nevertheless, fully regulated under such other Federal order; and

(5) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

4. In § 1079.52, revise paragraph (a)(2)(ii) to read as follows:

§ 1079.52 Plant location adjustments for handlers.

(a) * * *

(2) * * *

(iii) The Illinois counties of Henry, Mercer, Rock Island, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland, and Erie in Whiteside County.

* * * * *

Signed at Washington, DC, on December 22, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89-30243 Filed 12-28-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1139

[DA-89-024]

Milk in the Great Basin Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the period of December 1989 through August 1990 the Great Basin order's limit on the amount of milk that a producer-handler may purchase from pool plants or other order plants without losing its unregulated status. The suspension was requested by a producer-handler under the Great Basin Federal milk order.

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that this suspension action is needed to relieve an unwarranted burden on producer-handlers in the market.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/ Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 13, 1989; published June 19, 1989 (54 FR 25727).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain producer-handlers and tends to encourage more orderly marketing of milk in the Great Basin marketing area.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 15121 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Great Basin marketing area. A notice of rulemaking was published in the Federal Register on June 19, 1989 (54 FR 25727) concerning a proposed suspension of certain provisions of the Great Basin Federal milk order. Interested parties were afforded an opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of December 1989 through August 1990 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1139.10(b)(1)(ii), the words "in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month."

Statement of Consideration

This action makes inoperative for the months of December 1989 through August 1990 the provisions of the Great Basin milk order that limit the amount of milk that a producer-handler may purchase from pool plants and other order plants. The provisions suspended limit the amount of milk that a producer-handler may buy from pool plants or from other order plants to supplement its own production to 5,000 pounds or 5 percent of its Class I sales, whichever is greater.

The suspension was requested for an indefinite period by Glen E. Brown, owner of Brown Dairy, Inc., a producer-handler located in Coalville, Utah. Mr. Brown asserted that it is virtually impossible to manage a dairy herd in a manner that allows a producer-handler to service its sales accounts without producing an unneeded surplus and that removal of the limit on purchases is the only logical way to provide a producer-handler the means of marketing all of its production. He stated that such a solution would eliminate the need to dump surplus milk onto the market and would foster orderly marketing to the consumer.

Mr. Brown pointed out that a producer-handler has no way of knowing the full extent of his allowable purchases until the current month is completed, thus limiting his ability to purchase the entire 5 percent of his route dispositions that is permitted. Further, he stated, that the limit makes it difficult to provide fluid milk products to groups and facilities with seasonal needs, such as boy scout camps.

The producer-handler stated that the percentage of the milk distributed in the Great Basin market that is handled by producer-handlers has decreased over time, and that there is no indication that producer-handlers in the Great Basin market represent a threat to orderly marketing conditions. Further, he indicated that he knows of no undesirable marketing conditions or any increase in numbers of producer-handlers in markets without limits on the amount of milk that producer-handlers are allowed to purchase.

Mr. Brown asserted that the prices at which the producer-handlers sell milk are not the lowest or highest in the market, and do not adversely affect orderly marketing in the Great Basin marketing area. He stated that paying the order's Class I price for raw milk would not provide producer-handlers any unusual opportunity to upset the market structure, and that prices received by producers whose milk is pooled under the order would not be negatively affected by the proposed suspension.

Finally, Mr. Brown cited the Regulatory Flexibility Act (5 U.S.C. 601-612) to argue that the requested suspension would represent a very positive action on behalf of small entities affected by the provisions of the Great Basin milk order.

In response to the notice of proposed suspension, seven comments were received from interested parties. Comments filed by Glen Brown and by the three other interested persons located in or near the marketing area supported the proposed suspension. Comments filed by three pooled handlers, including the cooperative association that represents approximately 70 percent of the

producers whose milk is pooled under the Great Basin milk order, opposed the proposed suspension.

Mr. Brown's comments reiterated the basis of his request for suspension of the purchase limit and included information indicating that the price paid to producer-handlers by manufacturing plant operators is based on a cheese formula price minus 50 cents and hauling deductions. Randal Stoker of Buhl, Idaho, stated that producer-handlers can better serve the fresh fluid milk needs of consumers in some remote areas, and that producer-handlers must bear burdens that other marketing organizations spread among many producers. He identified these burdens as the necessity of constantly balancing supply and demand, being both dairy and business managers, and the responsibility of obtaining large amounts of capital for production, processing and marketing, and maximizing the use of that capital. Mr. Stoker stated that producer-handlers should be allowed to purchase supplemental supplies of milk during the generally short periods of high demand. He pointed out that having to purchase milk from pool handlers at the Class I price (probably with the addition of hauling costs, handling charges and premiums) would serve as an incentive for producer-handlers to limit such purchases since producer-handlers acquire most of their milk at the cost of production, which is generally less than the Class I prices.

Mr. Gerald L. Carlisle of Jerry's Dairy, a producer-handler under the Great Basin order, argued that the current allowable level of purchases is too small to use as an effective management tool, and leaves him unable to supply nearby summer programs with milk products. He pointed out that acts of nature, such as extreme weather conditions, can cause fluctuations of more than 5 percent in milk production. According to Mr. Carlisle, the present limit on purchases creates unstable marketing conditions during peak-production months by causing producer-handlers to lower prices on their Class I sales at such times while the ability to expand purchases would make producer-handlers better able to maintain their fluid milk sales at prices closer to the order's Class I price. Mr. Carlisle stated that suspension of the purchase limit would cause producer-handlers to adjust production closer to market demand, would return the Class I price to pooled producers, and would create no market disruption.

Gordon M. Liddle, president of Winder Dairy, a pooled handler located in Salt Lake City, Utah, stated that by definition and because of the large capital outlays required to compete on a larger scale, producer-handlers will remain a small market force. Mr. Liddle stated that more flexibility in a producer-handler's ability to purchase supplemental milk supplies is needed without incurring the extreme penalty of becoming a pool plant. He complained that the current regulations force producer-handlers to produce excess milk during the months of seasonally low production to avoid participating in the marketwide pool. As a result, he stated, a great deal of excess production must be marketed during the months of flush production, which results either in a reduction in returns on surplus production or lowered prices on fluid use that jeopardize market integrity. According to Mr. Liddle, the proposed suspension would provide for more orderly planning.

K.D.K. Dairy, a proprietary handler pooled under the Great Basin order, expressed opposition to the proposed suspension by quoting relevant paragraphs from the decision justifying the producer-handler exemption from regulation and the current order provisions. The decision stated that producer-handler operations may be exempted from full regulation because fluctuations in their daily and seasonal needs are met through their own farm production, with their surplus production disposed of at their own expense. According to the portion of the decision quoted by K.D.K., the necessity of balancing its own production with the market's Class I needs limits a producer-handler's ability to be a major competitive factor in the market supplied by regulated handlers. A further paragraph quoted from the decision noted that a producer-handler that is able to buy substantial supplemental supplies does not differ significantly from pooled handlers, but contributes none of the proceeds from its Class I sales to the market while other producers bear the cost of carrying the producer-handler's necessary reserve.

Gossner Foods, another pool plant regulated under the Great Basin order, opposed the proposed suspension on the basis that the producer-handler exemption from regulation is intended to cover small family operations selling milk from plant stores directly to consumers. Gossner's comments state that Brown's Dairy actively solicits and gains grocery store accounts previously supplied by pool handlers. These stores must then supplement their fluid milk needs by purchases from regulated handlers. According to Gossner's comments, in the absence of limits on producer-handler purchases, producer-handlers would be able to build up their production to eventually displace the milk purchased from pooled handlers. Gossner concluded that the present order provisions allow producer-handlers adequate flexibility to supplement their production to meet temporary needs.

Comments were filed on behalf of Western Dairymen, Inc. (WDCI), a cooperative association representing approximately 70 percent of the producers pooled under the Great Basin order. WDCI opposed the proposed suspension on the grounds that it is contrary to and would undermine the "orderly marketing" purpose of the Agricultural Marketing Agreement Act of 1937 (the Act), and that the producer-handler exemption from regulation is an exception to the uniform pricing and pooling provisions of the order and should not be broadened beyond its limited purpose.

WDCI's comments argued that the Act authorizes the regulation of handlers by requiring them to pay uniform class prices for milk purchased, and specifically includes producers in their capacity as handlers. The cooperative further stated that the exemption of producer-handlers from full regulation is based on the theory that such a handler is a self-contained production, processing and distribution unit that neither shares its Class I sales with other producers in the market nor counts on other producers to meet any of its needs. WDCI cited a USDA Judicial Officer's decision stating that unlimited purchases by a producer-handler would allow such an entity to rely on the pool to produce enough surplus milk to cover the producer-handler's peak demand while not sharing the benefits of its Class I use with other producers. Consequently, the producer-handler would enjoy the benefits of the regulatory program without sharing any of the burdens of surplus milk.

As indicated by those opposing the suspension, the limit on supplemental milk purchases by producer-handlers is essentially for the purpose of precluding a producer-handler from shifting to pool producers the burden of carrying its own reserve supply. Without any purchase limit a producer-handler could be expected to obtain Class I sales accounts in an amount equal to the volume of milk produced in the seasonally high production months. During seasonally low production months, a producer-handler could supplement its lack of sufficient

production with purchases from pool sources. Thus, a producer-handler that is permitted to follow this practice could effectively shift the burden of the seasonal reserve associated with its Class I sales to pool producers. Therefore, there continues to be an appropriate basis to continue to protect pool producers from this type of shift in the seasonal burden of reserve supplies associated with Class I sales of producer-handlers.

However, year-round application of the limit tends to impose an unnecessary burden on certain producer-handler operations in the market. Some producer-handler plants are located within close proximity to summer camps and winter recreational facilities that have a short-duration demand for milk in the months of seasonally higher production. The limit on supplemental milk purchases tends to either effectively preclude producer-handlers from serving such accounts or encourage producer-handlers to produce an unnecessary surplus of milk to serve such accounts and thereby retain producer-handler status. In circumstances where producer-handlers are placed in a position of having to refuse to service nearby summer camp accounts, it detracts from obtaining potential marketing efficiency and accommodation to sales accounts through the use of the packaged milk cooler space maintained at the producer-handler's plant. In the circumstance of excess production by producer-handlers to serve such accounts, it tends to detract from overall marketing efficiency by unduly encouraging increased milk production during periods of seasonal surplus and thereby adding to the seasonal variation in the volume of surplus milk to be processed in the market. If, on the other hand, producer-handlers were permitted to purchase pool milk to serve such accounts, pool producers would still tend to receive the benefit of such Class I sales, yet less surplus milk would be put on the market by producer-handlers.

Additionally, removal of the limit during the market's seasonally higher production months would tend to provide an incentive for producer-handlers to shift their production pattern so that it would peak during the market's low-production months of September through November in order to service their year-round sales accounts and retain producer-handler status. To the extent that this results in producer-handlers buying milk from pool sources during the market's high-production months, it would contribute to overall marketing efficiency by narrowing the magnitude of the seasonal variation in reserve milk supplies to be processed in the market.

In light of the foregoing consideration, it is concluded that application of the limit on a producer-handler's purchases of pool milk during December through August, the months of seasonally higher milk production in the market, detracts from the order's basic purpose of encouraging and maintaining orderly and efficient marketing in the Great Basin marketing area. To keep the limit on a producer-handler's purchases during the months of September through November, as herein concluded to be appropriate, the indefinite suspension request should not be adopted. However, to make the limit inoperative for the months of December through August, suspension action is necessary. To best effect an indefinite change to this provision of the order, the issue appropriately should be addressed at a public hearing. Pending such a hearing, the limit should be suspended for the period of December 1989 through August 1990.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that unnecessary production of surplus milk by producer-handlers is being encouraged by the limit on purchases of pool milk by producer-handlers and the limit is unduly disrupting the marketing of milk to seasonal recreational sales accounts in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1139.10 of the Great Basin order are hereby suspended for the months of December 1989 through August 1990, as follows:

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority citation for Part 1139 continues to read as follows:

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

§ 1139.10 [Temporarily suspended in part.]

2. In § 1139.10(b)(1)(ii), the words "in an amount that is not in excess of the larger of 5,000 or 5 percent of such person's Class I disposition during the month" are suspended for the months of December 1989 through August 1990.

Signed at Washington, DC on: December 26, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89–30274 Filed 12–28–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

10 CFR Part 590

Administrative Procedures With Respect to the Import and Export of Natural Gas; Technical Amendments

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of publication of technical changes to final administrative procedures rule to reflect transfer of natural gas import and export functions.

SUMMARY: On January 6, 1989, the administration of the natural gas import and export authorization program within the Department of Energy was transferred from the Economic Regulatory Administration to the Office of Fossil Energy. DOE Delegation Order No. 0204–127, specifies the transferred functions (54 FR 11437, March 20, 1989).

The Office of Fossil Energy hereby gives notice of clarification and technical changes to the Administrative Procedures in 10 CFR part 590, which govern the operation of the natural gas import and export program, to reflect this transfer of authority and to correct typographical errors in the original publication.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass (Office of Fuels Program), Fossil Energy, U.S. Department of Energy, Forrestal Bldg., room 3F–056, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–1302;

Michael T. Skinner (Natural Gas & Mineral Leasing), Office of General

Counsel, U.S. Department of Energy, Forrestal Bldg., room 6E-042, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-6667.

List of Subjects in 10 CFR Part 590

Administrative practice and procedure, Exports, Imports, Filing Fees, Natural Gas, Recordkeeping and reporting requirements, Environmental protection.

In consideration of the foregoing, chapter II of title 10, subchapter G, part 590, Code of Federal Regulations, is revised, as set forth below.

Issued in Washington, DC on December 22, 1989.

Denise L. Swink,

Acting Assistant Secretary, Fossil Energy.

Part 590 of subchapter II of title 10, Code of Federal Regulations, is revised to read as follows:

PART 590—ADMINISTRATIVE PROCEDURES WITH RESPECT TO THE IMPORT AND EXPORT OF NATURAL GAS

Subpart A—General Provisions

Sec.

Subpart B—Applications for Authorization to Import or Export Natural Gas

Subpart C—Procedures

Subpart D—Opinions and Orders

Subpart E—Applications for Rehearing

Authority: Secs. 301(b), 402(f), and 644, Pub. L. 95-91, 91 Stat. 578, 585, and 599 (42 U.S.C. 7151(b), 7172(f), and 7254), Sec. 3, Act of June 21, 1938, c. 556, 52 Stat. 822 (15 U.S.C. 717b); E.O. 12009 (42 FR 46267, September 15, 1977); DOE Delegation Order Nos. 0204-111 and 0204-127 (49 FR 6684, February 22, 1984; 54 FR 11437, March 20, 1989).

Subpart A—General Provisions

§ 590.100 OMB Control Numbers.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under Control No. 1903-0081.

§ 590.101 Purpose and scope.

The purpose of this Part is to establish the rules and procedures required to be followed by persons to obtain authorizations from DOE to import or export natural gas under the Natural Gas Act and by all other persons interested in participating in a natural gas import or export proceeding before the agency. This Part establishes the procedural rules necessary to implement the authorities vested in the Secretary of Energy by sections 301(b) and 402(f) of the DOE Act, which have been delegated to the Assistant Secretary.

§ 590.102 Definitions.

As used in this part:

(a) *"Assistant Secretary"* means the Assistant Secretary for Fossil Energy or any employee of the DOE who has been delegated final decisional authority.

(b) *"Contested proceeding"* means a proceeding:

(1) Where a protest or a motion to intervene, or a notice of intervention, in opposition to an application or other requested action has been filed, or

(2) Where a party otherwise notifies the Assistant Secretary and the other parties to a proceeding in writing that it opposes an application or other requested action.

(c) *"Decisional employee"* means the Assistant Secretary, presiding officials at conferences, oral presentations or trial-type hearings, and any other employee of the DOE, including consultants and contractors, who are, or may reasonably be expected to be, involved in the decision-making process, including advising the Assistant Secretary on the resolution of issues involved in a proceeding. The term includes those employees of the DOE assisting in the conduct of trial-type hearings by performing functions on behalf of the Assistant Secretary or presiding official.

(d) *"DOE"* means the Department of Energy, of which FE is a part.

(e) *"DOE Act"* means the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq.).

(f) *"FE"* means the Office of The Assistant Secretary for Fossil Energy.

(g) *"FERC"* means the Federal Energy Regulatory Commission.

(h) *"Interested person"* means a person, other than a decisional employee, whose interest in a proceeding goes beyond the general interest of the public as a whole and includes applicants, intervenors, competitors of applicants, and other individuals and organizations, including non-profit and public interest organizations, and state, local, and other public officials, with a proprietary, financial or other special interest in the outcome of a proceeding. The term does not include other federal agencies or foreign governments and their representatives, unless the agency, foreign government, or representative of a foreign government is a party to the proceeding.

(i) *"Natural gas"* means natural gas and mixtures of natural gas and synthetic natural gas, regardless of physical form or phase, including liquefied natural gas and gels primarily composed of natural gas.

(j) *"NGA"* means the Natural Gas Act of June 21, 1938, c. 556, 52 Stat. 821 (15 U.S.C. 717 et seq.).

(k) *"Off-the-record communication"* means a written or oral communication not on the record which is relevant to the merits of a proceeding, and about which the parties have not been given reasonable prior notice of the nature and purpose of the communication and an opportunity to be present during such communication or, in the case of a written communication, an opportunity to respond to the communication. It does not include communications concerned solely with procedures which are not relevant to the merits of a proceeding. It also does not include general background discussions about an entire industry or natural gas markets or communications of a general nature

made in the course of developing agency policy for future general application, even though these discussions may relate to the merits of a particular proceeding.

(l) "*Party*" means an applicant, any person who has filed a motion for and been granted intervenor status or whose motion to intervene is pending, and any state commission which has intervened by notice pursuant to § 590.303(a).

(m) "*Person*" means any individual, firm, estate, trust, partnership, association, company, joint-venture, corporation, United States local, state and federal governmental unit or instrumentality thereof, charitable, educational or other institution, and others, including any officer, director, owner, employee, or duly authorized representative of any of the foregoing.

(n) "*Presiding official*" means any employee of the DOE who has been designated by the Assistant Secretary to conduct any stage of a proceeding, which may include presiding at a conference, oral presentation, or trial-type hearing, and who has been delegated the auhority of the Assistant Secretary to make rulings and issue orders in the conduct of such proceeding, other than final opinions and orders, orders to show cause, emergency interim orders, or conditional decisions under subpart D and orders on rehearing under subpart E.

(o) "*Proceeding*" means the process and activity, and any part thereof, instituted by FE either in response to an application, petition, motion or other filing under this Part, or on its own initiative, by which FE develops and considers the relevant facts, policy and applicable law concerning the importation or exportation of natural gas and which may lead to the issuance of an order by the Assistant Secretary under subparts D and E.

(p) "*State commission*" means the regulatory body of a state or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the state or municipality, or having any regulatory jurisdiction over parties involved in the import or export arrangement.

§ 590.103 General requirements for filing documents with FE.

(a) Any document, including but not limited to an application, amendment of an application, request, petition, motion, answer, comment, protest, complaint, and any exhibit submitted in connection with such documents, shall be filed with FE under this Part. Such document shall be considered officially filed with FE when it has been received and stamped with the time and date of receipt by the Office of Fuels Programs, FE. Documents transmitted to FE must be addressed as provided in § 590.104. All documents and exhibits become part of the record in the official FE docket file and will not be returned. An original and fifteen (15) copies of all applications, filings and submittals shall be provided to FE. No specific format is required. Applicants required to file quarterly reports as a condition to an authorization need only file an original and four (4) copies.

(b) Upon receipt by FE, each application or other initial request for action shall be assigned a docket number. Any petition, motion, answer, request, comment, protest, complaint or other document filed subsequently in a docketed proceeding with FE shall refer to the assigned docket number. All documents shall be signed either by the person upon whose behalf the document is filed or by an authorized representative. Documents signed by an authorized representative shall contain a certified statement that the representative is a duly authorized representative unless the representative has a certified statement already on file in the FE docket of the proceeding. All documents shall also be verified under oath or affirmation by the person filing, or by an officer or authorized representative of the firm having knowledge of the facts alleged. Each document filed with FE shall contain a certification that a copy has been served as required by § 590.107 and indicate the date of service. Service of each document must be made not later than the date of the filing of the document.

(c) A person who files an application shall state whether, to the best knowledge of that person, the same or a related matter is being considered by any other part of the DOE, including the FERC, or any other Federal agency or department and, if so, shall identify the matter and the agency or department.

§ 590.104 Address for filing documents.

All documents filed under this part shall be addressed to: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Docket Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. All hand delivered documents shall be filed with the Office of Fuels Programs at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

§ 590.105 Computation of time.

(a) In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run is not included. The period of time begins to run the next day after the day of the act or event. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal Federal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal Federal holiday, unless otherwise provided by this Part or by the terms of an FE order. Documents received after the regular business hours of 8 a.m. to 4:30 p.m. are deemed filed on the next regular business day.

(b) When a document is required to be filed with FE within a prescribed time, an extension of time to file may be granted for good cause shown.

(c) An order is issued and effective when date stamped by the Office of Fuels Programs, FE, after the order has been signed unless another effective date is specified in the order.

§ 590.106 Dockets.

The FE shall maintain a docket file of each proceeding under this Part, which shall contain the official record upon which all orders provided for in subparts D and E shall be based. The official record in a particular proceeding shall include the official service list, all documents filed under § 590.103, the official transcripts of any procedures held under subpart C, and opinions and orders issued by FE under subparts D and E, and reports of contract amendments under § 590.407. All dockets shall be available for inspection and copying by the public during regular business hours between 8 a.m. and 4:30 p.m. Dockets are located in the Office of Fuels Programs, FE, Docket Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

§ 590.107 Service.

(a) An applicant, any other party to a proceeding, or a person filing a protest shall serve a copy of all documents filed with FE upon all parties unless otherwise provided in this part. The copy of a document served upon parties shall be a true copy of the document filed with FE, but does not have to be a copy stamped with the time and date of receipt by FE. The FE shall maintain an official service list for each proceeding which shall be provided upon request.

(b) When the parties are not known, such as during the initial comment period following publication of the notice of application, service requirements under paragraph (a) of this section may be met by serving a copy of all documents on the applicant and on

FE for inclusion in the FE docket in the proceeding.

(c) All documents required to be served under this Part may be served by hand, certified mail, registered mail, or regular mail. It shall be the responsibility of the serving party to ensure that service is effected in a timely manner. Service is deemed complete upon delivery or upon mailing, whichever occurs first.

(d) Service upon a person's duly authorized representatives on the official service list shall constitute service upon that person.

(e) All FE orders, notices, or other FE documents shall be served on the parties by FE either by hand, registered mail, certified mail, or regular mail, except as otherwise provided in this Part.

§ 590.108 Off-the-record communications.

(a) In any contested proceeding under this part:

(1) No interested person shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any decisional employee.

(2) No decisional employee shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any interested person.

(3) A decisional employee who receives, makes, or knowingly causes to be made an oral off-the-record communication prohibited by this section shall prepare a memorandum stating the substance of the communication and any responses made to it.

(4) Within forty-eight (48) hours of the off-the-record communication, a copy of all written off-the-record communications or memoranda prepared in compliance with paragraph (a)(3) of this section shall be delivered by the decisional employee to the Assistant Secretary and to the Deputy Assistant Secretary for Fuels Programs. The materials will then be made available for public inspection by placing them in the docket associated with the proceeding.

(5) Requests by a party for an opportunity to rebut, on the record, any facts or contentions in an off-the-record communication may be filed in writing with the Assistant Secretary. The Assistant Secretary shall grant such requests only for good cause.

(6) Upon being notified of an off-the-record communication made by a party in violation of this section, the Assistant Secretary may, to the extent consistent with the interests of justice and the policies of the NGA and the DOE Act, require the party to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(b) The prohibitions of paragraph (a) of the section shall apply only to contested proceedings and begin at the time either a protest or a motion to intervene or notice of intervention in opposition to the application or other requested action is filed with FE, or a party otherwise specifically notifies the Assistant Secretary and the other parties in writing of its opposition to the application or other requested action, whichever occurs first.

§ 590.109 FE investigations.

The Assistant Secretary or the Assistant Secretary's delegate may investigate any facts, conditions, practices, or other matters within the scope of this part in order to determine whether any person has violated or is about to violate any provision of the NGA or other statute or any rule, regulation, or order within the Assistant Secretary's jurisdiction. In conducting such investigations, the Assistant Secretary or the Assistant Secretary's delegate may, among other things, subpoena witnesses to testify, subpoena or otherwise require the submission of documents, and order testimony to be taken by deposition.

Subpart B—Applications for Authorization to Import or Export Natural Gas

§ 590.201 General.

(a) Any person seeking information to import or export natural gas into or from the United States, to amend an existing import or export authorization, or seeking any other requested action, shall file an application with the FE under the provisions of this part.

(b) Applications shall be filed at least ninety (90) days in advance of the proposed import or export or other requested action, unless a later date is permitted for good cause shown.

§ 590.202 Contents of applications.

(a) Each application filed under § 590.201 shall contain the exact legal name of the applicant, the names, titles, and mailing addresses of a maximum of two persons for the official service list, a statement describing the action sought from FE, the justification for such action, including why the proposed action is not consistent with the public interest, and the FE docket number, if applicable.

(b) Each application shall include the matters listed below to the extent applicable. All factual matters shall be supported to the extent practicable by the necessary data or documents. Copies of relevant documents filed or intended to be filed with FERC may be submitted to satisfy the requirements of this section. Topics to be addressed or described shall include:

(1) The scope of the project, including the volumes of natural gas involved, expressed in either Mcf or Bcf and their Btu equivalents, the dates of commencement and completion of the proposed import or export, and the facilities to be utilized or constructed;

(2) The source and security of the natural gas supply to be imported or exported, including contract volumes and a description of the gas reserves supporting the project during the term of the requested authorization;

(3) Identification of all the participants in the transaction, including the parent company, if any, and identification of any corporate or other affiliations among the participants;

(4) The terms of the transaction, such as take-or-pay obligations, make-up provisions, and other terms that affect the marketability of the gas;

(5) The provisions of the import arrangement which establish the base price, volume requirements, transportation and other costs, and allow adjustments during the life of the project, and a demonstration as to why the import arrangement is and will remain competitive over the life of the project and is otherwise not consistent with the public interest;

(6) For proposed imports, the need for the natural gas by the applicant or applicant's prospective customers, including a description of the persons who are expected to purchase the natural gas; and for proposed exports, the lack of a national or regional need for the gas; and

(7) The potential environmental impact of the project. To the extent possible, the application shall include a listing and description of any environmental assessments or studies being performed on the proposed gas project. The application shall be updated as the status of any environmental assessments changes.

(c) The application shall also have attached a statement, including a signed opinion of legal counsel, showing that a proposed import or export of natural gas is within the corporate powers of the applicant and a copy of all relevant contracts and purchase agreements.

(d) The Assistant Secretary or the Assistant Secretary's delegate may at any time require the applicant and other parties to make supplemental filings of

additional information necessary to resolve issues raised by the application.

(e) All information and data filed in support of or against an application will be placed in the official FE docket file of the proceeding and will not be afforded confidential treatment, unless the party shows why the information or data should be exempted from public disclosure and the Assistant Secretary or Assistant Secretary's delegate determines that such information or data shall be afforded confidential treatment. Such determination shall be made in accordance with 10 CFR 1004.11.

§ 590.203 Deficient applications.

If an application is incomplete or otherwise deemed deficient, the Assistant Secretary or the Assistant Secretary's delegate may require the applicant to submit additional information or exhibits to remedy the deficiency. If the applicant does not remedy the deficiency within the time specified by the Assistant Secretary or the Assistant Secretary's delegate, the application may be dismissed without prejudice to refiling at another time.

§590.204 Amendment or withdrawal of applications.

(a) The applicant may amend or supplement the application at any time prior to issuance of the Assistant Secretary's final opinion and order resolving the application, and shall amend or supplement the application whenever there are changes in material facts or conditions upon which the proposal is based.

(b) The Assistant Secretary may for good cause shown by motion of a party or upon the Assistant Secretary's own initiative decline to act on, in whole or in part, an amendment or supplement requested by an applicant under paragraph (a) of this section.

(c) After written notice to FE and service upon the parties of that notice an applicant may withdraw an application. Such withdrawal shall be effective thirty (30) days after notice to FE if the Assistant Secretary does not issue an order to the contrary within that time period.

§ 590.205 Notice of applications.

(a) Upon receipt of an application, the FE shall publish a notice of application in the **Federal Register.** The notice shall summarize the proposal. Except in emergency circumstances, generally the notice shall provide a time limit of not less than thirty (30) days from the notice's date of publication in the **Federal Register** for persons to file protests, comments, or a motion to intervene or notice of intervention, as applicable. The notice may also request comments on specific issues or matters of fact, law, or policy raised by the application.

(b) The notice of application shall advise the parties of their right to request additional procedures, including the opportunity to file written comments and to request that a conference, oral presentation, or trial-type hearing be convened. Failure to request additional procedures at this time shall be deemed a waiver of any right to additional procedures should the Assistant Secretary decide to grant the application and authorize the import or export by issuing a final opinion and order in accordance with 590.316.

(c) Where negotiations between the DOE, including FE, and a foreign government have resulted in a formal policy agreement or statement affecting a particular import or export proceeding, FE shall include in the notice of application a description of the terms or policy positions of that agreement or statement to the extent they apply to the proceeding, and invite comment. A formal policy agreement or statement affecting a particular import or export proceeding that is arrived at after publication of the notice of application shall be placed on the record in that proceeding and the parties given an opportunity to comment thereon.

§ 590.206 Notice of procedures.

In all proceedings where, following a notice of application and the time specified in the notice for the filing of responses thereto, the Assistant Secretary determines to have additional procedures, which may consist of the filing of supplemental written comments, written interrogatories or other discovery procedures, a conference, oral presentation, or trial-type hearing, the Assistant Secretary shall provide the parties with notice of the procedures the Assistant Secretary has determined to follow in the proceeding and advise the parties of their right to request any additional procedures in accordance with the provisions of § 590.310. The notice of procedures may identify and request comments on specific issues of fact, law, or policy relevant to the proceeding and may establish a time limit for requesting additional procedures.

§ 590.207 Filing fees.

A non-refundable filing fee of fifty dollars ($50) shall accompany each application filed under § 590.201. Checks shall be made payable to "Treasury of the United States."

§ 590.208 Small volume exports.

Any person may export up to 100,000 cubic feet of natural gas (14.73 pounds per square inch at 60 degrees Fahrenheit) or the liquefied or compressed equivalent thereof, in a single shipment for scientific, experimental, or other non-utility gas use without prior authorization of the Assistant Secretary.

§ 590.209 Exchanges by displacement.

Any importer of natural gas may enter into an exchange by displacement agreement without the prior authorization of the Assistant Secretary when the net effect of the exchange is no different than under the importer's existing authorization. An exchange by displacement is an arrangement whereby authorized imported volumes are displaced by other gas for purposes of storage or flexibility. The term of the exchange agreement may not exceed five (5) years, the volumes imported may not exceed the importer's existing import authorization, and no actual natural gas may flow across the United States border under the terms of the exchange agreement. Any importer who enters into an exchange agreement pursuant to this section shall file with FE within fifteen (15) days after the start up of the exchange, a written description of the transaction, the exact volume of natural gas to be displaced, the name of the purchaser, and the import authorization under which the exchange is being carried out.

Subpart C—Procedures

§ 590.301 General.

The procedures of this subpart are applicable to proceedings conducted on all applications or other requested actions filed under this Part. The Assistant Secretary may conduct all aspects of the procedures of this Subpart or may designate a presiding official pursuant to § 590.314.

§ 590.302 Motions and answers.

(a) Motions for any procedural or interlocutory ruling shall set forth the ruling or relief requested and state the grounds and the statutory or other authority relied upon. All written motions shall comply with the filing requirements of § 590.103. Motions made during conferences, oral presentations or trial-type hearings may be stated orally upon the record, unless the Assistant Secretary or the presiding official determines otherwise.

(b) Any party may file an answer to any written motion within fifteen (15) days after the motion is filed, unless another period of time is established by the Assistant Secretary or the presiding official. Answers shall be in writing and shall detail each material allegation of the motion being answered. Answers shall state clearly and concisely the facts and legal authorities relied upon.

(c) Any motion, except for motions

seeking intervention or requesting that a conference, oral presentation or trial-type hearing be held, shall be deemed to have been denied, unless the Assistant Secretary or presiding official acts within thirty (30) days after the motion is filed.

§ 590.303 Interventions and answers.

(a) A state commission may intervene in a proceeding under this Part as a matter of right and become a party to the proceeding by filing a notice of intervention no later than the date fixed for filing motions to intervene in the applicable FE notice or order. If the period for filing the notice has expired, a state commission may be permitted to intervene by complying with the filing and other requirements applicable to any other person seeking to become a party to the proceeding as provided in this section.

(b) Any other person who seeks to become a party to a proceeding shall file a motion to intervene, which sets out clearly and concisely the facts upon which the petitioner's claim of interest is based.

(c) A motion to intervene shall state, to the extent known, the position taken by the movant and the factual and legal basis for such positions in order to advise the parties and the Assistant Secretary as to the specific issues of policy, fact, or law to be raised or controverted.

(d) Motions to intervene may be filed at any time following the filing of an application, but no later than the date fixed for filing such motions or notices in the applicable FE notice or order, unless a later date is permitted by the Assistant Secretary for good cause shown and after considering the impact of granting the late motion on the proceeding. Each motion or notice shall list the names, titles, and mailing addresses of a maximum of two persons for the official service list.

(e) Any party may file an answer to a motion to intervene, but such answer shall be made within fifteen (15) days after the motion to intervene was filed, unless a later date is permitted by the Assistant Secretary for good cause shown. Answers shall be in writing. Answers shall detail each material allegation of the motion to intervene being answered and state clearly and concisely the facts and legal authorities relied upon. Failure to answer is deemed a waiver of any objection to the intervention. This paragraph does not prevent the Assistant Secretary from ruling on a motion to intervene and issuing a final opinion and order in accordance with § 590.316 prior to the expiration of the fifteen (15) days in which a party has to answer a motion to intervene.

(f) If an answer in opposition to a motion to intervene is timely filed or if the motion to intervene is not timely filed, then the movant becomes a party only after the motion to intervene is expressly granted.

(g) If no answer in opposition to a motion to intervene is filed within the period of time prescribed in paragraph (e) of this section, the motion to intervene shall be deemed to be granted, unless the Assistant Secretary denies the motion in whole or in part or otherwise limits the intervention prior to the expiration of the time allowed in paragraph (e) for filing an answer to the motion to intervene. Where the motion to intervene is deemed granted, the participation of the intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in the motion to intervene, and the admission of such intervenor to party status shall not be construed as recognition by FE that the intervenor might be aggrieved because of any order issued.

(h) In the event that a motion for late intervention is granted, an intervenor shall accept the record of the proceeding as it was developed prior to the intervention.

§ 590.304 Protests and answers.

(a) Any person objecting to an application filed under 590.201 of this part or to any action taken by FE under this part may file a protest. No particular form is required. The protest shall identify the person filing the protest, the application or action being objected to, and provide a concise statement of the reasons for the protest.

(b) The filing of a protest, without also filing a motion to intervene or a notice of intervention, shall not make the person filing the protest a party to the proceeding.

(c) A protest shall be made part of the official FE docket file in the proceeding and shall be considered as a statement of position of the person filing the protest, but not as establishing the validity of any assertion upon which the decision would be based.

(d) Protests shall be served on the applicant and all parties by the person filing the protest. If the person filing the protest is unable to provide service on any person identified as a party to the proceeding after a good faith effort, then FE shall effect service. However, when the parties are not known, service requirements may be met by serving a copy of the applicant and on FE as provided in § 590.107(b).

(e) Protests may be filed at any time following the filing of an application, but no later than the date fixed for filing protests in the applicable FE notice or order, unless a later date is permitted by the Assistant Secretary for good cause shown.

(f) Any party may file an answer to a protest but such answer must be filed within fifteen (15) days after the protest was filed, unless a later date is permitted by the Assistant Secretary for good cause shown.

§ 590.305 Informal discovery.

The parties to a proceeding may conduct discovery through use of procedures such as written interrogatories or production of documents. In response to a motion by a party, the Assistant Secretary or presiding official may determine the procedures to be utilized for discovery if the parties cannot agree on such procedures.

§ 590.306 Subpoenas.

(a) Subpoenas for the attendance of witnesses at a trial-type hearing or for the production of documentary evidence may be issued upon the initiative of the Assistant Secretary or presiding official, or upon written motion of a party or oral motion of a party during a conference, oral presentation, or trial-type hearing, if the Assistant Secretary or presiding official determines that the evidence sought is relevant and material.

(b) Motions for the issuance of a subpoena shall specify the relevance, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification to the extent possible of the documents sought and the facts to be proven by them, the issues to which they relate, and why the information or evidence was not obtainable through discovery procedures agreed upon by the parties.

(c) If service of a subpoena is' made by a United States Marshal or a Deputy United States Marshal, service shall be evidenced by their return. If made by another person, that person shall affirm that service has occurred and file an affidavit to that effect with the original subpoena. A witness who is subpoenaed shall be entitled to witness fees as provided in § 590.315(c).

§ 590.307 Depositions.

(a) Upon motion filed by a party, the Assistant Secretary or presiding official may authorize the taking of testimony of any witness by deposition. Unless otherwise directed in the authorization issued, a witness being deposed may be examined regarding any matter which is relevant to the issues involved in the pending proceeding.

(b) Parties authorized to take a deposition shall provide written notice to the witness and all other parties at

least ten (10) days in advance of the deposition unless such advance notice is waived by mutual agreement of the parties.

(c) The requesting motion and notice shall state the name and mailing address of the witness, delineate the subject matters on which the witness is expected to testify, state the reason why the deposition should be taken, indicate the time and place of the deposition, and provide the name and mailing address of the person taking the deposition.

(d) A witness whose testimony is taken by deposition shall be sworn in or shall affirm concerning the matter about which the witness has been called to testify before any questions are asked or testimony given. A witness deposed shall be entitled to witness fees as provided in § 590.315(c).

(e) The moving party shall file the entire deposition with FE after it has been subscribed and certified. No portion of the deposition shall constitute a part of the record in the proceedings unless received in evidence, in whole or in part, by the Assistant Secretary or presiding official.

§ 590.303 Admissions of facts.

(a) At any time prior to the end of a trial-type hearing, or, if there is no trial-type hearing, prior to the issuance of a final opinion and order under § 590.404, any party, the Assistant Secretary, or the presiding official may serve on any party a written request for admission of the truth of any matters at issue in the proceeding that relate to statements or opinions of fact or of the application of law to fact.

(b) A matter shall be considered admitted and conclusively established for the purposes of any proceeding in which a request for admission is served unless, within fifteen (15) days of such time limit established by the Assistant Secretary or presiding official, the party to whom the request is directed answers or objects to the request. Any answer shall specifically admit or deny the matter, or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless the answering party states that, after reasonable inquiry, the answering party has been unable to obtain sufficient information to admit or deny. If an objection is made, the answering party shall state the reasons for the objection.

(c) If the Assistant Secretary or presiding official determines that an answer to a request for admission does not comply with the requirements of this section, the Assistant Secretary or presiding official may order either that the matter is admitted or that an amended answer be served.

(d) A copy of all requests for admission and answers thereto shall be filed with FE in accordance with § 590.103. Copies of any documents referenced in the request shall be served with the request unless they are known to be in the possession of the other parties.

(e) The Assistant Secretary or presiding official may limit the number of requests for admission of facts in order to expedite a proceeding through elimination of duplicative requests.

§ 590.309 Settlements.

The parties may conduct settlement negotiations. If settlement negotiations are conducted during a conference, at the request of one of the parties, the Assistant Secretary or presiding official may order that the discussions be off-the-record with no transcript of such settlement negotiations being prepared for inclusion in the official record of the proceeding. No offer of settlement, comment or discussion by the parties with respect to an offer of settlement shall be subject to discovery or admissible into evidence against any parties who object to its admission.

§ 590.310 Opportunity for additional procedures.

Any party may file a motion requesting additional procedures, including the opportunity to file written comments, request written interrogatives or other discovery procedures, or request that a conference, oral presentation or trial-type hearing be held. The motion shall describe what type of procedure is requested and include the information required by §§ 590.311, 590.312 and 590.313, as appropriate. Failure to request additional procedures within the time specified in the notice of application or in the notice of procedure, if applicable, shall constitute a waiver of that right unless the Assistant Secretary for good cause shown grants additional time for requesting additional procedures. If no time limit is specified in the notice or order, additional procedures may be requested at any time prior to the issuance of a final opinion and order. At any time during a proceeding, the Assistant Secretary or presiding official may on his or her own initiative determine to provide additional procedures.

§ 590.311 Conferences.

(a) Upon motion by a party, a conference of the parties may be convened to adjust or settle the proceedings, set schedules, delineate issues, stipulate certain issues of fact or law, set procedures, and consider other relevant matters where it appears that a conference will materially advance the proceeding. The Assistant Secretary or presiding official may delineate the issues which are to be considered and may place appropriate limitations on the number of intervenors who may participate, if two or more intervenors have substantially like interests.

(b) A motion by a party for a conference shall include a specific showing why a conference will materially advance the proceeding.

(c) Conferences shall be recorded, unless otherwise ordered by the Assistant Secretary or presiding official, and the transcript shall be made a part of the official record of the proceeding and available to the public.

§ 590.312 Oral presentations.

(a) Any party may file a motion requesting an opportunity to make an oral presentation of views, arguments, including arguments of counsel, and data on any aspect of the proceeding. The motion shall identify the substantial question of fact, law or policy at issue and demonstrate that it is material and relevant to the merits of the proceeding. The party may submit material supporting the existence of substantial issues. The Assistant Secretary or presiding official ordinarily will grant a party's motion for an oral presentation, if the Assistant Secretary or presiding official determines that a substantial question of fact, law, or policy is at issue in the proceeding and illumination of that question will be aided materially by such an oral presentation.

(b) The Assistant Secretary or presiding official may require parties making oral presentations to file briefs or other documents prior to the oral presentation. The Assistant Secretary or presiding official also may delineate the issues that are to be considered at the oral presentation and place appropriate limitations on the number of intervenors who may participate if two or more intervenors have substantially like interests.

(c) Oral presentations shall be conducted in an informal manner with the Assistant Secretary or the presiding official and other decisional employees presiding as a panel. The panel may question those parties making an oral presentation. Cross-examination by the parties and other more formal procedures used in trial-type hearings will not be available in oral presentations. The oral presentation may be, but need not be, made by legal counsel.

(d) Oral presentations shall be recorded, and the transcript shall be made part of the official record of the proceeding and available to the public.

§ 590.313 Trial-type hearings.

(a) Any party may file a motion for a trial-type hearing for the purpose of taking evidence on relevant and material issues of fact genuinely in dispute in the proceeding. The motion shall identify the factual issues in dispute and the evidence that will be presented. The party must demonstrate that the issues are genuinely in dispute, relevant and material to the decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. The Assistant Secretary or presiding official shall grant a party's motion for a trial-type hearing, if the Assistant Secretary or presiding official determines that there is a relevant and material factual issue genuinely in dispute and that a trial-type hearing is necessary for a full and true disclosure of the facts.

(b) In trial-type hearings, the parties shall have the right to be represented by counsel, to request discovery, to present the direct and rebuttal testimony of witnesses, to cross-examine witnesses under oath, and to present documentary evidence.

(c) The Assistant Secretary or presiding official upon his or her own initiative or upon the motion of any party may consolidate any proceedings involving common questions of fact in whole or in part for a trial-type hearing. The Assistant Secretary or presiding official may also place appropriate limitations on the number of intervenors who may participate if two or more intervenors have substantially like interests.

(d) The Assistant Secretary or presiding official may make such rulings for trial-type hearings, including delineation of the issues and limitation of cross-examination of a witness, as are necessary to obtain a full and true disclosure of the facts and to limit irrelevant, immaterial, or unduly repetitious evidence.

(e) At trial-type hearings, the Assistant Secretary or presiding official, or any other decisional employee directed by the Assistant Secretary or presiding official, may call witnesses for testimony or presenting exhibits that directly relate to a particular issue of fact to be considered at the hearing. The Assistant Secretary or presiding official, or any other decisional employee directed by the Assistant Secretary or presiding official, may also question witnesses offered by the parties concerning their testimony.

(f) Trial-type hearings shall be recorded, and the transcript shall be made part of the official record of the proceeding and available to the public.

§ 590.314 Presiding officials.

(a) The Assistant Secretary may designate a presiding official to conduct any stage of the proceeding, including officiating at a conference, oral presentation, or trial-type hearing. The presiding official shall have the full authority of the Assistant Secretary during such proceedings.

(b) A presiding official at a conference, oral presentation, or trial-type hearing shall have the authority to regulate the conduct of the proceeding including, but not limited to, determination of the issues to be raised during the course of the conference, oral presentation, or trial-type hearing, administering oaths or affirmations, directing discovery, ruling on objections to the presentation of testimony or exhibits, receiving relevant and material evidence, requiring the advance submission of written testimony and exhibits, ruling on motions, determining the format, directing that briefs be filed with respect to issues raised or to be raised during the course of the conference, oral presentation or trial-type hearing, questioning witnesses, taking reasonable measures to exclude duplicative material, and placing limitations on the number of witnesses to be called by a party.

§ 590.315 Witnesses.

(a) The Assistant Secretary or presiding official may require that the direct testimony of witnesses in trial-type hearings be submitted in advance of the hearing and be under oath, and in written form.

(b) Witnesses who testify in trial-type hearings shall be under oath or affirmation before being allowed to testify.

(c) Witnesses subpoenaed pursuant to § 590.306 shall be paid the same fees and mileage as paid for like services in the District Courts of the United States.

(d) Witnesses subpoenaed pursuant to § 590.506 shall be paid the same fees and mileage as paid for like services in the District Court of the United States.

§ 590.316 Shortened proceedings.

In any proceeding where, in response to a notice of application or notice of procedures, if applicable, no party files a motion requesting additional procedures, including the right to file written comments, or the holding of a conference, oral presentation, or trial-type hearing, or where the Assistant Secretary determines that such requested additional procedures are not required pursuant to §§ 590.310, 590.311, 590.312 and 590.313, the Assistant Secretary may issue a final opinion and order on the basis of the official record, including the application and all other filings. In any proceeding in which the Assistant Secretary intends to deny the application or grant the application with the attachment of material conditions unknown to, or likely to be opposed by, the applicant, solely on the basis of the application and responses to the notice of application or notice of procedures, if applicable, without additional procedures, the Assistant Secretary shall advise the parties in writing generally of the issues of concern to the Assistant Secretary upon which the denial or material conditions would be based and provide them with an opportunity to request additional procedures pursuant to §§ 590.310, 590.311, 590.312 and 590.313.

§ 590.317 Complaints.

(a) Any person may file a complaint objecting to the actions by any other person under any statute, rule, order or authorization applicable to an existing import or export authorization over which FE has jurisdiction. No particular form is required. The complaint must be filed with FE in writing and must contain the name and address of the complainant and the respondent and state the facts forming the basis of the complaint.

(b) A complaint concerning an existing import or export authorization shall be served on all parties to the original import or export authorization proceeding either by the complainant or by FE if the complainant has made a good faith effort but has been unable to effect service.

(c) The Assistant Secretary may issue an order to show cause under § 590.401, or may provide opportunity for additional procedures pursuant to §§ 590.310, 590.311, 590.312, or § 590.313, in order to determine what action should be taken in response to the complaint.

Subpart D—Opinions and Orders

§ 590.401 Orders to show cause.

A proceeding under this Part may commence upon the initiative of the Assistant Secretary or in response to an application by any person requesting FE action against any other person alleged to be in contravention or violation of any authorization, statute, rule, order, or law administered by FE applicable to the import or export of natural gas, or for any other alleged wrong involving importation or exportation of natural gas over which FE has jurisdiction. Any show cause order issued shall identify the matters of interest or the matters complained of that the Assistant Secretary is inquiring about, and shall be deemed to be tentative and for the purpose of framing issues for consideration and decision. The respondent named in the order shall respond orally or in writing, or both, as required by the order. A show cause order is not a final opinion and order.

§ 590.402 Conditional orders.

The Assistant Secretary may issue a conditional order at any time during a proceeding prior to issuance of a final opinion and order. The conditional order shall include the basis for not issuing a final opinion and order at that time and a statement of findings and conclusions. The findings and conclusions shall be based solely on the official record of the proceeding.

§ 590.403 Emergency interim orders.

Where consistent with the public interest, the Assistant Secretary may waive further procedures and issue an emergency interim order authorizing the import or export of natural gas. After issuance of the emergency interim order, the proceeding shall be continued until the record is complete, at which time a final opinion and order shall be issued. The Assistant Secretary may attach necessary or appropriate terms and conditions to the emergency interim order to ensure that the authorized action will be consistent with the public interest.

§ 590.404 Final opinions and orders.

The Assistant Secretary shall issue a final opinion and order and attach such conditions thereto as may be required by the public interest after completion and review of the record. The final opinion and order shall be based solely on the official record of the proceeding and include a statement of findings and conclusions, as well as the reasons or basis for them, and the appropriate order, condition, sanction, relief or denial.

§ 590.405 Transferability.

Authorizations by the Assistant Secretary to import or export natural gas shall not be transferable or assignable, unless specifically authorized by the Assistant Secretary.

§ 590.406 Compliance with orders.

Any person required or authorized to take any action by a final opinion and order of the Assistant Secretary shall file with FE, within thirty (30) days after the requirement or authorization becomes effective, a notice, under oath, that such requirement has been complied with or such authorization accepted or otherwise acted upon, unless otherwise specified in the order.

§ 590.407 Reports of changes.

Any person authorized to import or export natural gas has a continuing obligation to give the Assistant Secretary written notification, as soon as practicable, of any prospective or actual changes to the information submitted during the application process upon which the authorization was based, including, but not limited to, changes to: the parties involved in the import or export arrangement, the terms and conditions of any applicable contracts, the place of entry or exit, the transporters, the volumes accepted or offered, or the import or export price. Any notification filed under this section shall contain the FE docket number(s) to which it relates. Compliance with this section does not relieve an importer or exporter from responsibility to file the appropriate application to amend a previous import or export authorization under this part whenever such changes are contrary to or otherwise not permitted by the existing authorization.

Subpart E—Applications for Rehearing

§ 590.501 Filing.

(a) An application for rehearing of a final opinion and order, conditional order, or emergency interim order may be filed by any party aggrieved by the issuance of such opinion and order within thirty (30) days after issuance. The application shall be served on all parties.

(b) The application shall state concisely the alleged errors in the final opinion and order, conditional order, or emergency interim order and must set forth specifically the ground or grounds upon which the application is based. If an order is sought to be vacated, reversed, or modified by reason of matters that have arisen since the issuance of the final opinion and order, conditional order, or emergency interim order, the matters relied upon shall be set forth with specificity in the application. The application shall also comply with the filing requirements of § 590.103.

§ 590.502 Application is not a stay.

The filing of an application for rehearing does not operate as a stay of the Assistant Secretary's order, unless specifically ordered by the Assistant Secretary.

§ 590.503 Opinion and order on rehearing.

Upon application for rehearing, the Assistant Secretary may grant or deny rehearing or may abrogate or modify the final opinion and order, conditional order, or emergency interim order with or without further proceedings.

§ 590.504 Denial by operation of law.

Unless the Assistant Secretary acts upon the application for rehearing within thirty (30) days after it is filed, it is deemed to be denied. Such denial shall constitute final agency action for the purpose of judicial review.

§ 590.505 Answers to applications for rehearing.

No answers to applications for rehearing shall be entertained. Prior to the issuance of any final opinion and order on rehearing, however, the Assistant Secretary may afford the parties an opportunity to file briefs or answers and may order that a conference, oral presentation, or trial-type hearing be held on some or all of the issues presented by an application for rehearing.

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FEDERAL RESERVE SYSTEM

12 CFR Parts 202, 205, 213, and 226

[Regs. B, E, M, and Z; Docket No. R-0682]

Equal Credit Opportunity, Electronic Fund Transfers, Consumer Leasing, and Truth in Lending; Change in Enforcement Agency; Technical Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendment.

SUMMARY: The Board is making technical amendments to its regulations to reflect the transfer of enforcement functions from the Federal Home Loan Bank Board to the Office of Thrift Supervision, pursuant to the recent FIRREA legislation.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: W. Kurt Schumacher, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551 at (202) 452-2412; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA; Pub. L. No. 101-73, 103 Stat. 183) abolished the Federal Home Loan Bank Board and transferred its enforcement responsibilities to a new agency, the Office of Thrift Supervision.

The following amendments are hereby made to the Board's Regulations B (Equal Credit Opportunity), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) to reflect this change in agency structure.

List of Subjects

12 CFR Part 202

Banks, Banking, Civil rights, Counsumer protection, Credit, Federal Reserve System, Marital status