Rules and Regulations

Federal Register
Vol. 57, No. 197
Friday, October 9, 1992

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 729 and 1421

RIN 0560–AC66

1992-Crop National Poundage Quota, National Average Support Levels for Quota and Additional Peanuts, and Minimum CCC Export Edible Sales Price for Additional Peanuts

AGENCY: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, Untied States Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule establishes the 1992 national poundage quota for quota peanuts of 1,540,000 short tons (st), national average level of price support for quota peanuts of $674.93 per st, national average level of price support for additional peanuts of $131.09 per st, and minimum CCC sales price of additional peanuts for export edible use of $400.00 per st. These determinations were made pursuant to the statutory requirements of the Agricultural Adjustment Act of 1938, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990.

EFFECTIVE DATES: December 13, 1991, for § 729.214 (the national poundage quota). February 18, 1992, for § 1421.7(c)(8) (the national average support levels for quota and additional peanuts) and § 1421.27(a)(2) (i) and (ii) the minimum CCC sales price of additional peanuts for export edible use).

FOR FURTHER INFORMATION CONTACT: Ronald W. Holling, Tobacco and Peanuts Analysis Division, ASCS, USDA, room 3732, South Building, P.O. Box 2415, Washington, DC 20013, telephone 202–720–7477.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major". This rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local governments 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.

Final Regulatory Impact Analyses discussing the impacts of the established quota, support levels, and minimum CCC sales price of additional peanuts for export edible use are available from the above-named person.

The titles and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

This program/activity is not subject to the provisions of Executive Order No. 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule do not preempt State law, are not retroactive, and do not involve administrative appeals.

It has been determined that the Regulatory Flexibility Act is not applicable because neither ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

The amendments to 7 CFR parts 729 and 1421 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Announcement of the Quota

Section 358–1(a)(1) of the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), requires that the national poundage quota for peanuts for each of the 1991 through 1995 marketing years (MYs) be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each such MY to domestic edible, seed, and related uses. Section 358–1(a)(1) of the 1938 Act further provides that the national poundage quota for a MY shall not be less than 1,350,000 st. The MY for 1992-crop peanuts is from August 1, 1992 through July 31, 1993. Poundage quotas for the 1991–1995 crops of peanuts were approved by 98.2 percent of peanut growers voting in a referendum conductd December 10–13, 1990.

A proposed quota with a public comment period was published on November 21, 1991, in the **Federal Register** (56 FR 58672). The proposed quota was 1,610,000 st. The calculations included individual estimates for: (1) Domestic food use, (2) farm sales and local sales of peanuts, (3) seed, (4) crushing residual, (5) shrinkage and other losses, and (6) quota product exports. A number of comments were received. Following a review of the comments and more recent estimates made by he USDA Interagency Commodity Estimate Committee (ICEC) for Oilseeds, Oils, and Meals, the 1992 quota is established at 1,540,000 st. Updated data resulted in adjustments to the estimates for domestic food use, seed, and crushing residual. The adjustments in those three factors also produced a slight revision in the estimate for shrinkage and other losses. The differences between the estimates on which the proposed quota was based versus the estimates on which the final quota was established are set out in the following table:

ESTIMATED DOMESTIC EDIBLE, SEED, AND RELATED USES

Item	Quota in short tons	
	Proposed [1]	Final [2]
Domestic Edible:		
Domestic food	1,211,000	1,186,000
On farm and local sales	21,000	21,000
Subtotal	1,232,000	1,207,000
Seed	119,000	106,000

ESTIMATED DOMESTIC EDIBLE, SEED, AND RELATED USES—Continued

Item	Quota in short tons	
	Proposed [1]	Final [2]
Related Uses:		
Crushing residual	189,000	158,000
Shrinkage and other losses	49,000	48,000
Segregation 2 and 3 loan transfers to quota loan	20,000	20,000
Quota product exports	1,000	1,000
Subtotal	259,000	227,000
Total	1,610,000	1,540,000

[1] Contained in November 21, 1992, **Federal Register** publication.
[2] Final Quota Determination.

Discussion of the Comments on Proposed Quota and of the Revisions

A total of 23 comments was received during the public comment period that ended on December 9, 1991. Comments were submitted by two manufacturer/processor associations, eight manufacturers, three sheller associations, two farm bureaus, four grower associations or commissions, and four growers.

The comments and revisions made to derive the 1992-crop national quota are discussed below.

Overall Quota Level

A number of comments were directed to the overall quota level rather than to individual elements of the calculation.

The manufacturer/processor associations and all manufacturers either supported the proposed quota of 1,610,000 st or a larger quota. One sheller association supported a 1992 quota unchanged from the 1991 quota of 1,550,000 st, but also expressed that it did not have serious disagreement with the proposed quota. All other associations, bureaus, and commissions supported a quota reduction to 1,500,000 st. All growers supported a smaller quota than that which was proposed. However, no grower recommended a specific tonnage. As set forth below, adjustments were made in the quota from the proposed amount based on adjustments in the individual estimates of use.

Crushing Residual

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given load of quota farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota must be sufficient to provide for the shelling of both edible and crushing grades. Manufacturers supported the past and proposed use of a 14-percent factor to account for the amount of crushing peanuts in a ton of farmer stock peanuts. Shellers/growers proposed use of a 12-percent factor and argued that the 14-percent factor should be reduced to reflect the blending of loose shelled kernels and a portion of $^{14}/_{16}$ kernel splits back into domestic edible shelled peanuts. The prior use of the 14-percent factor was based on the assumption that loose shelled kernels and $^{14}/_{16}$ kernel would be crushed. Following a review of the comments, it was determined that crushing peanuts will be approximately 12 percent, on a farmer stock basis, of the total MY 1992 domestic food and seed production.

Domestic edible use

One manufacturer/processor association estimated the growth in the quota should be 8 to 9 percent but provided no specific estimate for individual components of domestic edible use. The other manufacturer/processor association estimated the amount of peanuts to be used for domestic edible use to be 1,200,000 st. Sheller and grower associations estimated the amount of peanuts to be used for domestic edible use to be 1,150,000 st. As of December 11, 1991, the ICEC estimated the MY 1992 domestic edible peanut use at 1,200,000 st, down 25,000 st from the ICEC estimate used in connection with the proposed quota. An estimated of 1,200,000 st was determined appropriate but was further reduced by 14,000 st to account for product exporters. (In most instances, product exports are either made from, or may otherwise be credited under section 359a(e)(1) of the 1938 Act as being made from, additional peanuts.)

Seed Use

The seed estimate is based on the expected 1993-crop planted acreage for peanuts and the farmer stock equivalent of the seed needed to plant such acreage. Manufacturer and grower comments regarding this estimate varied concerning seeding rates. Manufacturers supported the use of a more traditional 110-pound-per-acre seeding rate. Shellers/growers proposed the use of a 90-pound-per-acre seeding rate. The sheller/grower recommendation was based on the improved accuracy of pneumatic planters and research enabling growers to have sustained yields with reduced seeding rates. The final seed estimate is based on a review of the most reliable data. ICEC concluded that a 95-pound-per-acre seeding rate is the best estimate.

Shrinkage and Other Losses

This estimate is based on multiplying a factor of 0.04 times domestic food use. Because the domestic food use estimate was revised downward, the estimate for shrinkage and other losses was lowered accordingly.

Quota Peanuts Support Level

The Agricultural Act of 1949, as amended, provides that the Secretary of Agriculture (Secretary) shall determine the rate of loans, payments, and purchases for the 1991–1995 crops of commodities without regard to the requirements for notice and public participation in rulemaking as prescribed in 5 U.S.C. 553 or in any directive of the Secretary.

The announcement of the national support level for the 1992 crop of quota and additional peanuts was required to be made by the Secretary no later than February 15, 1992.

In accordance with section 108B(a)(2) of the 1949 Act, as amended, the national average price support level for the 1992 crop of quota peanuts must be the corresponding 1991-crop price support level adjusted to reflect any increases in the national average cost of peanut production excluding any changes in the cost of land) during the calendar year immediately preceding MY 1992, except that the price support level cannot exceed the 1991-crop support level by more than 5 percent. The 1991-crop quota peanut price support level was $642.79 per st. The 1992-crop support level was determined based on the following estimates:

COST ESCALATOR CALCULATIONS

Variable/component	1990 crop	1991 crop
Total Cash Expense, Capital Replacement, and Unpaid Labor, Less Land Return.	$507.76/acre	$567.91/acre.
Trend Yields	2,500 lbs/acre	2,500 lbs/acre.
Adjusted Costs Per Pound.	$0.20310	$0.22716.
	Dollars Per st.	
Adjusted Costs Per st..	1990	1991.
	406.21	454.33.

COST ESCALATOR CALCULATIONS—Continued

Variable/component	1990 crop	1991 crop
	1992 Quota Calculations Dollars per st.	
Change During 1991 in the Average Cost of Producing Peanuts.	48.12	
Maximum Increase (5%).	32.14	
1992 Quota Support Level.	642.79 + 32.14 = 674.93	

Source: T&PAD/ASCS/USDA January 1992.

As indicated in the chart, which was derived form data of the USDA, Economic Research Service, relevant peanut production costs, as calculated in accordance with the statute, increased $48.12 per st, exceeding the maximum permitted 5-percent increase ($32.14 per st). The 1992-crop quota peanut price support level is accordingly established at $674.93 per st.

Additional Peanut Support Level

Section 108B(b)(1) of the 1949 Act, as amended, provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The price support level for additional peanuts is established at $131.09 per st to assure no losses to CCC from the sale or disposal of such peanuts. It reflects the average 1991 soybean oil and meal price equivalent of $192.24 per st less an estimated carrying cost of $61.15 per st on 1991 loan inventory. Peanuts pledged as collateral for a price support loan are sold to recover the loan and related costs. The $131.09 per st support level will provide a reasonable margin of error to prevent losses to the CCC on the sale and disposition of 1992-crop additional peanuts. Prior to making this determination, the following information was considered.

The domestic use of peanut oil during MY 1992 is forecast to be 100,500 st, down 20 percent from MY 1991 projected domestic use. MY 1992 peanut oil beginning stocks are expected to be 30,000 st, up 240 percent from MY 1991. MY 1992 peanut oil prices are expected to average 26.5 cents per pound, up 4.5 cents per pound from MY 1991 prices, but lagging well behind the average price of 45.5 cents per pound for MY 1990.

The domestic use of peanut meal during MY 1992 is forecast to be 65,000 st, down 19,500 st from MY 1991 projected domestic use. MY 1992 peanut meal beginning stocks are expected to be 5,000 st, up 11 percent from MY 1991. Peanut meal prices are expected to average $175.00 per st, up $2.50 per st from MY 1991 prices, but lagging behind the average price of $193.00 per st for MY 1990.

The average price for soybean oil for MY 1992 is forecast to be 19.0 cents per pound, unchanged from MY 1991. The domestic disappearance of soybean oil during MY 1992 is forecast to be 6,200,000 st, up less than 1 percent from projected MY 1991 domestic disappearance. MY 1992 soybean oil beginning stocks are expected to be 1,125,000 st, up 242,500 st from MY 1991.

The average price for cottonseed oil for MY 1992 is forecast to be 18.75 cents per pound, up 0.25 cents per pound from MY 1991. The domestic disappearance of cottonseed oil during MY 1992 is forecast to be 505,000 st, up 7 percent from projected MY 1991 domestic disappearance. MY 1992 cottonseed oil beginning stocks are expected to be 80,000 st, up 12,000 st from MY 1991.

The average soybean meal price for MY 1992 is forecast to be $170.00 per st, down $2.50 per st from MY 1991. The domestic disappearance of soybean meal during MY 1992 is forecast to be 23,300,000 st, down 1 percent from projected MY 1991 domestic disappearance. MY 1992 soybean meal beginning stocks are expected to be 300,000 st, up 15,000 st from MY 1991.

The average cottonseed meal price for MY 1992 is forecast to be $140.00 per st, down $5.00 per st from MY 1991. The domestic disappearance of cottonseed meal during MY 1991 is forecast to be 1,845,000 st, up 4 percent from projected MY 1991 domestic disappearance. MY 1992 cottonseed meal beginning stocks are expected to be 75,000 st, down 20 percent from MY 1991.

The world use of peanuts for MY 1991 is expected to be 23.03 million metric tons, up 0.5 percent from MY 1990. World peanut production for MY 1991 is forecast to be a record 23.51 million metric tons, up 3 percent from MY 1990. Ending stocks for MY 1991 are forecast at 0.75 million metric tons, up 63 percent from MY 1990.

Minimum CCC Sales Price for Additional Peanuts Sold for Export Edible Use

The announcement of a minimum price at which additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is announced at the same time that the quota and additional peanut support level are announced. Thus, producers and handlers have information to facilitate the negotiation of private contracts for the sale of additional peanuts.

An overly high price may create an unrealistic expectation of high pool dividends and discourage private sales. If too low, the price could unnecessarily adversely affect prices paid to producers for additional peanuts.

The minimum price at which 1992-crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is established at $400 per st. This level will provide price stability for additional peanuts sold under contract and provide some assurance to handlers that CCC will not undercut the handlers' export contracting efforts by offerings of additional peanuts for export edible sale below the historic minimum sales price.

List of Subjects

7 CFR Part 729

Poundage quotas, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 1421

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, 7 CFR parts 729 and 1421 are amended as follows:

PART 729—[AMENDED]

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375; 7 U.S.C. 1445c-3.

2. Part 729, subpart B, is amended by adding a new section, § 729.214, to read as follows:

§ 729.214 National poundage quota.

(a) The national poundage quota for quota peanuts for marketing year 1991 is 1,550,000 short tons.

(b) The national poundage quota for quota peanuts for marketing year 1992 is 1,540,000 short tons.

PART 1421—[AMENDED]

3. The authority citation for part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

4. Section 1421.7 is amended by revising paragraph (c)(8) to read as follows:

§ 1421.7 Adjustment of basic support rates.

* * * * *

(c) * * *

(8)(i) 1991 Peanuts, Quota—$642.79 per short ton; Additional—$149.75 per short ton;

(ii) 1992 Peanuts, Quota—$674.93 per short ton; Additional—$131.09 per short ton;

* * * * *

5. Section 1421.27(a)(2) (i) and (ii) is added to read as follows:

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a)(1) * * *

(2) * * *

(i) The 1991 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton;

(ii) The 1992 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton.

* * * * *

Signed at Washington, DC, on October 2, 1992.

Keith D. Bjerke,

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

[FR Doc. 92-24589 Filed 10-8-92; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD: Docket No. R-0753]

Truth in Savings; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Regulation DD (Docket No. R-0753) published September 21, 1992 (57 FR 43337). The regulation implements the Truth in Savings Act, which requires depository institutions to disclose fees, interest rates and other terms concerning deposit accounts, and limits the methods by which institutions determine the balance on which interest is calculated.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, or Jane Ahrens, Kurt Schumacher, or Mary Jane Seebach, Staff Attorneys (202/736-5500), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Regulation DD, which is the subject of these corrections, implements the Truth in Savings Act (12 U.S.C. 4301 *et seq.*, contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, 105 Stat. 2236).

Need for Correction

As published, the final regulation contains two drafting errors that may be confusing and should be clarified. Several minor typographical errors in the regulation appeared and are being corrected. Errors in the supplementary information that may be confusing are also being corrected at this time.

Correction of Publication

For the reasons set forth in the preamble, the publication on September 21, 1992 of the final regulations (Docket No. R-0753), which were the subject of FR Doc. 92-22478, is corrected as follows:

1. On page 43353, in the third column, in Paragraph (b)(6)(iii)—Withdrawal of interest prior to maturity, first sentence, the word "account" is corrected to read "amount".

2. On page 43362, in the third column, in Paragraph (a)(4)--Length of period, third paragraph, second sentence, the phrase "both April 30" is corrected to read "both April 1 and April 30".

3. On page 43371, in the third column, in Appendix A, Part I, B. Stepped-rate accounts (different rates apply in succeeding periods), second sentence, the word "but" is corrected to read "that".

4. On page 43372, in the second column, in Appendix A, Part I, D. Tiered-rate accounts (different rates apply to specified balance levels), Tiering Method A, second paragraph, third line from the top of the column, the word "within" is corrected to read "with".

PART 230 [CORRECTED]

§ 230.6 [Corrected]

5. On page 43379, in the second column, in § 230.6(a)(3), in the fourth and fifth lines, the words "dollar amounts of the" are removed.

Appendix A [Corrected]

6. On page 43380, in the second column, in Appendix A, introductory text, in the tenth line, the word "percentages" is corrected to read "percentage".

7. On page 43382, first column, in Appendix A, Part II, example (2), in the 16th line, the figure "6.69%" is corrected to read "5.40%".

8. On page 43382, first column, in Appendix A, Part II, example (2), in the equation in the last line, the figure "6.69%" is corrected to read "5.40%".

Appendix B [Corrected]

9. On page 43382, second column, in Appendix B, B-1 (a)(ii), under Limitations on Rate Changes, fourth line, the word "by" is corrected to read "be".

10. On page 43383, first column, in Appendix B, B-1 (f), Fees, the clause is corrected to read as follows:

* * * * *

(f) * * *

The following fees may be assessed against your account:

______________________$_____

______________________$_____

______________________$_____

______*(conditions for imposing fee)*$_____

______________________% of _____.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-24623 Filed 10-8-92; 8:45 am]

BILLING CODE 6210-01-F

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 615 and 627

RIN 3052-AA92

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Title V Conservators and Receivers

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final regulations governing conservatorships and receiverships for which the Farm Credit System Insurance Corporation (Insurance Corporation) is appointed as conservator or receiver. These regulations were published as proposed regulations on June 3, 1992, 57 FR 23348. The final regulations reflect

amendments to the Farm Credit Act of 1971 by the Agricultural Credit Act of 1987 providing that, after January 5, 1993, the Insurance Corporation will be the exclusive entity appointed as conservator or receiver of a Farm Credit System institution (System institution or Farm Credit institution). Also adopted are amendments to existing conservatorship and receivership regulations, which continue to apply in situations where the Insurance Corporation is not appointed as conservator or receiver.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444,

or

John J. Hays, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. General

The Agricultural Credit Act of 1987 (Pub. L. 100–233) (1987 Act) amended the Farm Credit Act of 1971 (Act) by adding a new title V which provided for the establishment of the Insurance Corporation. New sections 5.51(5) and 5.58(9) of the Act empower the Insurance Corporation to act as conservator or receiver. The 1987 Act also amended section 4.12(b) of the Act to provide that, after January 5, 1993, the Insurance Corporation will be the exclusive entity to be appointed by the FCA as conservator or receiver of a System institution. In new part 627, the Board sets forth the powers and duties of the Insurance Corporation when it acts as conservator or receiver of a System institution. Other conservators or receivers will continue to be governed by the existing provisions in part 611, subparts K, L, M, and N of the regulations, as amended.

The Board's decision to promulgate separate regulations for conservatorships and receiverships for which the Insurance Corporation is the conservator or receiver is based on fundamental differences between the Insurance Corporation and other persons or entities that have previously been appointed to the position. The primary difference is that the Insurance Corporation is a Federal agency in its own right. Thus, provisions pertaining to the status of other conservators or receivers as agents of the FCA are unnecessary for the Insurance Corporation. In addition, the Board believes that retention of a Farm Credit charter by an institution for which the Insurance Corporation acts as receiver is no longer necessary in all circumstances and has provided that the Board may, in its discretion, cancel the charter at the commencement of such receivership or at any time thereafter. Finally, most of the provisions relating to FCA supervisory involvement have been removed. For a full discussion of these matters, see 57 FR 23348 (June 3, 1992).

II. Discussion of Comments

The FCA received comments from the Farm Credit Council (FCC) on behalf of its member System institutions, and from two Farm Credit Banks (FCBs). The FCBs' comments consisted of statements of support for the FCC's comments. Their comments are discussed below.

A. Definition of "Farm Credit institution"

The FCC objected to the inclusion of the Federal Farm Credit Banks Funding Corporation (Funding Corporation), the Farm Credit System Financial Assistance Corporation (FAC), and the Federal Agricultural Mortgage Corporation (Farmer Mac) in the definition of "Farm Credit institution" in proposed § 627.2705(b) for purposes of applying the conservatorship and receivership regulations. These institutions are also included in the definition of "bank" in existing regulation § 611.1170(h) of this chapter. The FCC questioned the appropriateness of applying the receivership procedures to these institutions on the ground that such institutions are "congressionally established."

The FCA Board agrees with the FCC that the institutions were either established by Congress, in the case of the Funding Corporation and Farmer Mac, or chartered by the FCA pursuant to congressional mandate, in the case of the FAC. All the institutions are, however, designated by statute as "institution[s] of the Farm Credit System." See sections 4.9(a), 6.20, and 8.1(a) (1) of the Act. Section 4.12(b) of the Act empowers the FCA Board to "appoint a conservator or receiver for any *System institution*" (emphasis added) if one or more specified grounds exist, and the FCA's power to appoint is exclusive. Should a System institution become insolvent or should any other ground for appointment of a conservator or receiver arise, only the FCA can appoint a conservator or receiver. There is no distinction made in the application of section 4.12(b) on the basis of how a System institution was created. Therefore, unless some other provision of the Act provides for a different treatment, the three institutions in question should be subject to section 4.12(b) and to the conservatorship and receivership regulations.

The provisions pertaining to the FCA's authority to regulate Farmer Mac are in title VIII of the Act. This title was amended by the Food, Agriculture, Conservation and Trade Act Amendments of 1991 (1991 Amendments) (Pub. L. 102–237) to establish a regulatory scheme of FCA examination and supervision through the Office of Secondary Market Oversight (OSMO). New section 8.11(a) provides that the FCA shall act through OSMO to examine, supervise, and promulgate rules and regulations for Farmer Mac, and new section 8.37(b)(6) authorizes the Director of OSMO to "[a]ppoint a conservator for [Farmer Mac] consistent with this Act." [1] Furthermore, section 8.3(c)(6), which was enacted in 1988, provides that Farmer Mac shall "have succession until dissolved by a law enacted by the Congress." Therefore, it appears that the Act gives the FCA, acting through the OSMO Director, power to appoint a conservator but does not permit the FCA to place Farmer Mac in receivership. The FCA would appoint a receiver only if Congress enacts a new law directing or authorizing the agency to take such action. Consequently, the receivership regulations would be inapplicable to Farmer Mac.

In addition, the Board has determined that the conservatorship regulations adopted here today should not be applicable to Farmer Mac but should be addressed separately. The Board has therefore removed Farmer Mac from the definitions of "bank" and "Farm Credit institution" in the final regulations.

There is no other provision of the Act that specifically addresses the appointment of a conservator or receiver for the Funding Corporation or the FAC. Accordingly, it is the Board's view that section 4.12(b) applies to them and that these regulations should likewise be

[1] The FCA interprets "consistent with this Act" to mean that relevant provisions of section 4.12 apply—such as, for example, the provision that an institution has a right to challenge the appointment of a conservator, or the requirement that the Insurance Corporation be appointed to act as conservator.

applicable.[2] Therefore, the final regulations include the Funding Corporation and the FAC in the definitions of "bank" and "Farm Credit institution."

The FCA Board is aware of the special statutory origin of the Funding Corporation and the FAC. Should one or more of the grounds for appointment of a conservator or receiver ever arise at one of the institutions, the Board would not anticipate taking any action without full consideration of such institution's special status and consultation with appropriate parties. The Board notes that the nature of the operational activities of these two institutions makes it extremely unlikely that either would ever be placed in receivership, but should that occur, there should be some mechanism for winding up the affairs of the institutions. Also, when the FAC terminates its existence, it may be necessary to place the corporation in receivership to wind up its affairs. When and if any of these events occur, it should be the FCA that places them in receivership and the Insurance Corporation that acts as receiver.

B. Consultation With District Bank Before Voluntary Liquidation of Association

Section 627.2720 of the proposed regulations did not contain a requirement that the FCA consult with the district FCB before placing an association in voluntary receivership, as is currently required in § 611.1160(a) of this chapter. The FCC requested that the consultation requirement be added to new part 627, reasoning that the FCA would and should want to know the views of the association's largest creditor and bank, in light of the potential impact of the liquidation on the FCB itself and the other association stockholders in the district. The FCC also stated that, if the district FCB did not have the opportunity to express its views to the FCA prior to the liquidation, it seemed unreasonable and unworkable to expect the FCB to fulfill its statutory and regulatory requirement to "institute appropriate measures to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution" (section 4.12(a) of the Act).

The Board does not agree that it is "unreasonable and unworkable" to expect an FCB to fulfill its statutory duties if the FCB has not been consulted. The Board notes, however, that because the FCA would also be concerned about minimizing the adverse effects of a liquidation, the FCA would ordinarily be in contact with a district bank before approving an association's proposed voluntary liquidation. Although the Board does not believe it is necessary to place a consultation requirement in the regulations, in light of the FCC's concerns a provision has been added in § 627.2720(a) that the FCA may, in its discretion, consult with the district bank prior to approving a voluntary liquidation of an association.

The discretionary consultation provision should not, however, be construed as granting an FCB any right to prevent an association's proposed liquidation. Rather, the consultation would provide the FCA with additional information with which to decide whether to approve the liquidation and, if it is approved, how to arrange for continued Farm Credit service in the territory.

The FCC also requested the addition in part 627 of another provision of existing regulations that permits the board of directors of an institution in receivership, at the discretion of the FCA Board, to remain in office during the receivership to provide advice and recommendations to the receiver during the liquidation. The Board has decided not to add this provision to part 627 because it believes that the issue is now more appropriately the concern of the Insurance Corporation when it acts as receiver.

C. Cancellation of the Charter of an Institution in Receivership

The FCC questioned the appropriateness of canceling the charter of an institution at the commencement of a receivership, rather than at the end as is currently the practice. The FCC asserted that the charter cancellation "needlessly clouds" the issue of whether the institution has standing to challenge the imposition of an involuntary receivership.

The FCA Board does not believe that cancellation of the charter places any cloud on the right of the institution to bring an action, within 30 days after the appointment of a receiver, for an order requiring the FCA Board to remove the receiver. This right is expressly granted by section 4.12(b) of the Act, and no valid regulation can have the effect of overriding a statutory requirement.

However, the Board has determined that it will consider the merits of cancellation of the charter at the commencement of each receivership on a case-by-case basis. The Board expects that, ordinarily, the charter would be canceled when the Insurance Corporation is appointed as receiver. If circumstances indicate that there would be a benefit to retaining the charter of a specific institution for a period of time after the appointment of the receiver, the Board will have the flexibility to so provide. Therefore, the Board is adopting a provision that the Board may, in its discretion, cancel the charter of an institution in receivership at any time after the Insurance Corporation is appointed as receiver.

D. Ongoing and Future Credit Needs of Eligible Borrowers

The FCC requested that the Board clarify in the final regulations how the ongoing and future credit needs of eligible borrowers will be met in the territory formerly served by an association in liquidation. The Board has decided not to revise the proposed regulations in response to this comment because it believes that the organizational differences among districts are too numerous and the credit needs of eligible borrowers throughout the country are too various to address this issue through regulations. Thus, future credit needs will necessarily be addressed on a case-by-case basis.

List of Subjects

12 CFR Part 611

Agriculture, Banks, Banking, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

12 CFR Part 627

Agriculture, Banks, Banking, Claims, Rural areas.

For the reasons set forth in the preamble, parts 627, 611, and 615 of chapter VI, title 12 of the Code of Federal Regulations are added and amended, respectively, as follows:

1. A new part 627 is added to read as follows:

PART 627—TITLE V CONSERVATORS AND RECEIVERS

Subpart A—General

Sec.
627.2700 General—applicability.
627.2705 Definitions.
627.2710 [Reserved]
627.2715 Action for removal of conservator or receiver.

Subpart B—Receivers and Receiverships

627.2720 Appointment of receiver.

[2] The FCA interprets the FAC termination provision in section 6.31 of the Act to set a time after which the FAC authorities are extinguished, not to prohibit the placing of the institution in conservatorship or receivership.

627.2725 Powers and duties of the receiver.
627.2730 Preservation of equity.
627.2735 Notice to holders of uninsured accounts and stockholders.
627.2740 Creditors' claims.
627.2745 Priority of claims—associations.
627.2750 Priority of claims—banks.
627.2752 Priority of claims—other Farm Credit institutions.
627.2755 Payment of claims.
627.2760 Inventory, audit, and reports.
627.2765 Final discharge and release of the receiver.

Subpart C—Conservators and Conservatorships

627.2770 Conservators.
627.2775 Appointment of a conservator.
627.2780 Powers and duties of conservators.
627.2785 Inventory, examination, audit, and reports to stockholders.
627.2790 Final discharge and release of the conservator.

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58 of the Farm Credit Act; 12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7.

Subpart A—General

§ 627.2700 General—applicability.

The provisions of this part shall apply to conservatorships and receiverships of Farm Credit institutions for which the Farm Credit System Insurance Corporation is appointed as conservator or receiver.

§ 627.2705 Definitions.

For purposes of this part the following definitions apply:

(a) *Act* means the Farm Credit Act of 1971, as amended.

(b) *Farm Credit institution(s)* or *institution(s)* means all associations, banks, service corporations chartered under title IV of the Act, the Federal Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

(c) *Conservator* means the Farm Credit System Insurance Corporation acting in its capacity as conservator.

(d) *Insurance Corporation* means the Farm Credit System Insurance Corporation.

(e) *Receiver* means the Insurance Corporation acting in its capacity as receiver.

§ 627.2710 [Reserved]

§ 627.2715 Action for removal of conservator or receiver.

Upon the appointment of a conservator or receiver for a Farm Credit institution by the Farm Credit Administration Board pursuant to § 627.2710 of this part, the institution may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the home office of the institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove such conservator or receiver and, if the charter has been canceled, to rescind the cancellation of the charter. Notwithstanding any other provision of subpart B or C of this part, the institution's board of directors is empowered to meet subsequent to such appointment and authorize the filing of an action for removal. An action for removal may be authorized only by such institution's board of directors.

Subpart B—Receivers and Receiverships

§ 627.2720 Appointment of receiver.

(a) The board of directors of a Farm Credit institution, by the adoption of an appropriate resolution, may vote to liquidate the institution, and upon approval of the resolution by the Farm Credit Administration Board, the Board may, by order, place the Farm Credit institution in receivership. If the institution seeking to liquidate is an association, the Farm Credit Administration may, in its discretion, consult with the district bank prior to approving the association's resolution to liquidate.

(b) The Farm Credit Administration Board may, in its discretion, appoint ex parte and without notice a receiver for any Farm Credit institution in accordance with the grounds for appointment set forth in § 627.2710 of this part.

(c) The voluntary or involuntary liquidation of a Farm Credit institution shall be conducted by the receiver. After January 5, 1993, the Insurance Corporation shall be the sole entity to be appointed as receiver.

(d) Upon the appointment of the Insurance Corporation as receiver, the Chairman of the Farm Credit Administration Board shall immediately notify the institution, and its district bank in the case of an association, and shall publish a notice of the appointment in the **Federal Register.**

(e) In the case of the voluntary or involuntary liquidation of an association, the district bank shall institute appropriate measures to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution.

(f) Upon the issuance of the order placing a Farm Credit institution into liquidation and appointing the Insurance Corporation as receiver, all rights, privileges, and powers of the board of directors, officers, and employees of the institution shall be vested exclusively in the receiver. The Farm Credit Administration Board may simultaneously, or any time thereafter, cancel the charter of the institution.

§ 627.2725 Powers and duties of the receiver.

(a) *General.* (1) Upon appointment as receiver, the receiver shall take possession of a Farm Credit institution pursuant to 12 U.S.C. 2183 and § 627.2710 of this part in order to wind up the business operations of such institution, collect the debts owed to the institution, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to stockholders. The receiver is authorized to exercise all powers necessary to the efficient termination of an institution's operation as provided for in this subpart.

(2) Upon its appointment as receiver, the receiver automatically succeeds to—

(i) All rights, titles, powers and privileges of the institution and of any stockholder, officer, or director of such institution with respect to the institution and the assets of the institution; and

(ii) Title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

(3) The receiver of a Farm Credit institution serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the institution.

(b) *Specific powers.* The receiver may:

(1) Exercise all powers as are conferred upon the officers and directors of the institution under law and the charter, articles, and bylaws of the institution.

(2) Take any action the receiver considers appropriate or expedient to carry on the business of the institution during the process of liquidating its assets and winding up its affairs.

(3) Extend credit to existing borrowers as necessary to honor existing commitments and to effectuate the purposes of the receivership.

(4) Borrow such sums as necessary to effectuate the purposes of the receivership.

(5) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the institution's assets or property or rehabilitate or improve such property and assets.

(6) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the institution has a lien or in which the institution has a

financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(7) Investigate any matter related to the conduct of the business of the institution, including, but not limited to, any claim of the institution against any individual or entity, and institute appropriate legal or other proceedings to prosecute such claims.

(8) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the institution or in which the institution or its creditors or members have any interest, and represent in every way the institution, its members, and creditors.

(9) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs.

(10) Hire any agents or employees necessary for proper administration of the receivership.

(11) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effective as if it had been executed by the institution's officers by authority of its board of directors.

(12) Sell for cash or otherwise any mortgage, deed of trust, chose in action, note contract, judgment or decree, stock, or debt owed to the institution, or any property (real or personal, tangible or intangible).

(13) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(14) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(15) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the institution or receiver.

(16) Pay, out of the assets of the institution, all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(17) Pay out of the assets of the institution all approved claims of indebtedness in accordance with priorities established in this subpart.

(18) Take all actions and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(19) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration Board authorizes by order or by amendment of any order or by regulation.

(c) *Authority to pay claims.* The receiver of a bank is also empowered to pay claims of holders of notes, bonds, debentures, or other obligations issued by the bank under 12 U.S.C. 2153(c) or (d) in accordance with procedures specified by the Insurance Corporation pursuant to § 627.2740(d) of this part.

§ 627.2730 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the institution, no capital stock, participation certificates, equity reserves, or other allocated equities of an institution in receivership shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities.

(b) Immediately upon the adoption of a resolution by its board of directors to liquidate voluntarily the institution, the capital stock, participation certificates, equity reserves, and allocated equities of the institution shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities until such time as the stockholders of the institution or the Farm Credit Administration Board disapproves such resolution. In the event the resolution is approved by the stockholders of the institution and the Farm Credit Administration Board, and the institution is placed in receivership, the provisions of paragraph (a) of this section shall govern further disposition of the equities of the institution.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

§ 627.2735 Notice to holders of uninsured accounts and stockholders.

(a) Upon the placing of an institution in liquidation, the receiver shall immediately notify every borrower who has an uninsured account (voluntary or involuntary) as described in § 614.4513 of this chapter that the funds ceased earning interest when the receivership was instituted and will be applied against the outstanding indebtedness of any loans of such borrower unless, within 15 days of such notice, the borrower directs the receiver to otherwise apply such funds in the manner provided for in existing loan documents.

(b) As soon as practicable after the receiver takes possession of the institution, the receiver shall notify, by first class mail, each holder of stock and participation certificates of the following matters:

(1) The number of shares such holder owns;

(2) That the stock and other equities of the institution may not be retired or transferred until the liquidation is completed, whereupon the receiver will distribute a liquidating dividend, if any, to the owners of such equities; and

(3) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§ 627.2740 Creditors' claims.

(a) The receiver shall publish promptly a notice to creditors to present their claims against the institution, with proof thereof, to the receiver by a date specified in the notice, which shall be not less than 90 calendar days after the first publication. The notice shall be republished approximately 30 days and 60 days after the first publication. The receiver shall promptly send, by first class mail, a similar notice to any creditor shown on the institution's books at the creditor's last address appearing thereon. Claims filed after the specified date shall be disallowed, except as the receiver may approve them for full or partial payment from the institution's assets remaining undistributed at the time of approval.

(b) The receiver shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority which is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Sending the notice of disallowance by first class mail to the claimant's address appearing on the proof of claim shall be sufficient notice. The disallowance shall be final, unless, within 30 days after the notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance. The receiver shall reconsider any claim upon the timely request of the claimant and may approve or disapprove such claim in whole or in part.

(c) Creditors' claims that are allowed shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established in this subpart and in such manner and amounts as the receiver deems appropriate. In the event the institution has a claim against a creditor of the institution, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

(d) The claims of holders of notes, bonds, debentures, or other obligations issued by a bank under 12 U.S.C. 2153 (c) or (d) shall be made, if deemed necessary or appropriate, in accordance with procedures formulated by the Insurance Corporation. In the formulation of such procedures, the Insurance Corporation shall consult with the Farm Credit Administration.

§ 627.2745 Priority of claims—associations.

The following priority of claims shall apply to the distribution of the assets of an association in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the association, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the association.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the association whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the association not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors, including the district bank, which are secured by assets or equities of the association in accordance with applicable Federal or State law.

(g) All claims of the district bank other than those provided for in paragraph (f) of this section, based on the financing agreement between the association and the bank, including interest accrued before and after the appointment of the receiver, minus any setoff for stock or other equity of the district bank owned by the association made in accordance with this paragraph or paragraph (f) of this section. Prior to making such setoff, the district bank must obtain the approval of the Farm Credit Administration Board for the retirement of such equities.

(h) All claims of general creditors.

§ 627.2750 Priority of claims—banks.

The following priority of claims shall apply to the distribution of the assets of a bank in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the bank, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the bank.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the bank whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the bank not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets or equities of the bank, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of holders of bonds issued by the bank individually to the extent such are collateralized in accordance with 12 U.S.C. 2154.

(h) All claims of holders of consolidated and Systemwide bonds and claims of the other Farm Credit banks arising from their payments pursuant to 12 U.S.C. 2155.

(i) All claims of general creditors.

§ 627.2752 Priority of claims—other Farm Credit Institutions.

The following priority of claims shall apply to the distribution of the assets of an institution, other than a bank or association, in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the institution, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the institution.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the institution whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the institution not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets or equities of the institution, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of general creditors.

§ 627.2755 Payment of claims.

(a) All claims of each class described in § 627.2745, § 627.2750, or § 627.2752 of this part, respectively, shall be paid in full, or provisions shall be made for such payment, prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay in full any class of claims described in § 627.2745, distribution on such class shall be on a pro rata basis.

(b) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the institution to the owners of stock, participation certificates, and other equities in accordance with the priorities for impairment set forth in the bylaws of the institution.

(c) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

§ 627.2760 Inventory, audit, and reports.

(a) As soon as practicable after taking possession of an institution, the receiver shall make an inventory of the assets and liabilities as of the date possession was taken.

(b) The institution in receivership shall be audited on an annual basis by a certified public accountant selected by the receiver.

(c) With respect to each receivership, the receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the institution in receivership or any member of the public, with a copy provided to the Farm Credit Administration.

(d) Upon the final liquidation of the institution, the receiver shall send to each stockholder of record a report summarizing the disposition of the assets of the receivership and claims against the receivership.

§ 627.2765 Final discharge and release of the receiver.

After the receiver has made a final distribution of the assets of the receivership, the receivership shall be terminated, the charter shall be canceled by the Farm Credit Administration Board if such cancellation has not previously occurred, and the receiver shall be finally discharged and released.

Subpart C—Conservators and Conservatorships

§ 627.2770 Conservators.

(a) The Insurance Corporation shall be appointed as conservator by the Farm Credit Administration Board pursuant to section 4.12 of the Act and § 627.2710 of this part to take possession of an institution in accordance with the terms of the appointment. Upon appointment, the conservator shall direct the institution's further operation until the Farm Credit Administration Board decides whether to place the institution into receivership. Upon correction or resolution of the problem or condition that provided the basis for the appointment and upon a determination by the Farm Credit Administration Board that the institution can be returned to normal operations, the Farm Credit Administration Board may turn the institution over to such management as the Farm Credit Administration Board may direct.

(b) The conservator shall exercise all powers necessary to continue the ongoing operations of the institution, to conserve and preserve the institution's assets and property, and otherwise protect the interests of the institution, its stockholders, and creditors as provided in this subpart.

§ 627.2775 Appointment of a conservator.

(a) The Farm Credit Administration Board may appoint ex parte and without notice a conservator for any Farm Credit institution provided that one or more of the grounds for appointment as set forth in § 627.2710 exist.

(b) Upon the appointment of a conservator, the Chairman of the Farm Credit Administration shall immediately notify the institution and, in the case of an association, the district bank, and notice of the appointment shall be published in the Federal Register. As soon as practicable after the conservator takes possession of the institution, the conservator shall notify, by first class mail, each holder of stock and participation certificates in the institution of the establishment of the conservatorship and shall describe the effect of the conservatorship on the institution's operations and on the borrower's loan and equity holdings.

(c) Upon the issuance of the order placing a Farm Credit institution in conservatorship, all rights, privileges, and powers of the members, board of directors, officers, and employees of the institution are vested exclusively in the conservator.

(d) The conservator is responsible for conserving and preserving the assets of the institution and continuing the ongoing operations of the institution until the conservatorship is terminated by order of the Farm Credit Administration Board.

(e) The Board may, at any time, terminate the conservatorship and direct the conservator to turn over the institution's operations to such management as the Board may designate, in which event the provisions of this subpart shall no longer apply.

§ 627.2780 Powers and duties of conservators.

(a) The conservator of an institution serves as the trustee of the institution and conducts its operations for the benefit of the creditors and stockholders of the institution.

(b) The conservator may, with respect to Farm Credit institutions, exercise the powers that a receiver of an institution may exercise under any of the provisions of § 627.2725(b) of this part, except paragraphs § 627.2725 (b)(2) and (b)(17). In interpreting the applicable paragraphs for purposes of this section, the terms "conservator" and "conservatorship" shall be read for "receiver" and "receivership."

(c) The conservator may extend credit to new and existing borrowers as is necessary to the continuing operation of the institution and to effectuate the purposes of the conservatorship.

(d) The conservator may also take any other action the conservator considers appropriate or expedient to the continuing operation of the institution.

§ 627.2785 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of a Farm Credit institution the conservator shall make an inventory of the assets and liabilities of the institution as of the date possession was taken. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The institution in conservatorship shall be examined by the Farm Credit Administration in accordance with section 5.19 of the Act. The institution shall also be audited by a certified public accountant in accordance with part 621 of this chapter.

(c) Each institution in conservatorship shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of part 621 of this chapter. The conservator of the institution shall provide the certification required in § 621.12 of this chapter.

(d) Each institution in conservatorship shall prepare and issue published financial reports in accordance with provisions of part 620 of this chapter, and the certifications and signatures of the board of directors or management provided for in §§ 620.2(b), 620.2(c), and 620.5(m)(2) of this chapter shall be provided by the conservator of the institution.

§ 627.2790 Final discharge and release of the conservator.

At such time as the conservator shall be relieved of its conservatorship duties, the conservator shall file a report on the conservator's activities with the Farm Credit Administration. The conservator shall thereupon be completely and finally released.

PART 611—ORGANIZATION

2. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003 and 1004.

Subpart K—Appointment of Conservators and Receivers

§ 611.1155 [Amended]

3. Section 611.1155 is amended by adding two sentences to the end of the existing text to read:

§ 611.1155 General.

* * * Subparts K, L, M, and N of this part shall not apply to conservatorships or receiverships for which the Farm Credit System Insurance Corporation is appointed as conservator or receiver. Such conservatorships and receiverships shall be governed by part 627 of this chapter.

§ 611.1156 [Redesignated]

4. Section 611.1156 is redesignated as § 627.2710, and paragraph (a) of newly designated § 627.2710 is revised to read as follows:

§ 627.2710 Grounds for appointment of conservators and receivers.

(a) Upon a determination by the Farm Credit Administration Board of the existence of one or more of the factors set forth in paragraph (b) of this section, with respect to any bank, association, or other institution of the System, the Farm Credit Administration Board may, in its discretion, appoint a conservator or receiver for such institution. After January 5, 1993, the Insurance Corporation shall be the sole entity to be appointed as conservator or receiver.

* * * * *

§ 611.1157 [Amended]

5. Section 611.1157 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (a) and (b).

Subpart L—Liquidation of Associations

§ 611.1160 [Amended]

6. Section 611.1160 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (b) and (g).

7. Section 611.1168 is amended by removing paragraphs (c), (d), and (e); by redesignating paragraph (f) as new paragraph (d); and by adding new paragraph (c) to read as follows:

§ 611.1168 Inventory, examination, audit, and reports to stockholders.

* * * * *

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the association in receivership or any member of the public.

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Subpart M—Liquidation of Banks

§ 611.1170 [Amended]

8. Section 611.1170 is amended by removing the reference "§ 611.1156 of this part" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraphs (b) and (g); and by removing "the Federal Agricultural Mortgage Corporation," from paragraph (h).

9. Section 611.1175 is amended by removing paragraphs (c), (d), and (e); by redesignating paragraph (f) as new paragraph (d); and by adding new paragraph (c) to read as follows:

§ 611.1175 Inventory, examination, audit, and reports to stockholders.

* * * * *

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the bank in receivership or any member of the public.

* * * * *

Subpart N—Conservators and Conservatorships of Banks and Associations

§ 611.1180 [Amended]

10. Section 611.1180 is amended by removing the reference "§ 611.1156" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraph (a); and by removing "the Federal Agricultural Mortgage Corporation," from paragraph (f).

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

11. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25; 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

§ 615.5216 [Amended]

12. Section 615.5216 is amended by removing the reference "§ 611.1156" and adding in its place, the reference "§ 627.2710 of this chapter" in paragraph (b).

Dated: October 2, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–24481 Filed 10–8–92; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM92–13–000; Order No 544]

Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities

Issued September 21, 1992

AGENCY: Federal Energy Regulatory Commission (Commission) DOE.

ACTION: Final rule.

SUMMARY: The Commission is issuing a final rule that requires companies (1) constructing natural gas facilities to transport natural gas pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA, or (2) replacing natural gas facilities pursuant to § 2.55(b) of the Commission's regulations, to notify the

Commission at least 30 days prior to commencing construction if the cost of the project exceeds the cost limit specified in the Commission's regulations. The purpose of this 30-day advance notification requirement is to enable the Commission to review the environmental impact of extensive section 311 construction and § 2.55(b) replacement activities before they commence and, where warranted, to intervene.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Paul W. Schach, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–2245.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3106, 941 North Capitol Street, NE., Washington, DC 20426

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabrandt, Elizabeth Anne Moler, Jerry J. Langdon, and Brando Terzic.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing a final rule that requires companies (1) constructing natural gas facilities to transport natural gas pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA),[1] or (2) replacing natural gas facilities pursuant to § 2.55(b) of the Commission's regulations,[2] to notify the Commission at least 30 days prior to commencing construction if the cost of the project exceeds the cost limit specified in Column 1 of Table I of § 157.208(d) of the regulations. That cost limit, which in 1992 is $6.2 million, is that applicable to the Part 157, Subpart F automatic authorization. The purpose of this 30-day advance notification requirement is to enable the Commission to review the environmental impact of extensive section 311 construction and § 2.55(b) replacement activities before they commence and, where warranted, to intervene.

The Commission initiated this rulemaking proceeding by Notice of Proposed Rulemaking (NOPR) issued on August 3, 1992.[3] The objective was to re-promulgate regulations adopted in an interim rule, in Order No. 525,[4] and recently vacated on procedural grounds by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), in *Tennessee Gas Pipeline Company* v. *FERC (Tennessee)*.[5] While the NOPR proposed the identical regulations that were vacated, the commentors have persuaded us to modify our proposal substantially.

II. Public Reporting Burden

The Commission estimates the public reporting burden for the collection of information required by the final rule's advance notification requirement to average approximately 5 hours per response. This estimate represents a weighted average for § 2.55(b) and section 311 filings. It recognizes the comments of four parties [6] that our previous estimate of 4 hours per response was too low. We anticipate that an average of 15 advance notifications will be filed each year. We thus estimate the annual reporting burden for advance notification filings to be about 75 hours.

We note that CNG, INGAA, and PGT claimed that 15 to 20 hours may be needed to prepare an advance notification. Transco stated that 12 hours was an approximate mean figure for its 1991 filings. No commentor, however, distinguished between § 2.55(b) and section 311 projects. We believe that § 2.55(b) filings cannot reasonably take longer than an average of 4 hours to prepare.

Regarding section 311 filings, we believe that 10 hours is a reasonable and conservative estimate of the time required, on average. We use as a starting point Transco's 12-hour estimate since it, apparently, was based on specific data. (CNG, INGAA, and PGT, we note, did not represent their 15- to 20-hour figures as average, but stated simply that some filings may take that long to prepare.) Additionally, many companies use standard forms for these filings, making data summarization easy. And many section 311 projects are no more extensive than § 2.55(b) projects. Therefore, such filings should not take significantly longer than § 2.55(b) filings.

Examining Transco's 12-hour figure, we note that it states that this estimate includes time to "research the project," internally review, and respond to subsequent inquiries. Since the Commission's § 157.206(d) regulations require certain things to be done and reports to be produced (but not filed), it is inappropriate, we believe, to include time involved with "researching the project" in the burden associated with the final rule. In addition, we have no way or determining whether the efficiency of Transco's internal review process is typical, and we believe that, for most filings for smaller section 311 projects, very little review time should be needed. Finally, Transco's figure is based on the first full year after implementation of the interim rule. We expect the time needed to prepare advance notifications to decrease as experience with the system grows. Thus, we believe 10 hours is a reasonable average burden for section 311 advance notification filings.

Regarding the final rule's annual reporting requirement, the Commission expects the public reporting burden to average approximately 41 hours per response. We anticipate that 55 pipeline respondents will file one annual report per year for a total annual reporting burden of 2,255 hours.

The industry burden associated with advance notification filings (75 hours) and annual report filings (2,255 hours) thus is expected to total approximately 2,330 hours per year. The average burden per filing (including both advance notifications and annual reports) is estimated to average 33.3 hours per filing. This includes the time needed to review instructions, search existing company files, gather and maintain the information needed, complete and review the collection of information, and file the information with the Commission.

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[1] 15 U.S.C. 3301–3432 (1988).

[2] 18 CFR 2.55(b).

[3] Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities, IV FERC Stats. & Regs. ¶ 32,486 (1992) (Advance Notification NOPR); 57 *Fed. Reg.* 35,525 (Aug. 10, 1992).

[4] Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,895 (Order No. 525), *clarified*, 52 FERC ¶ 61,252, *reh'g denied*, 53 FERC ¶ 61,140 (1990) (Order No. 525–A).

[5] No. 90–1618 (July 14, 1992). The court's mandate issued on September 16, 1992, vacating the interim rule as of the date of the court's opinion, *i.e.*, July 14, 1992.

[6] CNG, INGAA, PGT, and Transco.

Send comments regarding these burden estimates or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capital Street, NE., Washington, DC 20426 [Attention: Mr. Michael Miller, Information Policy and Standards Branch, (202) 208–1415], and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

III. Background

Section 2.55(b) of the Commission's regulations permits a natural gas pipeline company to replace existing facilities without prior authorization under section 7(c) of the Natural Gas Act (NGA).[7] Section 284.3(c) of the regulations provides automatic authorization to construct facilities that will be used solely for the transportation of natural gas pursuant to NGPA section 311. Section 284.11 requires any pipeline constructing, or abandoning and removing, facilities under § 284.3(c) to comply with the environmental terms and conditions of § 157.206(d).

On August 2, 1990, the Commission issued an interim rule in Order No. 525, without notice and comment.[8] On the same day, it issued a NOPR in a proceeding that has come to be known as the construction rule proceeding.[9]

The interim rule required natural gas pipelines to notify the Commission 30 days before commencing any replacement of facilities pursuant to § 2.55(b), or any section 311 construction or abandonment with removal of facilities pursuant to § 284.3(c). The notification had to include the following information: (1) A brief description of the facilities; (2) U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities; and (3) a description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings. Additionally, for section 311 construction the pipeline also had to provide evidence of having met the Commission's environmental compliance procedure at § 157.206(d).

The purpose of the interim rule was to give the Commission a temporary procedure, pending adoption of a final rule in the construction rule proceeding, for reviewing section 311 construction activities under § 284.3(c), and replacement activities under § 2.55(b), before construction commenced. The Commission believed that the opportunity for prior review would allow it to take appropriate action where necessary to ensure compliance with the applicable environmental statutes and regulations.[10]

On September 20, 1991, the Commission issued a final rule in the construction rule proceeding, in Order No. 555.[11] For § 2.55(b) replacement activities, the Commission eliminated the 30-day advance notification requirement but narrowed the definition of exempt replacement activities, and added two new conditions, that together it believed would adequately minimize any potential adverse environmental impacts.[12] For section 311 construction, Order No. 555 adopted, at § 284.11(b) of the regulations, essentially the same 30-day advance notification requirement previously adopted as an interim rule.

Order No. 555 was scheduled to take effect on November 19, 1991 but, on November 13, 1991, the Commission postponed the effective date of the rule until 30 days after publication in the **Federal Register** of an order on rehearing.[13] This caused the interim rule to remain in effect. Rehearing of Order No. 555 is pending.

On July 14, 1992, as stated, the D.C. Circuit vacated the interim rule in Tennessee. The court found that the Commission had "failed to provide a sufficient basis for invoking the good cause exception" of the APA,[14] which permits an agency to promulgate a regulation without notice and comment under certain circumstances. The court's mandate issued on September 16, 1992, thus reinstating the pre-Order No. 525 regulations as of the date of the court's opinion on July 14, 1992.

IV. The Proposed Regulations

As stated, we instituted this rulemaking proceeding to repromulgate the same regulations vacated by the court in Tennessee. Specifically, we proposed to require a pipeline to notify the Commission 30 days prior to commencing: (1) Any section 311 construction, or abandonment with removal of facilities, pursuant to § 284.3(c) of the regulations; and (2) any replacement of facilities pursuant to § 2.55(b). Such advance notification, we believed, would enable the Commission to review planned activities before construction commenced and, where warranted, to intervene.

In proposing the same regulations vacated by the court, we expounded the identical rationale that the Commission previously adopted in promulgating the interim rule. We explained that originally it was thought that only very minor facilities, such as taps and interconnections, would be constructed under section 311, and that stringent Commission review therefore was unnecessary. As it turned out, however, pipelines viewed section 311 as a vehicle or constructing more extensive projects.[15] We gave two examples of section 311 construction that had proceeded without advance notification to the Commission and which, we believed, had presented serious environmental repercussions.[16] Without advance notification of section 311 construction projects, we stated, the Commission had no means, other than through the press, of being informed of such construction and ensuring environmental compliance.

Further, we stated that, like section 311 construction, the replacement of facilities under § 2.55(b) could be extensive. We noted that when § 2.55(b) was adopted over 40 years ago, [17] there

[7] 15 U.S.C. 717–717z (1988).

[8] The Commission invoked the good cause exception of the Administrative Procedure Act (APA), which permits rulemaking without public notice and comment when an agency "for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B) (1988).

[9] Revisions to Regulations Governing Certificates for Construction, IV FERC Stats. & Regs. ¶ 32,477 (1990). The construction rule proceeding involved numerous matters in addition to the one addressed by the interim rule.

[10] *See* Order No. 525, FERC Stats. & Regs., Regulations Preambles 1986–1990, at 31,812.

[11] Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928 (1991).

[12] Specifically, Order No. 555 defined exempt replacement activities as involving "[f]acilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable to comply with Department of Transportation regulations * * *." In addition, the final rule required that: (1) Service through the replaced facilities not result in a reduction or abandonment of service; (2) the new facilities have a substantially equivalent designed delivery capacity as the old facilities; (3) the replacement occur within the pipeline's existing right-of-way; and (4) the old facilities be abandoned in compliance with the guidelines of the U.S. Environmental Protection Agency for facilities exposed to PCB contamination greater than 50 ppm.

[13] Revision to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928A (1991).

[14] Tennessee, slip op. at 2.

[15] As an example, we cited Arkla Energy Resources, a Division of Arkla, Inc., 54 FERC ¶ 61,033 (1991), where the Commission granted Arkla NGA section 7(c) authority to operate Line AC, a large diameter, 225-mile pipeline that Arkla previously had constructed pursuant to NGPA section 311.

[16] These examples, involving Transco and Questar, are discussed *infra*.

[17] See Order No. 148, 14 FR 681 (Feb. 16, 1949).

were fewer pipeline construction projects and the majority involved relatively short lengths of small-diameter pipeline. Over the years, an integrated and sophisticated national pipeline grid developed. Today, we stated, the replacement of facilities potentially could involve hundreds of miles of large-diameter pipeline. And the environment where a pipeline originally was laid may very well have changed completely by the time replacement occurred: what was once a rural area may now be densely populated. Accordingly, we believed that advance notification of § 2.55(b) replacement activities was as necessary as advance notification of section 311 construction projects.

V. The Commenting Parties

The 23 parties identified in the appendix to this order filed timely comments in response to the NOPR. (Beside the full name of each party is the shorthand name by which we refer to it in this order.)

In general, nearly all of the commenting pipelines and pipelines associations assail the proposed 30-day advance notification requirement for § 2.55(b) replacement activities. While many also oppose an advance notification requirement for section 311 construction, others, while less adamantly opposed to it, still believe it is overly broad as written. Only one pipeline, Texas Gas, states, albeit conditionally, that it does not object to complying with the proposed notification requirement.

Three commentors representing gas distribution companies [18] support a prior notification requirement for section 311 construction but oppose it for § 2.55(b) replacements. Another such commentor has no objection to an advance notification requirement for either type of activity.[19] All of these commentors, however, advocate some form of additional public notice of section 311 construction. We expand on these generalities, and discuss the particulars, in the immediately following section.

VI. Discussion

A. The Need For An Advance Notification Requirement

1. Commentors' Positions

a. *The Commission adduced insufficient data to support a need for the proposed rule.* Most commentors opposing the proposed rule in its entirety point out that the § 2.55(b) regulations were in effect for nearly 40 years, and the section 311 regulations nearly 11 years, with no prior notification requirement. The interim rule was in effect 2 years. The commentors argue that, despite all this experience, the Commission provided only scant evidence documenting either harm that occurred to the environment when no advance notification requirement was in effect, or potential harm that the interim rule averted.

Several commentors point out that the Commission cited just two examples to support the asserted need for the advance notification requirement. Both examples, they note, involved section 311 construction.

One case involved the construction by Transco of 138 miles of 30- and 42-inch pipeline, a compressor station, and other related facilities, at a cost of approximately $83 million.[20] The Commission found that, by failing to comply with the National Historic Preservation Act, Transco had seriously damaged or destroyed 48 archaeological sites. It required Transco to pay $25.5 million in civil penalties and reimbursements.

The other case involved the installation of approximately $75,000 of tie-in, metering, and regulating facilities by Questar at an existing regulation station. [21] The Commission imposed a $5,000 civil penalty on Questar for its inadvertent failure to provide the required 30-day advance notification, under the interim rule, and to consult certain agencies prior to beginning construction.[22]

Many commentors argue that these examples are meager evidence upon which to base a requirement affecting all section 311 construction and all § 2.55(b) replacement activities. Most argue that, even assuming that these examples are adequate to support some form of advance notification requirement for section 311 construction, they do not support the need to impose an advance notification requirement on § 2.55(b) replacement activities. As support, they point to the court's observation in Tennessee that "[i]t goes without saying that evidence of harm resulting from the past construction of a new [section 311] pipeline provides no support for the rule's requirement of advance notification of replacement work performed pursuant to section 2.55(b)." [23]

b. *Replacement activities already are subject to substantial environmental regulations.* In any event, PGT argues that replacement activities already are subject to substantial environmental requirements. For example, common replacement activities such as turbine and driver replacements are subject to rigorous air quality reviews under the New Source Review and Permitting processes of the U.S. Environmental Protection Agency (EPA), the states, and local air pollution control districts. Replacement activities involving PCB contaminated facilities are subject to EPA oversight. And pipelines must obtain individual permits from local districts for stream and road crossings, as well as permission from fish and wildlife agencies for river crossings. PGT argues that additional Commission oversight would only add a duplicative and unnecessary layer of regulatory review.

CNG asserts that one of the Commission's stated concerns for proposing an advance notification requirement for replacement activities—that a formerly rural area may now be densely populated—is assuaged by U.S. Department of Transportation (DOT) regulations. CNG states that DOT has defined class locations to ensure safe pipeline operations in populated areas.[24] The class location of a pipeline segment determines its MAOP. Whenever an increase in population density changes a pipeline segment's class location, the operator must lower the segment's MAOP or replace it with thicker walled pipeline.

c. *An advance notification requirement for replacement activities conflicts with DOT regulations.* Six parties [25] argue that, whereas the

[18] They are AGA (which also represents gas transmission companies), AGD, and So-Cal.

[19] NI-Gas.

[20] Transcontinental Gas Pipe Line Corp., 48 FERC ¶¶ 61,132 and 51,189 (1989), 55 FERC ¶ 61,316 (1991).

[21] Questar Pipeline Co., 57 FERC ¶ 61,058 (1991), 58 FERC ¶ 61,157 (1992).

[22] Questar objects to our citing its case with Transco's as representative of extensive section 311 construction that has "presented potentially serious environmental repercussions." It believes that this wrongly impugns its reputation and character, because: (1) There was never the potential for any environmental harm (all construction occurred on a previously heavily developed, fenced, and graveled site that had been in continuous use by Questar for 25 years); (2) Questar voluntarily notified the Commission of its inadvertent failure to provide advance notification; (3) it cooperated fully with the Commission to remedy the inadvertent violation; and (4) it did not commence service until corrective regulatory action had been taken. We agree with Questar that its case is a bad example for the proposition cited. We no longer rely on it.

[23] Tennessee, slip op. at 8. The interim rule only cited the Transco Case. The Questar case occurred later and, as we have conceded above, is a poor example.

[24] 49 CFR 192.5 defines four class locations. For example, class 1 is any class location unit that has 10 or less buildings intended for human occupancy Class 4 is any class location unit where buildings with four of more stories prevail.

[25] AGA, ANR, CNG, Enron, Great Lakes, and INGAA.

Commission stated, in both its clarification of the interim rule [26] and the new NOPR, that it does not intend the 30-day advance notification requirement to conflict with DOT's safety regulations, in fact it does.[27] The commentors point out that no segment of a pipeline may be operated unless it is maintained in compliance with the minimum federal safety standards established by DOT under the Natural Gas Pipeline Safety Act.[28] For example, a pipeline must report a safety-related condition to DOT within 5 working days after it is first determined to exist, and within 10 days after it is identified.[29] If permanent repairs are not feasible at the time of discovery, the operator must take "immediate temporary measures to protect the public * * *." [30] Failure to comply may lead to significant civil or criminal penalties.[31]

INGAA points out that, even assuming that our part 284, Subpart I regulations actually cover emergencies that require replacements, not all the replacements required by DOT constitute emergencies. Specifically, there are eight safety-related conditions that require a prompt report to DOT and immediate remedial action. Of these eight conditions, only one directly refers to an emergency.[32] The others focus on preventing emergencies.[33]

Several commentors,[34] however, argue that our own Part 284, Subpart I regulations do not cover emergencies requiring replacement activities. Thus, these regulations would not override, as the Commission asserted, the proposed 30-day advance notification requirement.

Additionally, the commentors argue that seeking a waiver of the advance notification requirement is not an adequate alternative because the process takes too long. CNG examined the five randomly selected cases that the Commission cited as evidence of its willingness to grant waivers. They took, it states, between 10 and 19 days to process.

d. *Alternatively, minor projects should be exempted from any advance notification requirement.* Many commentors argue alternatively that, if the Commission decides to adopt an advance notification requirement, for either section 311 construction, replacement activities, or both, minor facilities should be excluded from the requirement's scope. In this regard, they allege that the Commission overreacted to its stated reason for proposing the rule—to prevent potential damage to the environment—by seeking to include in the scope of its proposed remedy every section 311 construction project and every § 2.55(b) replacement activity. The commentors focus on the stated reason for the Commission's concern: that, where originally it was believed that only minor facilities would be constructed under section 311 or replaced pursuant to § 2.55(b), today both types of projects may be extensive. Assuming that this concern is valid (and many commentors dispute it with regard to replacement activities),[35] the commentors fault the Commission for not tailoring its proposal to this concern over extensive projects. Instead, the Commission proposed a broad, sweeping approach that would include in its scope all activities regardless of size, type, or potential environmental impact.

These commentors thus argue that if the Commission decides to adopt an advance notification requirement, it should exempt certain projects from it. Various commentors suggest various approaches, including excluding from the scope of the requirement: (1) Emergency replacements; [36] (2) minor replacements (*e.g.*, those less than 2 miles in length, and those inside the fence of an existing compressor station);[37] (3) projects costing less than the cost limit applicable to Part 157, Subpart F automatic authorization; [38] and (4) replacements costing less than $5 million.[39]

2. Commission Response

We conclude that a 30-day advance notification requirement is needed to enable the Commission to review extensive construction projects, under both section 311 and § 2.55(b), before they occur to ensure that they do not adversely affect the environment. The need for this advance notification derives from our mandate under the National Environmental Policy Act of 1969 (NEPA) [40] to weigh carefully the potential environmental impact of activities subject to our jurisdiction.

Section 311 construction activities, as stated, must comply with the environmental requirements at § 157.206(d) of the regulations. Although § 2.55(b) replacement activities are not subject to those environmental requirements, we may, where appropriate, require an environmental review.

Contrary to earlier statements that we first made in Order No. 525–A and repeated in the NOPR to this proceeding,[41] replacement activities are not categorically excluded under § 380.4 of our regulations from the need to prepare an environmental assessment (EA) or environmental impact statement (EIS).[42] Since the Commission thus has a responsibility under NEPA to review replacement activities that pose potentially serious, adverse environmental impacts, we need to be informed of such activities before they occur. The information submitted in the advance notification requirement that we are adopting here will allow us to review extensive replacement projects to determine whether additional environmental review is appropriate in a

[26] Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities, 52 FERC at 61,877.

[27] In the NOPR, we emphasize that the proposed 30-day advance notification requirement would not conflict with DOT's regulations that require pipeline operators to take prompt action to correct safety-related conditions. We explained that the proposed rule would not override Commission regulations (at Part 284, Subpart I) that authorize pipelines to act immediately to correct conditions posing a safety hazard. Advance Notification NOPR, IV FERC Stats. & Regs. at 32,618.

[28] 49 U.S.C. 1671–1687 (1988); 49 CFR parts 191 and 192.

[29] 49 CFR 191.25(a).

[30] 49 CFR 192.711.

[31] 49 U.S.C. 1679a (1988).

[32] "A leak in a pipeline or LNG facility that contains or processes gas or LNG that constitutes an emergency." 49 CFR 191.23(6).

[33] Examples include: (1) General corrosion that has reduced the wall thickness to less than that required for the maximum allowable operating pressure; and (2) localized corrosion pitting to a degree where leakage might result. 49 CFR 191.23(1).

[34] AGA, CNG, Enron, and Great Lakes

[35] They acknowledge that while a replacement project could, conceivably, involve hundreds of miles of pipeline, as stated by the Commission, rarely does one involve more than a couple of miles of pipeline.

[36] AGA, CNG, and Great Lakes.

[37] AGA, ANR, CNG, PGT, Southern, and Texas Intrastates.

[38] Arkla, Tennessee, and Transco.

[39] PGT.

[40] 42 U.S.C. 4321–4370c (1988).

[41] See Order No. 525–A, 53 FERC at 61,470–471; Advance Notification NOPR, IV FERC Stats. & Regs. at 32,617.

[42] In Order No. 486, the Commission rejected some commentors' requests to create a categorical exclusion for replacement activities. The Commission stated:

Merely because land was disturbed when the trench was originally dug does not mean that replacing the old pipe with a new pipe will not disturb the environment. Such an action must be assessed in light of current land use and concerns about erosion, sediment control, impact on streams and soils, threatened and endangered species and potential PCB contamination.

Regulations Implementing the National Environmental Policy Act of 1969, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783, at 30,928 (1987) (Order No. 486), *on reh'g*, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,799 (1988) (Order No. 486–A). Moreover, the replacement of facilities does not appear in the codified list of categorical exclusions at § 380.4.

particular instance. The same holds true for section 311 construction.

Our concern is focused on extensive construction projects. We noted above the example involving Transco that resulted in serious environmental damage. That damage could have been averted had we had the opportunity to review the project's environmental compliance before construction began. That example, coupled with our responsibility under NEPA, is sufficient, we conclude, to require a 30-day advance notification requirement for extensive section 311 projects.

We cannot provide a similar example concerning an extensive replacement project that resulted in serious environmental damage. That is primarily because most facilities are replaced in small increments (often less than 1 mile in length) and, commonly, in previously certificated rights-of-way. As we stated in the NOPR, however, a replacement could, potentially, involve hundreds of miles of large-diameter pipeline.[43] Accordingly, the very real possibility that a replacement activity can be extensive, coupled again with our responsibility under NEPA, is sufficient, we conclude, to require pipelines to notify us in advance of extensive replacement projects.

The commentors thus have convinced us that we framed our proposed rule too broadly to deal with our more limited concern for averting the potentially serious environmental harm that extensive section 311 construction and replacement activities may cause. They thus have persuaded us to exclude from the advance notification requirement non-extensive section 311 construction and § 2.55(b) replacement activities.

The reasons are twofold. First, the construction or replacement of minor facilities does not present the same potential for serious environmental harm as more extensive projects due, simply, to their smaller scale. Second, while the potential for environmental harm is not eliminated in smaller section 311 construction and § 2.55(b) replacement projects, we have to balance the burden on pipelines of an advance notification requirement with the potential benefits of that requirement. For minor facilities, we conclude, the potential benefits do not outweigh the burdens, particularly because, before construction can begin, all section 311 projects must comply with the environmental terms and conditions of § 157.206(d) and all replacement activities must comply with the environmental requirements of other federal, state, and local agencies. We thus are comfortable in limiting our prior review of such projects to those involving the construction or replacement of extensive facilities.

Our task, then, is to translate our concern, which is limited to extensive section 311 construction and replacement projects, into a workable rule—in other words, to define the universe of non-extensive projects that properly should be excluded from the advance notification requirement. It is very difficult to define this universe by identifying every type of facility that properly should be exempted from the requirement, particularly on the existing record. By far the most workable approach, we conclude, is to adopt a project cost limit. Projects falling under that cost limit will be construed as non-extensive, for purposes of this rule, and not subject to the advance notification requirement. Conversely, projects costing more than that cost limit will be considered extensive and subject to the requirement.

We have chosen as the project cost limit for the final rule the cost limit applicable to the NGA section 7, automatic authorization (which also is known as the as the part 157, subpart F automatic authorization). That cost limit, found in Column 1 of Table I of § 157.208(d) of the regulations, is, for 1992, $6.2 million. It is revised annually for inflation. One benefit of adopting that cost limit for this rule's advance notification requirement is that NGA section 7, NGPA section 311, and § 2.55(b) replacement activities all will be treated alike for purposes of advance notification.[44] In short, for purposes of the advance notification requirement, we can find no reason to treat the three types of construction authorizations differently. In fact, we find it desirable, from both our perspective and that of affected pipelines, to treat them alike.

Additionally, we agree with the commentors that the proposed advance notification requirement for replacement activities, if adopted, potentially would conflict with DOT safety regulations and that our own part 284, subpart I regulations would not override it. The purpose of the subpart I regulations is to "exempt[] a person who engages in an emergency natural gas transaction * * * from the certificate requirements of section 7" of the NGA.[45] "Emergency natural gas transaction" is defined as the sale, transportation, or exchange of natural gas (including the construction and operation of necessary facilities) conducted pursuant to subpart I that is: (1) Necessary to alleviate an emergency; and (2) not anticipated to last more than 60 days.[46]

Thus, a safety related replacement activity does not fall squarely within the codified purpose of the subpart I regulations, since a § 2.55(b) replacement activity is, by definition, already exempt from the requirements of NGA section 7. Nor does it fall within the codified definition of an "emergency natural gas transaction," since it cannot meet the second proviso concerning the expected duration of the emergency. In addition, the preamble [47] adopting the subpart I regulations clearly indicates that the focus of that proceeding was on certain types of supply emergencies resulting, for example, from curtailments or weather induced increases in requirements. The preamble does not mention, directly or indirectly, facility replacements.

However, even assuming that the subpart I regulations do apply to emergency replacement activities, they would not override the 30-day advance notification requirement. Subpart I only would exempt emergency replacement activities from the certificate requirements of NGA section 7. However, by definition a § 2.55(b) replacement activity already is exempt from those requirements.[48] And the 30-day advance notification requirement is a § 2.55(b) requirement, not a section 7 requirement.

Thus, the part 284, subpart I regulations are inapposite to emergency replacement activities. In addition, an advance notification requirement would conflict with DOT safety regulations requiring immediate action to prevent safety related problems not yet

[43] As of September 3, 1992, the Commission received, under the interim rule, 643 advance notifications of replacement activities. Of that figure, 507 filings involved less than 1 mile of pipeline; 90 involved between 1 and 10 miles of pipeline; 19 between 11 and 20 miles of pipeline; and 27 filings involved more than 20 miles of pipeline (including two that involved more than 100 miles of pipeline).

[44] In this regard, we note that construction proceeding under the Part 157, Subpart F automatic authorization, while subject to the environmental requirements of § 157.206(d), is not subject to an advance notification requirement.

[45] 18 CFR 284.261.

[46] 18 CFR 284.262(d). "Emergency," in turn, is defined as "[a]ny situation in which the participant, in good faith, determines that immediate action is required or is reasonably anticipated to be required for the protection of life or health or for maintenance of physical property." 18 CFR 284.262(a)(1)(iii).

[47] Emergency Natural Gas Sale, Transportation and Exchange Transactions, III FERC Stats. & Regs. ¶ 30,693 (1986) (Order No. 449).

[48] Section 2.55 reads, as pertinent, "For the purposes of section 7(c) of the Natural Gas Act, as amended, the word *facilities* as used therein shall be interpreted to exclude: * * * (b) *Replacement of facilities*. * * *"

constituting an emergency. Accordingly, to prevent a possible conflict between the 30-day advance notification requirement and DOT's regulations in the case of an immediately required replacement that costs more than the cost limit specified in Column 1 of Table I of § 157.208(d), we are specifically excluding from the scope of the advance notification requirement replacement activities that are required to be performed immediately under DOT safety regulations.

The general, 30-day advance notification requirement for replacement activities and section 311 construction is found, respectively, at § 2.55(b)(1)(iii) and § 284.11(b)(1) of the final regulations. The exception to that general requirement for projects costing less than the § 157.208(d) cost limit is found at § 2.55(b)(2)(i) and § 284.11(b)(2). And the exception to that requirement for replacement activities that are required to be performed immediately under DOT safety regulations is found at § 2.55(b)(2)(ii) of the final regulations.

B. The Applicability of the Advance Notification Requirement For Section 311 Construction to Intrastate Pipelines

Section 311 was enacted to allow interstate and intrastate pipelines to provide service which, being in interstate commerce, would otherwise fall under the requirements of the NGA, without subjecting those entities to the full panoply of federal jurisdiction. Part 284 of the Commission's regulations governs section 311 transactions. As noted in the NOPR,[49] under § 284.11 an intrastate pipeline constructing facilities to be used for section 311 transactions (which are in interstate commerce by their very nature) always has been held to the same § 157.206(d) environmental standards as an interstate pipeline in like circumstances. Similarly, the advance notification requirement for section 311 construction that we are adopting here applies to both interstate and intrastate pipelines constructing section 311 facilities.

1. Commentors' Positions

The Association of Texas Intrastates asks us to clarify the applicability of the advance notification requirement to intrastate pipelines. It notes that intrastate pipelines may construct three kinds of facilities: (1) Those used solely for intrastate service; (2) those used for intrastate service and for section 311(a)(2) service;[50] and (3) those used solely for section 311(a)(2) service. The Association of Texas Intrastates notes further that the NOPR indicated that the section 311 advance notification requirement would apply to any pipeline constructing under the section 311 construction authorization at § 284.3(c) of the regulations.[51] It asks us to clarify that the only facilities eligible to be built under that authorization are those utilized solely for section 311 transportation.

2. Commission Response

The Association of Texas Intrastates is correct. The final rule makes the section 311 advance notification requirement applicable to any construction or replacement activity performed pursuant to § 284.3(c) of the regulations that exceeds the applicable cost limit. By definition, the § 284.3(c) authorization can be used only to build facilities that will be utilized solely for section 311 transportation.

C. The Information Required in an Advance Notification

We are adopting the proposal set forth in the NOPR concerning the specific information that an advance notification must include. Under § 284.11(c) of the final regulations, an advance notification for section 311 construction must include the following information:

(1) A brief description of the facilities to be constructed or replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) Evidence of having complied with each of the environmental terms and conditions contained in § 157.206(d) of the regulations;

(3) Current U.S. Geological Survey 7.5-minute series topographical maps showing the location of the facilities; and

(4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

Under § 2.55(b)(3) of the final regulations, the advance notification for a replacement activity must include the information described in (1), (3), and (4) above. It need not include evidence of having complied with § 157.206(d) because replacement activities are not subject to those regulations.

We do not believe that collecting and collating this information for projects costing more than $6.2 million (for 1992) will be burdensome. All of the required information should be readily accessible to the pipeline. Any inconvenience to the pipeline that might be caused by the preparation of an advance notification should be minor when measured against the potential environmental damage that we are seeking to prevent.

1. Commentors' Positions

ANR and Columbia comment on the second element of the advance notification for section 311 construction that requires a pipeline to demonstrate that it has complied with the environmental terms and conditions of § 157.206(d) before filing the notification with the Commission. Columbia states that a minimum of six weeks is required to obtain clearances from state historic preservation officers for the construction of even minor facilities. Adding that 6-week period to the 30-day notification period thus delays at least 10 weeks the start of construction. Both ANR and Columbia request that we permit a pipeline to file an advance notification prior to its completing the § 157.206(d) environmental compliance process. The pipeline, however, would have to complete that process prior to beginning construction.

2. Commission Response

The very purpose of the advance notification requirement is to enable the Commission to review an extensive project before construction commences and to ensure that the pipeline has in fact achieved compliance with the environmental terms and conditions of § 157.206(d). If we adopted Columbia's and ANR's suggestions, a pipeline could file an advance notification, complete the § 157.206(d) process 29 days later, and begin construction the next day. Under that scenario, we would have no opportunity to review the pipeline's environmental compliance before construction began, thus defeating the very purpose of the requirement. Accordingly, we reject the suggestion.

Additionally, we believe that, particularly for extensive projects costing more than $6.2 million (for 1992), a pipeline is likely to obtain the clearances required by § 157.206(d) prior to entering into contracts for the actual construction or ordering the necessary equipment for the job. Therefore, submitting this information 30 days prior to the start of construction is not unreasonable and should not delay planned activities. In any event, in an unusual situation a pipeline may seek a waiver of the requirement.

[49] Advance Notification NOPR, IV FERC Stats. & Regs. at 32,617; *see also* Order No. 525–A, 53 FERC at 61,471.

[50] Section 311(a)(2) service is service by an intrastate pipeline on behalf of an interstate pipeline or an LDC served by an interstate pipeline.

[51] Advance Notification NOPR, IV FERC Stats. & Regs. at 32,617.

D. Reporting Requirements

1. One-Time Reports

It is likely that some section 311 construction or § 2.55(b) replacement activities may have commenced, or will commence, during the hiatus when the pre-Order No. 525 regulations are in effect—*i.e.*, between July 14, 1992 (the day the court's opinion in Tennessee issued) and the date this final rule takes effect (*i.e.*, November 9, 1992). Accordingly, to avoid a gap in the Commission's knowledge of projects commenced during that time, we are adopting the proposal set forth in the NOPR, at § 2.55(b)(4)(i) and § 284.11(d)(1) of the final regulations, and requiring pipelines to submit, within 30 days of this rule's effective date, a one-time report informing the Commission of every construction and replacement project costing more than $6.2 million that they commenced during the hiatus. If, for any reason, a pipeline filed an advance notification for a project commenced on or after July 14, 1992, it may reference that filing in its one-time report without repeating the required information.

2. Annual Reports

Additionally, we are adopting an annual reporting requirement at § 2.55(b)(4)(ii) and § 284.11(d)(2) of the final regulations. Under it, a company must file an annual report by May 1 of each year that includes, for each section 311 construction and § 2.55(b) replacement activity that it completed during the previous calendar year that was exempt from the advance notification requirement, the information required for an advance notification.

The annual reporting requirement will serve two purposes. First, it will allow the Commission to verify that pipelines are complying on their own with all applicable environmental requirements and, consequently, that the limited advance notification requirement is working. Second, as it will inform the Commission of all projects not subject to the advance notification requirement, it will bridge a gap in the Commission's knowledge of such activities. We note that this annual reporting requirement parallels a similar reporting requirement for projects authorized under the Part 157, Subpart F automatic authorization.[52]

In preparing this annual report, a company need not repeat information that is common to all projects. For example, if the company uses the same erosion control plan for all projects, it only has to describe it once. This should simplify and make less burdensome the requirement.

E. Matters Not Within the Scope Of This Proceeding

We noted in the NOPR that the proposed regulation at § 2.55(b) was somewhat different from the one adopted in Order No. 555 (which we described above, and which was stayed pending rehearing generally of Order No. 555). Because of the need to react quickly to the court's decision in Tennessee to ensure that some mechanism was in place to enable us to review both section 311 construction and § 2.55(b) replacement activities before construction commenced, we stated that we would not consider in this proceeding any of the issues raised on rehearing of Order No. 555 concerning the § 2.55(b) regulation adopted there.[53] We also should have stated expressly that we would not consider here any section 311 issues raised on rehearing of Order No. 555.

In this regard, we note that AGA, AGD, NI-Gas, and So-Cal have urged here that a pipeline be required to give either public notice of section 311 construction, or at least notice to affected LDCs and state commissions, in addition to Commission notification. That matter not only is at issue on rehearing of Order No. 555 but also is outside the publicly noticed scope of this proceeding. Accordingly, we will not address it here.

F. Conclusion

In sum, we conclude that a 30-day advance notification requirement is necessary to enable the Commission to review extensive section 311 construction and § 2.55(b) replacement activities before they occur. It will enable the Commission, in the case of section 311 construction, to ensue that a pipeline has complied with the environmental requirements of § 157.206(d) of the regulations, and, in the case of § 2.55(b) replacements, to determine whether additional environmental review is needed. For purposes of this rule, only section 311 construction and § 2.55(b) replacement projects costing more than the cost limit specified in Column 1 of Table I of § 157.208(d) of the regulations will be considered extensive and thus subject to the 30-day advance notification requirement.

In practical terms, this should eliminate the vast majority of replacement and section 311 projects from the scope of the advance notification requirement. We note that, in the 25 months between August 2, 1990 (the day the interim rule took effect) and September 2, 1992, the Commission received 699 advance notifications for § 2.55(b) replacement projects and 202 advance notifications for section 311 projects. Only 25 of the former, and 5 of the latter, were for projects costing more than $6.2 million.

Finally, to avert any possible conflict with DOT regulations, § 2.55(b) replacements that are required to be performed immediately under DOT safety regulations will not be subject to the advance notification requirement.

VII. Environmental Analysis

Commission regulations require that an EA or EIS be prepared for any Commission action that may have a significant adverse effect on the human environment.[54] The Commission has categorically excluded certain actions from these requirements on the ground that they do not have a significant effect on the human environment.[55]

The final rule requires pipelines to notify the Commission prior to commencing certain construction activities. However, it does not alter the inherent nature of the activities or their impact upon the human environment. Accordingly, an EA is unnecessary and was not prepared.

VIII. Regulatory Flexibility Act Certification

The Commission certifies, pursuant to the Regulatory Flexibility Act of 1980 (RFA),[56] that the final rule will not have a "significant economic impact on a substantial number of small entities."[57] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm or burdens to small entities.

We conclude that this rule will not have a significant economic impact, within the meaning of the RFA, on a substantial number of small entities, largely because we do not believe that most of the entities that will be affected by it fall within the RFA's definition of "small entity." [58] However, even if the

[52] See 18 CFR 157.207.

[53] Advance Notification NOPR, IV FERC Stats. & Regs. at 32,619.

[54] See 18 CFR part 380.

[55] See 18 CFR 380.4.

[56] 5 U.S.C. 601–612 (1988).

[57] 5 U.S.C. 605(b) (1988).

[58] Section 601 of the RFA defines "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. In turn, a "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is

Continued

final rule were to affect a substantial number of small entities, we do not believe that its impact would be substantial. First, a substantial number of section 311 construction and § 2.55(b) replacement projects have been excluded from the scope of the final rule. Second, both the time needed to prepare an advance notification and the cost of doing so should be modest.

IX. Information Collection Requirements

The regulations of the Office of Management and Budget (OMB) require that OMB approve certain information collection requirements imposed by agency rules.[59]

The information collection form affected by the final rule's advance notification requirement is FERC-577(A), Gas Pipeline Certificates: Environmental Impact Statement, (1902-161). This information collection is required to enable the Commission to carry out its legislative mandate under the NGA, NGPA, and NEPA. As previously discussed, the information required by the advance notification requirement will permit the Commission to review extensive section 311 construction and § 2.55(b) replacement activities before they commence and, where necessary, to intervene. In addition, the annual report required by the final rule for projects not subject to the advance notification requirement will enable the Commission to verify pipelines' compliance with all applicable environmental requirements and, further, will bridge a gap in the Commission's knowledge of such projects.

An estimated 55 respondents on average per year will be affected by the final rule. The respondents will consist mostly of large interstate pipeline companies (approximately 50), with a few (approximately 5) medium to large intrastate pipeline companies. As stated, the public reporting burden with respect to the advance notification requirement is estimated to average approximately 5 burden hours per response. The public reporting burden with respect to the annual reporting requirement is estimated to average approximately 41 burden hours per response. The total public reporting burden with respect to the advance notification and annual reporting requirements is estimated to average approximately 33.3 hours per response or approximately 2,330 burden hours per year.

"independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1988).

[59] 5 CFR part 1320.

X. Effective Date

This final rule is effective on November 9, 1992.

List of Subjects

18 CFR Part 2

Administrative practice and procedure; electric power; environmental impact statements; natural gas; pipelines; reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf; natural gas; reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends parts 2 and 284 of chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

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

Authority: 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 792-825r, 2601-2645; and 42 U.S.C. 4321-4361, 7101-7352.

2. In § 2.55, paragraph (b) is revised to read as follows:

§ 2.55 Definition of terms used in section 7(c).

* * * * *

(b) *Replacement of facilities.* (1) Facilities which constitute the replacement of existing facilities that have or will soon become physically deteriorated or obsolete, to the extent that replacement is deemed advisable, if:

(i) The replacement will not result in a reduction or abandonment of service through the facilities;

(ii) The replacement facilities will have a substantially equivalent designed delivery capacity as the facilities being replaced; and

(iii) Except as described in paragraph (b)(2) of this section, the company files notification of such activity with the Commission at least 30 days prior to commencing construction.

(2) *Advance notification not required.* The advance notification described in paragraph (b)(1)(iii) of this section is not required if:

(i) The cost of the replacement project does not exceed the cost limit specified in Column 1 of Table I of § 157.208(d) of this chapter; or

(ii) U.S. Department of Transportation safety regulations require that the replacement activity be performed immediately;

(3) *Contents of the advance notification.* The advance notification described in paragraph (b)(1)(iii) of this section must include the following information:

(i) A brief description of the facilities to be replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(ii) Current U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities to be replaced; and

(iii) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

(4) *Reporting requirements.* (i) *One-time report.* A company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) a one-time report with the Commission, by December 9, 1992, that includes all of the information required in paragraph (b)(3) of this section, for any replacement activity authorized under paragraph (b)(1) of this section that cost more than $6.2 million and was commenced between July 14, 1992 and November 9, 1992.

(ii) *Annual report.* On or before May 1 of each year, a company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) an annual report that lists for the previous calendar year each replacement project that was completed pursuant to paragraph (b)(1) of this section and that was exempt from the advance notification requirement pursuant to paragraph (b)(2) of this section. For each such replacement project, the company must include all of the information described in paragraph (b)(3) of this section.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717-717w; 15 U.S.C. 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356.

4. Section 284.11 is revised to read as follows:

§ 284.11 Environmental compliance.

(a) Any activity involving the construction of, or the abandonment with removal of, facilities that is authorized pursuant to § 284.3(c) and Subpart B or C of this part is subject to the terms and conditions of § 157.206(d) of this chapter.

(b) *Advance notification*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, at least 30 days prior to commencing construction a company must file notification with the Commission of any activity described in paragraph (a) of this section.

(2) *Exception.* The advance notification described in paragraph (b)(1) of this section is not required if the cost of the project does not exceed the cost limit specified in Column 1 of Table I of § 157.208(d) of this chapter.

(c) *Contents of advance notification.* The advance notification described in paragraph (b)(1) of this section must include the following information:

(1) A brief description of the facilities to be constructed or abandoned with removal of facilities (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) Evidence of having complied with each provision of § 157.206(d) of this chapter;

(3) Current U.S. Geological Survey 7.5-minute series topographical maps showing the location of the facilities; and

(4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

(d) *Reporting requirements*—(1) *One-time report.* A company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) a one-time report with the Commission, by December 9, 1992, that includes all of the information required in paragraph (c) of this section, for any activity described in paragraph (a) of this section that cost more than $6.2 million and was commenced between July 14, 1992 and November 9, 1992.

(2) *Annual report.* On or before May 1 of each year, a company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) an annual report that lists for the previous calendar year each activity that is described in paragraph (a) of this section, and which was completed during the previous calendar year and exempt from the advance notification requirement pursuant to paragraph (b)(2) of this section. For each such activity, the company must include all of the information described in paragraph (c) of this section.

Appendix—Commentors

1. American Gas Association (AGA)
2. ANR Pipeline Company and Colorado Interstate Gas Company (ANR)
3. Arkla Pipeline Group (Arkla)
4. Associated Gas Distributors, Inc. (AGD)
5. Association of Texas Intrastate Natural Gas Pipelines (Association of Texas Intrastates)
6. CNG Transmission Corporation (CNG)
7. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia)
8. Enron Interstate Pipeline Companies (Enron)
9. Great Lakes Gas Transmission Limited Partnership (Great Lakes)
10. Interstate Natural Gas Association of America (INGAA)
11. K N Energy, Inc. (K N Energy)
12. Northern Illinois Gas Company, The Peoples Gas Light and Coke Company, and North Shore Gas Company (NI-Gas)
13. Pacific Gas Transmission Company (PGT)
14. Pacific Offshore Pipeline Company (Pacific Offshore)
15. Questar Pipeline Company (Questar)
16. Southern California Gas Company (SoCal)
17. Southern Natural Gas Company (Southern)
18. Tennessee Gas Pipeline Company (Tennessee)
19. Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company, and Algonquin Gas Transmission Company (Texas Eastern)
20. Texas Gas Transmission Corporation (Texas Gas)
21. Transcontinental Gas Pipe Line Corporation (Transco)
22. United Gas Pipe Line Company (United)
23. Williston Basin Interstate Pipeline Company (Williston)

[FR Doc. 92-24522 Filed 10-8-92; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 284

[Docket No. RM90-7-001; Order No. 537-A]

Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates

Issued September 21, 1992

AGENCY: Federal Energy Regulatory Commission (Commission) DOE.

ACTION: Order on rehearing.

SUMMARY: On September 20, 1991, the Commission issued a final rule to revise its regulations governing transportation of natural gas by interstate and intrastate pipelines under section 311 of the Natural Gas Policy Act of 1978 (NGPA), and interstate pipelines under blanket certificates issued pursuant to Commission regulations. Order No. 537-A addresses requests for rehearing and/or clarification filed by ten parties.

In addition to clarifying various provisions of the final rule, Order No. 537-A grants rehearing with respect to new section 284.227 of the regulations promulgated by the final rule. Specifically, Order No. 537-A clarifies that intrastate pipelines holding limited-jurisdiction blanket certificates under section 284.227 may act in a chain to transport gas gathered by gathers in adjacent state or Federal waters for delivery in the intrastate pipelines' state of operation.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Jack O. Kendall, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission has made this document available so that all interested persons may inspect or copy its contents during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of Order No. 537-A will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Order on Rehearing

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

Revisions to Regulations Governing Transportation under section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, Docket No. RM90-7-001; Hadson Gas Systems, Inc., Docket No. GP88-11-004; Cascade Natural Gas Corp. v. Northwest Pipeline Corporation, *et al.*, Docket No. CP88-286-005; and Texas Eastern Transmission Corporation, Docket Nos. RP88-81-015, RP88-67-048, RP88-175-003.

I. Introduction

On September 20, 1991, the Federal Energy Regulatory Commission