an alternate fuel for which an exemption under 10 CFR 503.38 (Fuel mixtures) would be available, would not be economically or technically feasible.

* * * * *

10. By revising § 503.10(a) to read as follows:

§ 503.10 Use of fluidized bed combustion not feasible—general requirement for permanent exemptions.

(a) *OFE finding.* Except in the case of an exemption for fuel mixtures, OFE may deny permanent exemptions authorized under section 212 of the Act if OFE finds on a site-specific or generic basis that use of a method of fluidized bed combustion of an alternate fuel is economically and technically feasible.

* * * * *

11. By revising § 503.11(a) to read as follows:

§ 503.11 Alternative sites—general requirement for permanent exemptions for new powerplants.

(a) *Criteria.* To qualify for a permanent exemption due to lack of alternate fuel supply, site limitations, environmental requirements, or inadequate capital, section 212(a) of the Act requires a demonstration that one of these exemptions would be available for any reasonable alternative site for the facility.

* * * * *

12. By revising § 503.13(a) introductory text, (a)(1), and (b) to read as follows:

§ 503.13 Environmental impact analysis.

* * * * *

(a) All petitions for permanent exemptions must contain the following information:

(1) A description of the facility, including site location, and surroundings, alternative site(s), the facility's current proposed operations, its fuel capability, and its pollution abatement systems and equipment (including those systems and equipment necessary for all fuel scenarios considered);

* * * * *

(b) For exemptions for cogeneration, the information enumerated below is to be submitted in lieu of the information required by paragraph (a) of this section. However, submission of the following information merely establishes a rebuttable presumption that the grant or denial of the exemption would have no significant environmental impact. OFE may, in individual cases, during the course of the administrative proceeding, determine that additional environmental information is required. In such cases, the petitioner will be required to submit the information described in paragraph (a) of this section.

* * * * *

13. By revising § 503.14 to read as follows:

§ 503.14 Fuels search.

Prior to submitting a petition for a permanent exemption for lack of alternate fuel supply, site limitations, inadequate capital, or state or local requirements, a petitioner must examine the use of conventional solid coal as a primary energy source at the site under consideration, and at reasonable alternative sites. Where a petitioner believes that its use of such coal would be infeasible, however, and where OFE and the petitioner can reach accord, it may evaluate use of a different alternate fuel in lieu of solid coal. A petitioner of these exemptions must demonstrate for any fuel examined that he would qualify for an exemption.

14. By revising § 503.20(b) to read as follows:

§ 503.20 Purpose and scope.

* * * * *

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants who petition for a temporary exemption must meet to sustain their burden of proof under the Act.

* * * * *

15. By revising § 503.21(a)(4) to read as follows:

§ 503.21 Lack of alternate fuel supply.

(a) * * *

(4) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

§ 503.21 [Amended]

16. By removing § 503.21(c) and by redesignating § 503.21(d) as § 503.21(c).

17. By revising § 503.22(a)(3) to read as follows:

§ 503.22 Site limitation.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

18. By revising § 503.23(b)(8) and (d)(1)(ii) to read as follows:

§ 503.23 Inability to comply with applicable environmental requirements.

* * * * *

(b) * * *

(8) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

(d) * * *

(1) * * *

(ii) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

19. By revising § 503.24(a)(3) to read as follows:

§ 503.24 Future use of synthetic fuels.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

20. By revising § 503.25(a)(3) to read as follows:

§ 503.25 Public interest.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

21. By revising § 503.31(a) (3) and (5) to read as follows:

§ 503.31 Lack of alternate fuel supply for the first 10 years of useful life.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations;

(4) * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

22. By revising § 503.32(a) (3) and (5) to read as follows:

§ 503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

23. By removing § 503.32(c).

24. By revising § 503.33(a) (2) and (4) to read as follows:

§ 503.33 Site limitations.

(a) * * *

(2) No alternate power supply exists, as required under § 503.8 of these regulations;

* * * * *

(4) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

25. By revising § 503.34 (a)(2), (c)(8), and (10), and (d)(1) (ii) and (iii) to read as follows:

§ 503.34 Inability to comply with applicable environmental requirements.

(a) * * *

(2) Reasonable alternative sites, which would permit the use of alternate fuels in compliance with applicable Federal or state environmental requirements, are not available.

* * * * *

(c) * * *

(8) No alternate power supply exists as required under § 503.8 of these regulations;

* * * * *

(10) Alternative sites are not available, as required under § 503.11 of these regulations;

* * * * *

(d) * * *

(1) * * *

(ii) No alternate power supply exists, as required under § 503.8 of these regulations;

(iii) Alternative sites are not available, as required under § 503.11 of these regulations; and

* * * * *

26. By revising § 503.35(a)(2) introductory text, (3), and (5) to read as follows:

§ 503.35 Inability to obtain adequate capital.

(a) * * *

(2) The additional capital cannot be raised:

* * * * *

(3) No alternative power supply exists, as required under § 503.8 of these regulations;

* * * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

27. By revising § 503.36(a) (4) through (6) and by adding (7) as follows:

§ 503.36 State or local requirements.

(a) * * *

(4) The petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital at the site of the proposed powerplant or at any reasonable alternative site for the alternate fuel(s) considered;

(5) At the proposed site and every reasonable alternative site where the petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital, the petitioner nevertheless would be barred at each such proposed or alternate site from burning an alternate fuel by reason of a State or local requirement;

(6) No alternate power supply exists, as required under § 503.8 of these regulations; and

(7) Use of mixtures is not feasible, as required under § 503.9 of these regulations.

* * * * *

28. By revising § 503.37 to read as follows:

§ 503.37 Cogeneration.

The following table may be used to determine eligibility for a permanent exemption based on oil and natural gas savings.

AVERAGE ANNUAL UTILIZATION OF OIL AND NATURAL GAS FOR ELECTRICITY GENERATION BY STATE

[BTU's per KWHR sold]

State name	Oil/gas savings Btu/kWh
Alabama	33
Arizona	802
Arkansas	1,363
California	3,502
Colorado	289
Connecticut	3,924
Delaware	3,478
Washington, DC.	895
Florida	3,177
Georgia	45
Idaho	0
Illinois	250
Indiana	53
Iowa	147
Kansas	666
Kentucky	34
Louisiana	4,189
Maine	2,560
Maryland	895
Massachusetts	5,250
Michigan	256
Minnesota	151
Mississippi	1,519
Missouri	57
Montana	60
Nebraska	139
Nevada	761
New Hampshire	2,695
New Jersey	1,894
New Mexico	1,528
New York	4,219
North Carolina	49
North Dakota	47
Ohio	36
Oklahoma	5,180
Oregon	0
Pennsylvania	771
Rhode Island	1,800
South Carolina	24
South Dakota	36
Tennessee	20
Texas	4,899
Utah	107
Vermont	105
Virginia	460
Washington	3
West Virginia	126
Wisconsin	72
Wyoming	75

Data are based upon 1987 oil, natural gas and electricity statistics published by DOE's Energy Information Administration.

Example: The proposed cogeneration project is to be located in Massachusetts and is to use distillate oil. It will have a capacity of 50 MW, an average annual heat rate of 7600 BTU/KWHR, and be operated at a capacity factor of 90%. The annual fuel consumption is therefore calculated to be 2.996×10^{9} Btu/yr. (50,000 KW $\times$ 7600 BTU/KWHR $\times$ .9 $\times$ 8760 HR/YR) The oil and gas backed off the grid would be calculated to be $.2070 \times 10^{9}$ BTU/YR. (50,000 KW $\times$ 5250 BTU/KWHR $\times$ .9 $\times$ 8760 HR/YR) since the proposed unit would consume more oil that would be "backed off" the grid, the unit would not be eligible for a permanent exemption based on savings of oil and natural gas.

29. By revising § 503.38(a)(3) to read as follows:

§ 503.38 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

§ 503.39 [Amended]

30. By removing §§ 503.38 (b) and (d), and redesignating §§ 503.38 (c) and (e) as §§ 503.38 (b) and (c), respectively.

§§ 503.39-503.43 [Reserved]

31. By removing and reserving §§ 503.39 through 503.43.

Part 504 is amended as follows:

PART 504—EXISTING POWERPLANTS

1. The authority citation for part 504 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. § 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

2. By replacing "ERA" and "Economic Regulatory Administration" wherever they appear with "OFP" and "Office of Fuels Programs" respectively.

§ 504.1 [Removed and reserved]

3. By removing subpart A consisting of § 504.1.

Subpart B—[Amended]

4. By removing heading for subpart B.

5. Appendix II to part 504 is revised to read as follows:

Appendix II—Fuel Price Computation

(a) *Introduction.* This appendix provides the equations and parameters needed to specify the price of the delivered fuels to be used in the cost calculations associated with parts 503 and 504 of these regulations. The delivered price of the fuel to be used to calculate delivered fuel expenses must reflect (1) the price of each fuel at the time of the petition, and (2) the effects of future real price increases for each fuel. The delivered price of an alternate fuel used to calculate delivered fuel expenses must reflect the petitioner's delivered price of the alternate fuel and the effects of real increases in the price of that alternate fuel. Paragraphs (b), (c) and (d) below provide the procedure to: (1) Calculate fuel price and inflation indices; (2) account for projected real increases in fuel prices when planning to burn one or more than one fuel; and (3) account for projected real increases in the price of the alternate fuel. Table II–1 of this appendix (See paragraph (b)) contains example fuel price and inflation indices based on the latest data appearing in the Energy Information Administration's (EIA) *Annual Energy Outlook* (AEO).

The fuel price and inflation indices will change yearly with the publication of the *AEO*. Revisions shall become effective after final publication. However, the relevant set of parameters for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

(b) *Computation of Fuel Price and Inflation Indices.*

(1) the Petitioner is responsible for computing the annual fuel price and inflation indices by using Equation II–1 and Equation II–2, respectively. The petitioner may compute the fuel price index specified in Equation II–1 or use his own price index. However, if he uses his own price index, the source or the derivation of the index must be fully documented and be contained in the evidential summary.

EQ II–1 is: $PX_i = \frac{P_i}{P_o}$

where:

PX_i = The fuel price index for each fuel in year i. P_i = Price of fuel in year i.

P_o = Price of fuel in base year.

EQ II–2 is: $IX_i = \frac{GX_i}{GX_o}$

where:

IX_i = The inflation index in year i.

GX_i = The NIPA GNP price deflator for year i.

GX_o = The NIPA GNP price deflator for the base year.

(2) The parameters to be used in EQ II–1 are the Base Case fuel price projections found in EIA's current *AEO*.

(3) When computing annual inflation indices, the petitioner is to use the Base Case National Macroeconomic Indicators (NIPA GNP Price Deflator) contained in EIA's current *AEO*. If necessary, the petitioner must rebase the projection to the same year used for the fuel price projections. For example, in 1989 *AEO* projects the price deflator in 1982 dollars; this must be rebased to the year in which the petition is filed. The methodology used to rebase the inflation indices must follow standard statistical procedures and must be fully documented within the petition. This index will remain frozen at the last year of the *AEO*'s projection for the remainder of the unit'(s) useful life.

(4) Table II–1 is provided as an example of the application of equations II–1 and II–2. This table contains annual fuel price indices for distillate oil, residual oil, natural gas, and coal. It also contains annual inflation indices. These values were computed from information contained in Table A3 and Table A11 of EIA's *AEO, 1989*.

TABLE II–1: PRICE AND INFLATION INDICES FOR USE IN THE COST CALCULATIONS

Year	Distillate (DPX)	Residual (RPX)	Natural gas (GPX)	Coal (CPX)	Inflation (IX)
1986	1.0000	1.0000	1.0000	1.0000	1.0000
1987	0.9810	1.2134	0.9508	0.9231	1.0334
1988	0.9429	0.9407	0.8934	0.8876	1.0658
1989	0.8929	0.9328	0.9057	0.8639	1.1054
1990	0.9905	1.0119	0.9221	0.9112	1.1607
1991	1.0381	1.0751	0.9344	0.9172	1.2204
1992	1.0929	1.1344	1.0205	0.9231	1.2836
1993	1.1595	1.2292	1.1148	0.9349	1.3512
1994	1.2286	1.3241	1.1844	0.9467	1.4214
1995	1.3000	1.4150	1.2705	0.9527	1.4960
1996	1.4000	1.5415	1.4016	0.9586	1.5768
1997	1.4762	1.6403	1.4918	0.9704	1.6585
1998	1.5452	1.7273	1.5615	0.9763	1.7410
1999	1.6143	1.7905	1.6475	0.9882	1.8235
2000	1.6690	1.8340	1.7049	0.9941	1.9025
2001	1.6690	I.8340	1.7049	0.9941	1.9025
2002	1.6690	1.8340	1.7049	0.9941	1.9025
2003	1.6690	1.8340	1.7049	0.9941	1.9025
2004	1.6690	1.8340	1.7049	0.9941	1.9025
2005	1.6690	1.8340	1.7049	0.9941	1.9025
2006	1.6690	1.8340	1.7049	0.9941	1.9025
2007	1.6690	1.8340	1.7049	0.9941	1.9025
2008	1.6690	1.8430	1.7049	0.9941	1.9025

TABLE II-1: PRICE AND INFLATION INDICES FOR USE IN THE COST CALCULATIONS—Continued

Year	Distillate (DPX)	Residual (RPX)	Natural gas (GPX)	Coal (CPX)	Inflation (IX)
2009	1.6690	1.8340	1.7049	0.9941	1.9025
2010	1.6690	1.8340	1.7049	0.9941	1.9025

(C) *Fuel Price Computation.*

(1) The delivered price of the proposed fuel to be burned (FPB_i) must reflect the real escalation rate of the proposed fuel, and must be computed with Equation EQ II-3.

EQ-II-3 is: $FPB_i = MPB\ [PX_i]$

where:

FPB_i = Price of the proposed fuel (distillate oil, residual oil, or natural gas) in year i.

MPB = The current delivered market price of the proposed fuel.

PX_i = The fuel price index value in year i, computed with Equation II-1.

or:

(2) When planning to use more than one fuel in the proposed unit(s), the petitioner must use Equation II-1 and Equation II-3 to calculate the annual fuel price of each fuel to be used. The petitioner then must estimate the proportion of each fuel to be burned annually over the useful life of the unit(s). With these proportions and the respective annual fuel prices for each fuel, the petitioner must compute an annual weighted average fuel price. The methodology used to calculate the weighted average fuel price must follow standard statistical procedures and be fully documented within the petition.

(d) *Fuel Price Computation—Alternate Fuel.* The delivered price of alternate fuel (PFA_i) must reflect the real escalation rate of alternate fuel and must be computed with Equation II-4.

Equation II-4 is:

$PFA_i = APF \times apx_i$

where:

PFA = The price of the alternate fuel in year i.

APF^{-1} = The current market price of the alternate fuel f.o.b. the facility).

APX_i = The alternate fuel price index value for year i, computed with Equation II-1.

In most cases the alternate fuel will be coal. The petitioner must use Equation II-1 (paragraph (b)) to compute the escalation rate (APX_i). If an alternate fuel other than coal is proposed the souroe or the derivation of the index must be fully documented and be contained in the evidential summary.

PART 508—ELECTRIC UTILITY CONSERVATION [REMOVED]

Part 508 of chapter II, title 10 of the Code of Federal Regulations is removed.

PART 516—PROHIBITIONS ON SALE AND DIRECT INDUSTRIAL USE OF NATURAL GAS FOR OUTDOOR LIGHTING [REMOVED]

Part 516 of chapter II, title 10 of the Code of Federal Regulations is removed.

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