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Vol. 58, No. 4
Thursday, January 7, 1993

Presidential Documents

Title 3—

The President

Executive Order 12828 of January 5, 1993

Delegation of Certain Personnel Management Authorities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code and sections 3502(e), 4505a(e), and 5377(i)(2) of title 5 of the United States Code, it is hereby ordered as follows:

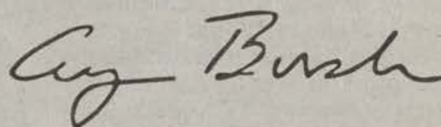
Section 1. The Office of Personnel Management is designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) The authority of the President under 5 U.S.C. 3502(e), as added by section 4433 of Public Law 102–484, to shorten the period of advance notice otherwise required by law with respect to reductions in force.

(2) The authority of the President under 5 U.S.C. 4505a(e), as added by section 2(19) of Public Law 102–378, to permit performance-based cash awards to be paid to categories of employees who would not otherwise be eligible.

Sec. 2. The Director of the Office of Management and Budget is designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority of the President under 5 U.S.C. 5377(i)(2), as added by section 2(34) of Public Law 102–378, to designate one or more categories of positions within an agency to be treated as critical positions within the meaning of 5 U.S.C. 5377(a)(2).

Sec. 3. This order shall be effective immediately.



THE WHITE HOUSE,
January 5, 1993.

[FR Doc. 93–456
Filed 1–5–93; 4:42 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 58, No. 4
Thursday, January 7, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Administration; Delegation of Authority, Claims Review Committees

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is amending its regulations delegating authority to its claims review committees. Presently, claims review committees exist at the District, Regional, and Central Office level and have the authority to approve settlement on primary obligations or other evidence of an indebtedness owed the SBA for an amount less than the total amount due thereon. This rule sets forth authority by which claims review committees may be established at the Branch Office level.

DATE: This rule is effective January 7, 1993.

FOR FURTHER INFORMATION CONTACT: Earl Chambers, Director, Office of Portfolio Management, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, (202) 205-6481.

SUPPLEMENTARY INFORMATION: SBA is amending its regulations setting forth the authority delegated to its various claims review committees. Claims reviews committees are established at the District, Regional, and Central Office level for the purpose of determining the action SBA will take with respect to debts owed the Agency. Specifically, the various claims review committees have authority, at differing amounts depending upon their organizational level, to reach settlement on primary obligations or other evidence of an indebtedness owed the SBA for an amount less than the total amount due thereon. This rule provides authority by which a claims review committee may be constituted at the Branch Office level.

In each qualified SBA Branch Office, a Branch Claims Review Committee may be established. The membership of the Committee shall consist of three incumbents (or those officially acting in their behalf) in the following order of position classification: Assistant Branch Manager for Finance and Investment (F&I); Portfolio Management (PM) Chief or Senior PM Staff Member; Branch Counsel; Finance Division (FD) Chief or Senior FD Staff Member; and Business Development Specialist. The first person available in the above order shall serve as chairperson of the committee. The regulation sets forth the degree of concurrence required of committee members in order to undertake certain action as well as the level of authority, in specific dollar amounts, which may be exercised by the Branch Claims Review Committee. Finally, the rule states that split decisions and reconsiderations (appeals) of actions taken by the Branch Claims Review Committee are to be taken directly to the Regional Claims Review Committee. A split decision for purposes of this rule means less than unanimity on those matters which require unanimity.

The establishment of a Branch Claims Review Committee pursuant to this authority shall require publication of a notice in the **Federal Register**. This regulation states that Branch Claims Review Committees will not be organized in each SBA Branch Office. Rather, this rule describes the authority that a Branch Claims Review Committee may exercise and requires that, in order to create a Branch Claims Review Committee in a particular SBA Branch Office, a notice must be published specifically designating such office. This system ensures that only those SBA Branch Offices with sufficient personnel and loan volume have the authority to undertake compromise activities.

Due to the fact that this rule governs matters of agency organization, management, and personnel and makes no substantive change to the current regulation, SBA is not required to determine if it constitutes a major rule for purposes of Executive Order 12291, to determine if it has a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), to do a Federalism Assessment pursuant to Executive Order 12612, or to determine if this rule imposes an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35).

SBA is publishing this regulation governing agency organization, practice, and procedure as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 101

Administrative practice and procedure; Authority delegation; Organization and function, Government agency; Reporting and recordkeeping requirement.

For the reasons set forth above, SBA is amending part 101 of Title 13, Code of Federal Regulations, as follows.

PART 101—[AMENDED]

1. The authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5 of Pub. L. 85-536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85-699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93-386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. Part V of Section 101.3-2, Delegation of authority to conduct program activities in field offices, is amended by redesignating paragraphs (a) through (d) as paragraphs (b) through (e) and by adding a new paragraph (a) to read as follows:

§ 101.3-2 Delegation of authority to conduct program activities in field offices.

* * * * *

PART V—CLAIMS REVIEW COMMITTEE

Committee Authority

No authority has been delegated within SBA to take final action in compromise settlement of any Agency claim except through the established Claims Review Committees. Actions taken by such Committees must be in compliance with the provisions of this regulation.

a. *Branch Claims Review Committee.* A Branch Claims Review Committee (BCRC) may be established in each qualified branch office. Membership shall generally consist of three available incumbents (or those acting officially on their behalf) in the following order of position classification. The first member

available in this order shall serve as chairperson:

Assistant Branch Manager/Finance and Investment Portfolio Management Chief or Senior Portfolio Management Staff Member
Branch Counsel
Finance Division Chief or Senior Finance Division Staff Member
Business Development Specialist

In the face of limited staffing availability, the Branch Manager may authorize a different committee structure if such structure is monitored to ensure that each member of the committee is free to give independent opinions regarding the matters at hand. This committee structure must be approved by the District Director overseeing the particular Branch Office at issue.

1. Authority is delegated to this Committee to take final approval action on:

(A) Claims not in excess of $200,000 (excluding interest), upon the majority vote of its members.

(B) Claims exceeding $200,000 but not in excess of $300,000 (excluding interest), upon the unanimous vote of its members.

(C) Claims of any size when the amount offered represents the full principal balance due (thereby forgiving only accrued interest), upon the majority vote of its members.

(D) Claims of any size involved in insolvency proceedings (bankruptcies, state and Federal receiverships, USDA Certified Mediation cases, assignments for the benefit of creditors, etc.) or which are under the administrative control of the U.S. Department of Justice, upon the unanimous vote of its members.

(E) Requests to reduce or eliminate the interest rate charged and/or the interest accrued by the Agency when authority for such action is not otherwise delegated to the line supervisor or the Central Office Claims Review Committee, upon the majority vote of its members.

(F) Private sales of collateral and collateral purchased which exceed the delegated authority of the line supervisor, upon the unanimous vote of its members.

(G) Bid proposals responding to an authorized Request For Proposals for annual auctioneering services, upon the unanimous vote of its members.

2. Committee recommendations to sell a loan or other evidence of indebtedness owed the Agency for less than the principal amount due, or to compromise an Agency claim against a "going" business which is not involved in insolvency proceedings or under the administrative control of U.S. Department of Justice, must be forwarded through channels, with Branch and Regional Committee comments, to the Central Office Claims Review Committee for final action.

3. Settlement offers on claims of any size may be declined by majority vote of its members.

4. Split decisions and reconsiderations (appeals) of actions taken by this Committee must go directly to the Regional Claims Review Committee.

5. A Branch Claims Review Committee will not be organized in each SBA Branch Office. Rather, a Branch Claims Review Committee may be established at an SBA Branch Office only pursuant to a specific designation of a particular branch office, published as a notice in the **Federal Register**. Such designation will be based upon the sufficiency of that office's personnel as well as its loan volume.

* * * * *

Dated: December 28, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 93-15 Filed 1-6-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 346 and 381

[Docket No. RM92-17-000]

Elimination of Filing Fees

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to eliminate certain filing fees. The Commission will retain filing fees for petitions for issuance of a declaratory order and the fees for blanket certificate applications made by Hinshaw pipelines and local distribution companies, for petitions for rate approval pursuant to § 284.123(b)(2), and for initial or extension reports for title III transactions, in addition to the six filing fees proposed for retention in the notice of proposed rulemaking. The Commission also is revising the current methodology for annual adjustments to its filing fees and direct billing.

EFFECTIVE DATE: This rule is effective January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0457.

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 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, 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, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

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

Elimination of Certain Filing Fees in Parts 346 and 381

[Docket No. RM92-17-000; Order No. 548]

Issued January 4, 1993.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations in parts 346 and 381 to eliminate certain filing fees. The Commission will retain the filing fees for petitions for issuance of a declaratory order in § 381.302 and the fees in § 381.207(a)(1) for blanket certificate applications made by Hinshaw pipelines and local distribution companies, in § 381.403 for petitions for rate approval pursuant to § 284.123(b)(2), and in § 381.404 for initial or extension reports for Title III transactions, in addition to the six filing fees proposed for retention in the Notice of Proposed Rulemaking. The Commission also is revising the current methodology for annual adjustments to its filing fees in § 381.104(c) and direct billing in § 381.107(a) of the regulations

This rule will be effective upon issuance.

II. Background

The Commission is authorized under the Independent Offices Appropriation Act of 1952 (IOAA) to establish fees for the services and benefits it provides.[1] In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) authorizes the Commission to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year."[2]

On October 15, 1992, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to eliminate most filing fees, with the exception of six.[3] The Commission proposed to recover costs associated with filings for which fees are being eliminated in the annual charges assessed pursuant to part 382 of the Commission's regulations. The Commission reserved the option to order direct billing for filings that may be unusually extensive in scope and that present complex factual, legal, or policy issues requiring an extraordinary amount of time and effort to process them. The Commission also sought comments on whether to substitute a different approach for the current methodology for annual adjustment of the retained filing fees.

Twenty-four comments were received in response to the NOPR.[4] Thirteen commenters generally supported the Commission's proposal because it will simplify the filing process, expedite the consideration of filings, eliminate barriers to actions that may be economically efficient and in the public interest, and to some extent reduce the Commission's administrative costs.[5] At the same time, some of these commenters expressed concerns with the final rule's potential impact on certain types of transactions and services.[6]

Eleven commenters opposed the elimination of filing fees.[7] These commenters argued that elimination of the Commission's filing fees will not result in either simplifying the filing process or expediting the review and consideration of filings. According to commenters, the Commission has not shown that elimination of the filing fees will reduce the Commission's administrative costs.

Commenters also proposed modifications to the annual charges assessment methodology, retention of additional filing fees, and modifications to direct billing procedures and the methodology for updating the filing fees.

For the reasons discussed below, the Commission is adopting as final its proposal to eliminate certain filing fees, with some modifications.

III. Discussion

A. Comments Supporting Elimination of Filing Fees

The Commission received thirteen comments that supported this rulemaking, recognizing its procompetitive and public interest aspects. Commenters noted that the proposed rule would reduce overall administrative costs for the Commission and the companies it regulates.[8] This in turn will benefit consumers since public utilities and pipelines generally pass on the fees and the costs associated with filings to purchasers and consumers.[9] They also noted that filing fees discourage otherwise economically advantageous and efficient jurisdictional transactions.[10]

One commenter identified two market-distorting effects of the Commission's current filing fees system for the electric industry: (1) utilities may forgo transactions or structure them inefficiently in order to avoid fees; and (2) utilities may design transactions to maximize filing fees passed through to customers/competitors, seeking to gain a competitive advantage or to block competitors from participating in the bulk power and coordination markets.[11]

According to commenters, removing filing fees will eliminate the cost of filing as a consideration in determining whether to engage in certain transactions, allowing those decisions to be made on their merits.[12] Commenters also noted that the Commission's existing filing fees system is not clear and leaves filing parties uncertain as to the fee, if any, that is due.[13]

Commenters supporting the rule also pointed out that the final rule will eliminate market barriers for some participants, especially smaller entities.

B. Impact of Elimination of Filing Fees on Annual Charges Assessments

1. Perceived Impacts on Jurisdictional Companies

The Commission proposed to eliminate most filing fees and to recover the Commission's costs associated with these filings as part of the annual charges assessed each year. The Commission noted in the NOPR that the resulting increase in annual charges would be modest and have no effect on the financial health or competitive viability of any jurisdictional company.[14]

Commenters opposing the elimination of the filing fees, apparently believing that the increase in annual charges will be much higher than will actually be the case, argued that the Commission must accurately allocate costs and eliminate or avoid cross-subsidies. According to these commenters, the Commission should require pipelines to pay regulatory costs in proportion to, or to compensate for, their regulatory activities.[15] One commenter argued that the proposed collection method would move further away from the theory that those who incur the costs of

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[1] 31 U.S.C. 9701.

[2] 42 U.S.C. 7178.

[3] Elimination of Certain Filing Fees in parts 346 and 381, Docket No. RM92-17-000, 57 FR 48005 (Oct. 21, 1992), IV FERC Stats. & Regs. ¶32,488. The six filing fees to be retained are: reviews of Department of Energy remedial orders in § 381.303; reviews of Department of Energy denials of adjustment in § 381.304; five Megawatt exemption applications under section 405 of the Public Utility Regulatory Policy Act (PURPA) in § 381.601; reviews of jurisdictional agency determinations in § 381.402; certifications of qualifying status as small power production facility or cogeneration facility in § 381.505; and interpretations by the Office of the General Counsel in § 381.305.

[4] A list of the commenters is in the Appendix.

[5] See, e.g., Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia), Commonwealth Edison Company (Edison): Edison Electric Institute (EEI); Enron Interstate Pipelines (Enron); Green Mountain Power Corporation (Green Mountain); National Fuel Gas Supply Corporation (National Fuel); New England Power Company; Pacific Gas Transmission Company (Pacific Gas); Public Systems; Tennessee Gas Pipeline Company (Tennessee Gas); Northern Distributor Group; Florida Power & Light Company (Florida); and UtiliCorp United Inc. (UtiliCorp).

[6] See, e.g., Columbia Gas; Edison; EEI; Enron; and Tennessee Gas.

[7] See, e.g., Arizona Public Service Company (Arizona); Arkla Energy Resources and Mississippi River Transmission Corporation (AER and MRT); ANR Pipeline Company and Colorado Interstate Gas Company (ANR and CIG); El Paso Natural Gas Company (EL Paso); Iowa-Illinois Gas & Electric (Iowa-Illinois); JMC Power Projects; Philadelphia Electric Company; PEC Pipeline Group; Transok Gas; Washington Water Power Company (Washington Water); and Williston Basin Interstate Pipeline Company (Williston).

[8] See, e.g., Public Systems at 2; Northern Distributor Group at 1; and Pacific Gas Transmission at 2.

[9] See, e.g., Public Systems at 2; Northern Distributor Group at 2.

[10] See, e.g., New England Power at 1; Northern Distributor Group at 2.

[11] Public Systems at 5.

[12] See, e.g., Edison Electric Institute at 1; New England Power at 1; Pacific Gas Transmission at 2; Northern Distributor Group at 2-4.

[13] See, e.g., Commonwealth Edison at 4; Green Mountain Power Corporation at 1-2; Pacific Gas Transmission at 2.

[14] See Notice of Proposed Rulemaking, slip op. at 6-9.

[15] See, e.g., AER and MRT; JMC Power Projects; ANR and CIG; and El Paso.

Commission services should pay for them.[16]

Arizona Public Service Co. (Arizona) argued that the elimination of filing fees would penalize jurisdictional utilities that collect applicable filing fees directly from the entity causing the filing. Arizona also fears that annual charges would be increased as the filing fees now recovered on an individual basis are spread out and recovered from all applicable jurisdictional utilities. Arizona noted that a utility may be required to seek a rate increase to absorb the increase in the annual charges assessments (ACA).[17]

Jurisdictional utilities that collect applicable filing fees directly from the entity causing the filing will not be penalized by this final rule. The increase in annual charges paid by utilities will be modest. Utilities may file to recover the increased annual charges if they choose to do so. Utilities may also seek to have these adjusted annual charges allocated to the customers who use those kilowatt hours.

Commenters also noted that, under the current ACA methodology, jurisdictional entities are not guaranteed recovery of annual charges payments to the Commission. According to one commenter, under current market conditions, merely having the right to collect the ACA does not guarantee that regulated entities will actually collect the ACA on volumes of natural gas transported. This commenter noted that, when the pipeline is forced to offer a discounted rate that includes the full ACA surcharge, the pipeline shareholders, not customers, would fund a portion of the Commission's activities.[18] According to two joint commenters, the annual charges element in a pipeline's rate may constitute a significant portion in a deeply discounted transportation arrangement. They alleged that, in a low margin transaction, the annual charge increase may render the transaction uneconomic.[19]

The Commission has considered these comments but nonetheless believes that eliminating filing fees will have a moderate impact on annual charges for jurisdictional companies. To the extent that these commenters believe that the elimination of filing fees will vastly increase their annual charges assessments, they are mistaken.

In 1992, the total annual charges assessments to oil companies were $2,589,000; if filing fees had been eliminated, the total annual charges would have been $2,675,000, a difference of $86,000, which will be spread out over 137 companies. The largest annual charges assessed against an oil pipeline in 1992 were $164,000 and the smallest annual charges assessed against an oil pipeline were $18. If filing fees had been eliminated, the largest annual charges that would have been assessed against an oil pipeline would have been $170,000 and the smallest annual charges that would have been assessed would have been $19. This is a difference of $6,000 and $1, respectively.

In 1992, the total annual charges assessments to electric public utilities were $29,083,000; if the filing fees other than for small power and co-generation had been eliminated, the annual charges would have been $31,306,000, which is a difference of $2,223,000, which would be spread out over 182 companies. The largest annual charges assessed against a public utility in 1992 were $1,330,174[20] and the smallest annual charges assessed against a public utility were $2. If filing fees had been eliminated, the largest annual charges that would have been assessed against a public utility would have been $1,431,799 and the smallest annual charges that would have been assessed would have been $2. This is a difference of $101,625 and zero, respectively.

In 1992, the total annual charges assessments to gas companies were $61,018,000; if the filing fees had been eliminated, the annual charges would have been $68,265,000, which is a difference of $7,247,000, which will be spread out over 115 companies. The largest annual charges assessed against a gas company in 1992 were $3,951,147 and the smallest annual charges assessed against a gas company were $145. If filing fees other than producer fees had been eliminated, the largest annual charges that would have been assessed against a gas company would have been $4,420,543 and the smallest annual charges that would have been assessed would have been $162. This is a difference of $469,396 and $17, respectively.

The benefits that will accrue as a result of this rule will not be counterbalanced by burdensome increases in annual charges. If the proposal to eliminate most filing fees had been in effect in 1992, there would have been no increase in annual charges for hydro-electric companies and an increase of only about 3 percent for oil pipelines. For electric utilities and natural gas pipelines, there would have been overall increased annual charges of about 7.64 and 11.88 percent, respectively.

The largest assessments and the smallest assessments are both being affected equally; the effect is a low percentage increase in annual charges. The highest increase in annual charges would have occurred with respect to the gas pipelines and this increase would only have been 11.88 percent.

Of equal importance to the modest increase in annual charges occasioned by this rule is the fact the increase in annual charges does not result in any additional revenue to the Commission. The increases in annual charges are offset, dollar for dollar, by decreases in filing fees. Those filing fees are generally paid by the very same entities that are paying annual charges. For example, in 1992, Texas Eastern Transmission Corporation (Texas Eastern) paid annual charges of $2,292,048 and filing fees for all its various filings of $589,618, or total charges of $2,881,666. If the rule had been in place for 1992, Texas Eastern would have paid annual charges of $2,564,343. While as an industry the offset will be dollar-for-dollar, for any given company in any given year the effect of the rule change may cause its total charges to be higher or lower than without the change. This would occur because the Commission offsets total program costs with total fees paid before assessing annual charges, rather than offsetting individual companies' annual charges with individual fees paid. The Commission would expect differentials to balance out over time.

The Commission does not anticipate that the removal of filing fees will result in a large number of frivolous filings by companies that were inhibited from making such filings prior to the fees' removal. To expect such behavior on the part of regulated entities is to anticipate that they will act in an economically irrational manner. The Commission cannot presume that this will be the case.

Recovering costs through annual charges rather than filing fees has the advantage of enhanced convenience and certainty for jurisdictional companies. Fees for specific types of regulatory action are, by their nature, subject to greater fluctuation than is a single annual charge based on a pro rata share of the Commission's costs for an entire regulatory program.[21]

[16] Williston Basin at 1.

[17] Arizona Public Service Co. at 2–3.

[18] Columbia at 5–6.

[19] AER and MRT at 4.

[20] New England Power Co. This utility supports this rulemaking.

[21] For example, certain pipeline tariff filing fees (under 18 CFR 381.205(a)(1)) increased from $6,600 in 1990 to $8,080 in 1992; pipeline certificate

The commenters who questioned a possible increase in annual charges that could result from elimination of most filing fees did not properly account for the fact that, to some extent, entities that pay annual charges are always cross-subsidizing activities at the Commission in which they do not actively participate or as to which they are not necessarily direct beneficiaries. The cross-subsidy to which some commenters allude is not unique to this proposal and is to some extent inherent in annual charges. Thus, raising the possibility of problems that occur with respect to annual charges to oppose elimination of filing fees is an impermissible and untimely collateral attack on the annual charges methodology.

2. Perceived Impact on Companies With Little Direct Involvement With FERC.

Iowa-Illinois is concerned that the Commission's proposal to shift recovery of costs from filing fees to annual charges assessments will adversely impact companies who have little direct involvement with the Commission. Iowa-Illinois pointed out that it generates few filings and the Commission therefore expends little time and resources processing Iowa-Illinois' filings. According to Iowa-Illinois, movement away from direct assessment methodology raises the possibility that Iowa-Illinois will be assessed a portion of the charges for the multitude of filings made by interstate natural gas pipelines and other entities.[22]

Iowa-Illinois' contentions lack merit. First, as previously noted, no jurisdictional company that presently pays annual charges will experience a significant increase in its annual charges. Second, Iowa-Illinois' arguments are a collateral attack on annual charges. Filing fees may actually distort the economic costs of doing business with the Commission more than annual charges and may also inhibit smaller companies, with a lesser ability to pay, from making beneficial filings.

Perhaps most significantly, based on this year's data, Iowa-Illinois actually will benefit from the rule change. According to Commission records, Iowa-Illinois paid electric annual charges for 1992 in the amount of $34,854 (disregarding an adjustment for the prior year's overpayment). If the rule change had been in effect, the annual charges would have been $37,517. In fiscal year 1992, Iowa-Illinois also paid $4,850 in filing fees—meaning that, under the rule change, Iowa-Illinois would have paid over $2,000 less than it did under the current system. Iowa-Illinois' fear of a dramatic increase in the amount of its annual charges is unfounded.

Finally, its contention that it has had relatively few filings in recent years does not signify that it should be given a waiver from the annual charges that jurisdictional companies must pay, according to statute.

C. Collateral Attack on Annual Charges Assessments Methodology

In addition to objecting to a perceived increase in the amount of annual charges that they will be required to pay, certain commenters identified problems with the Commission's current methodology for assessing annual charges pursuant to Part 382 of the Commission's regulations, including: (1) The proposal to eliminate filing fees is inconsistent with Order No. 636's policy initiatives[23]; (2) ACA charges should not be collected on interstate pipeline sales under blanket certification[24]; (3) pipelines should be able to recover ACA charges in their demand charges[25]; (4) pipelines should be able to recover ACA charges in a "50–50 demand/commodity split,"[26]; (5) pipelines should be allowed to recover increased ACA charges by changing their method of collecting annual charges from a cost-of-service item to a surcharge, or vice-versa[27]; (6) pipelines should be allowed to recover increased ACA charges by adjusting their base tariff rates in limited Section 4(e) filings to reflect the increase in annual charges[28]; (7) pipelines should be allowed to recover increased ACA charges by continuing to collect the existing level of annual charges in their base tariff rates, and collecting the increase in annual charges resulting from this rule through an interim surcharge[29]; (8) pipelines should be allowed to recover increased ACA charges by maintaining the status quo and continuing to pay filing fees in lieu of the increase in annual charges, until the pipelines make their next general Section 4 rate filing[30]; (9) pipelines should be allowed to recover annual charges through a reservation surcharge[31]; (10) the ACA charge should only be collected by the pipeline at the end of the transaction chain[32]; (11) annual charges must be assessed only once[33]; (12) the Commission should include a true-up mechanism whereby an entity is assured of remitting only the annual charges amounts actually collected[34]; (13) increased annual charges assessments should be billed by the Commission on a quarterly basis[35]; (14) the ACA methodology will result in regional inequities that will create a substantial and unrecoverable cost burden on companies operating where pipeline construction has slowed due to an excess of capacity[36]; (15) increased annual charges will have deleterious consequences for "incremental shippers"[37]; and (16) the Commission should expand of the types of companies assessed annual charges[38].

First, the Commission will not address in this docket the commenters' attacks on the way annual charges are assessed and collected. These issues are irrelevant to the question of eliminating certain filing fees. As the Commission repeatedly has noted, shifting the recovery of the Commission's costs from filing fees to annual charges will not substantially increase any one company's costs—and on an industry-wide basis, the change is zero. The incremental increase in the pipelines' annual charges should have negligible consequences, particularly when these consequences are balanced against the administrative burden of maintaining two different collection systems. Moreover, because this action is being taken in mid-year, the impact of doing away with filing fees will be spread over two years.

Second, questions that have been raised with respect to the Commission's annual charges adjustment (ACA) mechanism are beyond the scope of this rulemaking. The Commission nevertheless acknowledges that several of the commenters have raised issues that deserve further consideration. Revisitation of the ACA mechanism may be appropriate, particularly as a result of the policy initiatives in Order No. 636.[39]

application fees rose in the same period from $26,260 to $39,440; and curtailment filing fees increased from $6,270 to $11,432.

[22] See Iowa-Illinois at 1–2.

[23] See PEC Pipeline Group at 1–2 and 5–7.

[24] Tennessee Gas Pipeline Company at 4.

[25] *Id.*

[26] Columbia at 6–7.

[27] ANR and CIG at 4.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] The PEC Pipeline Group at 11–12.

[32] Williston at 3.

[33] Enron at 6–7.

[34] Columbia at 7.

[35] Enron at 5–6

[36] JMC Power Projects at 3 and 5.

[37] JMC Power Projects at 3–4.

[38] PEC Pipeline Group at 9–10.

[39] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR

Continued

The Commission therefore will issue a notice of inquiry in the near future seeking comments on the ACA mechanism and current market conditions. That notice will take into account the comments that were filed by all commenters in this case and will seek additional comments from entities that are affected by the Commission's annual charges assessments.

D. Retention of Certain Filing Fees

The Commission proposed to retain six filing fees including: (1) reviews of Department of Energy remedial orders in § 381.303; (2) reviews of Department of Energy denials of adjustment in § 381.304; (3) five megawatt exemption applications under Section 405 of the Public Utility Regulatory Policy Act (PURPA) in § 381.601; (4) reviews of jurisdictional agency determinations in § 381.402; (5) certifications of qualifying status as a small power production facility or cogeneration facility in § 381.505; and (6) interpretations by the Office of the General Counsel in § 381.305.

Commenters generally supported retention of these filing fees. However, several commenters proposed retention of other filing fees. Two commenters requested that the Commission retain the filing fee for petitions for issuance of a declaratory order in § 381.302.[40] These commenters noted that non-jurisdictional entities may file requests for a declaratory order disclaiming jurisdiction and that these filings are of specific interest and benefit to the party making the filing. According to Tennessee, the number of these petitions seems to be increasing as more companies seek gathering status determinations for various facilities.[41]

The Commission will retain the filing fee for petitions for issuance of a declaratory order in § 381.302, as Arizona and Tennessee requested. This is consistent with the Commission's intention to retain filing fees assessed against nonjurisdictional entities. The Commission recognizes, in the case of petitions for declaratory orders for gathering status determinations or for other determinations of nonjurisdictional status, that these filings are made by entities that may well not pay annual charges.

The Commission will retain a filing fee for blanket certificate applications made by Hinshaw pipelines and local distribution companies in § 381.207(a)(1). The PEC Pipeline Group pointed out that elimination of the filing fee for all certificate applications will allow intrastate pipelines that are not subject to annual charges assessments to avoid paying for Commission services.[42] The PEC Pipeline Group argues that interstate pipelines should not be required to pay for filings made by intrastate pipelines when interstate pipelines do not enjoy the same benefits as do the intrastate pipelines providing section 311 service.

The PEC Pipeline Group's arguments do not warrant retention of this filing fee. Since 1989, the Commission has processed only 23 applications pursuant to § 381.207(a)(1). Those applications are routine in nature, are now acted upon pursuant to delegated authority, and do not require significant expenditures of Commission resources. Since 1989, these applications have not once been protested. Retention of the current level of filing fees for this category of applicant (now $39,440) would result in disproportionately high costs, however, because the applications would be considered on the same base that is discussed in section F, herein.

On the other hand, the Commission believes that these categories of filers, who do not pay annual charges and therefore do not defray the costs applicable to consideration of their applications, should pay a filing fee for applications filed under § 381.207(a)(1). Based on recent experience with these types of filings, the Commission has determined that a comparable category in terms of resources expended is in § 381.208, requests under the blanket certificate notice and protest procedures. Presently, these filing fees are $490. However, the applications filed pursuant to § 381.207(a)(1) require preparation of an order, which should add to the fee that the applicant will pay. The Commission therefore has determined to retain an application fee for these applications, but will change § 381.207(b) to reflect the reduced filing fee. The fee that the Commission will charge for such filings in the future, to be updated on an annual basis based on the data available with respect to these transactions in the Commission's data base, as explained in section F herein, will initially be $1,000.

The Commission also will retain the filing fees under §§ 381.403 and 381.404, that are applicable to petitions for rate approval pursuant to § 284.123(b)(2) and initial or extension reports for Title III transactions for intrastate pipelines, respectively. These fees are charged for filings that are made by nonjurisdictional companies that do not pay annual charges. The volume of these filings, which are made on a continuous and routine basis, can be significant. The Commission has determined to continue to charge filing fees in these circumstances and will therefore retain §§ 381.403 and 381.404 intact.

Philadelphia Electric Company (PECo) requested the Commission to exempt rate filings to effect transmission services under the Federal Power Act from the NOPR's proposal to eliminate filing fees. PECo did not specify the provision(s) that it wanted the Commission to retain, but noted that a number of the filing fees incurred by PECo arise from customer requests for new transmission services and the accompanying new rate schedules. PECo alleges that it and a number of other electric power companies recover these filing fees directly from the customer. According to PECo, without a separately identified filing fee, it would be unlikely that electric power companies could assess the costs caused by each rate filing to the party that is responsible for the expense. Annual charges for public utilities are based, in part, on the amount of power they transmit. Thus, PECo alleges, inclusion of annual charges in the regulatory expense portion of their base rates would be one way for PECo to recover these costs.

Edison Electric Institute (EEI) requested the Commission to charge filing fees for preliminary permit applications, and original license applications filed under part I of the Federal Power Act (FPA).[43] EEI noted that a large percentage of these applications do not result in licensed projects, so the applicants never pay annual charges for back charges to cover their share of the Commission's administrative costs.[44] EEI also noted that few preliminary permits and

13267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992); *order on reh'g*, Order No. 636-A, 57 FR 36128 (Aug. 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30, 950 (Aug. 3, 1992); *order denying reh'g and clarifying*, 57 FR 57911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (Nov. 27, 1992).

[40] See Arizona Public Service Co. at 4; and Tennessee Gas Pipeline Co. at 3.

[41] Tennessee Gas Pipeline Co. at 3. Commission records indicate that 10 petitions for declaratory orders for gathering determinations were filed in FY 91, 11 petitions were filed in FY 92, and to date 4 petitions have been filed in FY 93.

[42] The PEC Pipeline Group at 9–10.

[43] EEI at 2.

[44] EEI cited testimony by Dick Hunt, former Director of the Commission's Office of Hydropower Licensing to the Senate Energy Committee in February 1991, that only 54% of permit, license, and exemption applications filed with FERC between 1980 and 1990 were approved and only 13% of the approved projects resulted in operating power plants. See EEI at 2.

original license applications are filed by owners of existing projects.

The costs of administering part I of the Federal Power Act are collected pursuant to section 10(e) of the Act. Changes to the manner in which part I costs are collected are beyond the scope of this rulemaking.

E. Direct Billing

The Commission proposed to retain the option to order a direct billing procedure at the beginning of processing a filing or at any time up to one year after receiving a complete filing for extraordinary filings.

Several commenters requested the Commission to clarify what constitutes an "extraordinary filing," to implement objective standards for determining when and how the direct billing mechanism will be applied, and to provide for notice to an affected applicant as soon as possible after an extraordinary filing is submitted, including an estimate of the fee.[45] Tennessee and Williston requested the Commission to place a cap on direct billing charges.[46] UtiliCorp requested the Commission to simplify the direct billing mechanism by replacing the periodic assessment of costs provision with a one-time standardized complexity surcharge.[47] The PEC Pipeline Group reserved the right to comment further on the direct billing test because the NOPR did not suggest a test.[48]

The PEC Pipeline Group also requested the Commission to clarify its intent regarding the direct billing alternative. According to the PEC Pipeline Group, once filing fees are eliminated, it is unclear whether the Commission intends to direct bill for an extraordinary filing that no longer requires a filing fee to be remitted. The PEC Pipeline Group interprets § 381.107(a) as indicating that direct billing will occur only on applications associated with payment of a filing fee. The PEC Pipeline Group requested clarification if this interpretation is not the Commission's interpretation.[49] Contrary to the PEC Pipeline Group's interpretation, the direct billing mechanism is not restricted to situations where a filing fee would otherwise be paid.

The Commission expects that the occasions on which it will resort to direct billing will be extremely rare. The direct billing procedures will be utilized, at the Commission's discretion, only in those cases involving complex factual, technical, environmental, procedural and/or legal issues that involve a disproportionate expenditure of Commission resources. One such situation is a large LNG project that is unrelated to any class of domestic customers or domestic rate payers and thus would not pay annual charges.[50]

F. Annual Adjustment of Fees

The Commission invited comments on whether it should continue the current annual recalculation process on the fees being retained. Few comments were submitted on the current annual recalculation process in § 381.104(c).[51] EEI noted that, although the Commission's current method of updating filing fees may be the most cumbersome of those identified in the NOPR, it also appears to be the most accurate. EEI requested the Commission to ensure that any alternative other than the current method selected to recalculate the filing fees produce accurate results.[52] EEI also suggested that filing fees should be "spot checked" periodically to ensure that they reflect actual costs for processing specific filings.[53]

EEI specifically requested that, if the Commission uses a constant number of employee hours for each type of filing to calculate filing fees, the constants should be developed using a sufficiently large data base to ensure that they accurately represent typical filings. EEI also requested that, if fees are updated by applying an inflation factor to base year fees, the "base year" should be carefully chosen to ensure that it reflects the level and nature of filings for which fees will be charged.[54]

The Commission is substituting a new formula for the present annual adjustment. The formula for determining each fee will use a constant base. That base will be the total number of actual workmonths dedicated to a given fee category for all years for which the Commission has data, through FY 92[55], divided by the total number of actual completions in those years for which the Commission has data, through FY 92. This base will be multiplied by the average cost per workmonth in the most recent complete fiscal year.[56]

This methodology for computing the annual adjustment of fees is preferable to other proposed methodologies because this method will simplify the Commission's procedures while retaining an accurate update of the fees. Using five or six years' data rather than the present three-year base will reduce year-to-year fluctuations. At the same time, using the most current cost factor will allow fees to reflect Commission costs more accurately than would an inflation factor, which would increase the fees yearly based on the rate of inflation only for that year.

If this formula for determining the filing fees had been in effect for FY 92, it would have affected the fees that the Commission proposed originally to retain in the following manner[57]: (1) Reviews of Department of Energy remedial orders would have been $12, 940 instead of $13,400; (2) reviews of Department of Energy denials of adjustment would have been $6,940 instead of $5,760; (3) the fee for five Megawatt exemptions would have been $19,900 instead of $20,650; (4) reviews of jurisdictional agency determinations would have been $90 instead of $85; (5) the fee for certification as a qualifying small power production facility would have been $8,120 instead of $9,100 and the fee for certification as a qualifying cogeneration facility would have been $9,560 instead of $10,540; and (6) the fee for interpretations by the Office of the General Counsel would have been $2,450 instead of $2,310.

The Commission is revising § 381.104(c) to reflect its new formula.

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[45] See AER and MRT at 7–8; Commonwealth Edison at 1 and 4–5; Tennessee at 5; and Williston Basin at 2.

[46] Tennessee Gas Pipeline Company at 5 and Williston at 2.

[47] UtiliCorp at 9.

[48] PEC Pipeline Group at 13–14.

[49] PEC Pipeline Group at 13.

[50] See Yukon Pacific Co. L.P., 59 FERC ¶ 61,153 (1992), order on reh'q 60 FERC ¶ 61,132 (1992), appeal pending sub nom. Yukon Pacific Co. L.P. v. FERC, No. 92-1503 (D.C. Cir. filed Oct. 7, 1992).

[51] 18 CFR 381.104(c).

[52] EEI at 2.

[53] Id. at 3.

[54] EEI at 2.

[55] Two fees, those for certifications of qualifying status as a small power production facility and cogeneration facilities, will use data for only five years (1988–1992) because prior to 1988 these fees were combined, and no data are available for 1987. All other fees will use data for the six fiscal years 1987 through 1992.

[56] Under this formula, the number of workmonths reported for a class of docketed activity is added to that class's pro rata share of the workmonths reported for relevant support activities. This figure, representing the total number of workmonths dedicated to a class of docketed activity for the indicated years, is divided by the number of completions for those six years for the given activity. The resulting quotient will be a constant factor used each year which represents the average number of workmonths required to complete one proceeding in that given class of docketed activity. Next, the average cost of a workmonth is calculated based on the Commission's most recent fiscal year actual costs. Then, in order to determine the fee for a given class of activity, the average cost per workmonth is multiplied by the constant factor. After rounding, according to current practice, this number will represent the fee in that category.

[57] These numbers for the filing fees being retained have been calculated without workmonth and completion data for FY 92, which are not yet available.

The Commission has determined to retain the filing fees for blanket certificate applications filed by Hinshaw pipelines and local distribution companies in § 381.207(a)(1). The data base that currently exists takes into account all pipeline certificate applications, however, not just these less substantial certificate applications. The present fee therefore is based on inclusion of larger and more complex transactions that are filed by jurisdictional companies. The Commission henceforth will rely on the data generated with respect to only the Hinshaw and LDC applicants in updating the filing fees that will be applicable to these transactions, which are made pursuant to section 7(c) of the Natural Gas Act filed in accordance with § 284.224 of the Commission's regulations. For the first year, the Commission will make the filing fee $1,000, based on the § 381.208 filing fee and its own experience. The Commission will add each succeeding year's information to create a data base for the filing fees for these applications.

G. Miscellaneous Comments

1. AER and MRT requested the Commission to expand the scope of this docket to re-examine all aspects of its cost collection methodology including: (1) Assigning costs directly to entities that cause the costs through their regulatory activity; (2) giving pipelines a reasonable opportunity to recover any annual charges allocated to discounted transactions; and (3) addressing the problem of multiple collections of annual charges for transactions that traverse more than one interstate pipeline.[58]

The Commission will not expand the scope of this docket to accommodate AER's and MRT's interests in order to re-examine all aspects of the cost collection methodology. AER's and MRT's first request, that the Commission assign costs directly to entities that cause the costs through their regulatory activities, would result in the Commission's abandoning the annual charges concept and potentially could overburden smaller companies, with a lesser ability to pay, with disproportionate costs. In any event, this request is beyond the scope of this rulemaking.

The Commission is not honoring in this docket AER's and MRT's request that the Commission consider giving pipelines a reasonable opportunity to recover any annual charges allocated to discounted transactions. First, this request appears to be premised on the false assumption that there will be a significant increase in annual charges as a result of the elimination of the filing fees at issue. As the Commission has previously explained, however, filing fees overall constitute less than 12 percent of the revenues; annual charges are the vast majority. Second, the annual charges adjustment mechanism set out in § 154.38(d)(6) of the Commission's regulations is not mandatory, but rather is one option by which pipelines may recover their annual charges.[59] Such charges may also be included and recovered as a part of regulatory expense in the pipelines' base rates. In any event, the Commission will be pursuing possible revisions to the ACA methodology in the near future.

The last problem that AER and MRT identified, multiple collections of annual charges for transactions that traverse more than one interstate pipeline, is similarly inappropriate for the Commission to address in the instant rulemaking. To the extent that the problem exists at all (and AER and MRT did not quantify the extent to which it allegedly exists), it is not unique to this case and will not be significantly exacerbated by the modest increase in annual charges that might occur after the elimination of the filing fees.

2. UtiliCorp United Inc. (UtiliCorp) proposed that the Commission should consider three refinements to the filing fees mechanism if the Commission should retain a filing fees approach to cost recovery.[60] The three proposals are: (1) within each currently existing category of filing, distinctions should be drawn based upon the type of application being made; (2) more of the existing filing fee categories should be broken down based on the dollar amount involved; and (3) the Commission must streamline its direct billing provision.

There is no need to address UtiliCorp's proposal because the Commission is eliminating most filing fees in this final rule.

3. In assessing annual charges under Part I of the FPA to recover the cost of other agencies participating in the hydro licensing process, EEI requested the Commission to set standards for documentation that other agencies must provide to substantiate their costs. EEI also requested the Commission to screen and occasionally audit the bills submitted by those other agencies.[61]

The Commission declines EEI's request to set standards for documentation that other agencies must provide to substantiate their costs in this rulemaking. EEI's request is beyond the scope of this rulemaking docket. The Commission intends to address this issue in a future rulemaking proceeding.

4. Filing Fee for Persons Seeking Exempt Wholesale Generator Status

On November 10, 1992, the Commission issued a notice of proposed rulemaking in Docket No. RM93–1–000 implementing section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as added by section 711 of the Energy Policy Act of 1992.[62] PUHCA section 32 requires persons seeking a determination of exempt wholesale generator (EWG) status to file for a determination with the Commission. The Commission requested comments in the NOPR concerning whether to create a separate fee category for applications for EWG status for non-public utility EWGs. The Commission noted that comments received in Docket No. RM93–1–000 would be placed in the record of this rulemaking docket. Comments are due in Docket No. RM93–1–000 on or before December 24, 1992.

Florida Power & Light Company (FPL) filed comments in support of the proposal to establish a filing fee for non-public utility EWG applicants in this rulemaking docket. FPL also raised several concerns with the Commission's proposal. The Commission will address FPL's comments along with the other comments filed in Docket No. RM93–1–000 separately from this rulemaking eliminating certain filing fees.

IV. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (FRA)[63] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[64] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

[58] AER and MRT at 6–7.

[59] 18 CFR 154.38(d)(6).

[60] *See* UtiliCorp at 7–11.

[61] EEI at 3.

[62] Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status, Docket No. RM93–1–000, 57 FR 55195 (Nov. 24, 1992), IV FERC Stats. & Regs. ¶ 32,490 (Nov. 10, 1992).

[63] 5 U.S.C. 601–612.

[64] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

V. Environmental Statement

The Commission concludes that issuance of this rule would not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[65] This rule would be procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[66]

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[67] However, this proposed rule contains no information collection requirements and therefore is not subject to OMB approval.

VII. Effective Date

Public Systems requested the Commission to make the final rule effective immediately, rather than 30 days after publication in the **Federal Register**. Pursuant to 5 U.S.C. 553(d)(1), Public Systems noted that a rule that grants an exemption may be placed into immediate effect. Public Systems argued that the Commission's rule would exempt certain filings from fees and that significant savings may be effected if filing fees can be eliminated by year's end. According to Public Systems, parties can begin their transactions in the new year with considerably more flexibility and without the anti-competitive impediments created by the present regulation.[68]

The Commission will make this rule immediately effective on the date of issuance. The Commission is eliminating a regulatory burden in the form of filing fees and does not foresee that those affected by the change will need time to make adjustments to comply with this rule.

This final rule, therefore, is effective January 4, 1993.

List of Subjects

18 CFR Part 346

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending parts 346 and 381, chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Langdon dissented with a separate statement attached.

Lois D. Cashell,

Secretary.

PART 346—FEES

1. Part 346 is removed in its entirety.

PART 381—FEES

2. The authority citation for Part 381 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; and 49 U.S.C. 1–27.

3. In § 381.104, paragraph (c) is revised to read as follows:

§ 381.104 Annual adjustment of fees.

* * * * *

(c) *Formula*. (1) Except as provided in paragraph (c)(2) of this section, the formula for determining each fee is the workmonths dedicated to the given fee category for the six fiscal years 1987 through 1992 or all years prior to FY 93 for which data are available divided by the number of actual completions in the six fiscal years 1987 through 1992 or all years prior to FY 93 for which data are available multiplied by the average monthly employee cost in the most recent fiscal year for which data are available.

(2) With respect to the fees charged to pipelines filing pursuant to § 381.207(a), the fee for the first year will be $1,000. The formula for the fee in future years will be the workmonths from the immediately prior year divided by the number of actual completions in that year multiplied by the average monthly employee cost in the most recent fiscal year for which data are available. With the addition of future years, the formula for § 381.207(a) fees will be updated to include that year as part of the base period.

* * * * *

4. In § 381.107, paragraph (a) is revised to read as follows:

§ 381.107 Direct billing.

(a) *Applicability*. If a filing presents an issue of fact, law, policy, procedural difficulty, or technical complexity that requires an extraordinary amount of expense to process, the Commission may institute a direct billing procedure for the direct and indirect costs of processing that filing. The Commission will make a direct billing determination under this paragraph not later than one year after receiving a complete filing from an applicant.

* * * * *

5. Sections 381.201 through 381.206 are removed, §§ 381.207(a) and (b) are revised, §§ 381.208, 381.209, 381.301, and 381.401 are removed, § 381.404 is revised, §§ 381.405, 381.502 through 381.504, and 381.506 through 381.512, are removed to read as follows:

§ 381.207 Pipeline certificate applications.

(a) *Definition*. For purposes of this section, "pipeline certificate application" means any application for authorization or exemption, any substantial amendment to such an application, and any application, other than an application for a temporary certificate, for authorization to amend an outstanding authorization or exemption, by any person, made pursuant to section 7(c) of the Natural Gas Act filed in accordance with § 284.224 of this chapter.

(b) *Fee*. Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a blanket certificate application is $1,000. The fee filed under this paragraph must be submitted in accordance with § 284.224 of this chapter.

* * * * *

§ 381.404 Initial or extension reports for Title III transactions.

The fee established for an initial or extension report is $120. The fee must be submitted in accordance with subpart A of this part and §§ 284.126(c), 284.148(e), and 284.165(d).

Note: The following Appendix will not be published in the Code of Federal Regulations.

Appendix—Commenters

1. Arizona Public Service Company.
2. Arkla Energy Resources and Mississippi River Transmission Corporation (filed joint comments).
3. ANR Pipeline Company and Colorado Interstate Gas Company.
4. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company.
5. Commonwealth Edison Company.
6. Edison Electric Institute.
7. El Paso Natural Gas Company.
8. Enron Interstate Pipelines (consisting of Northern Natural Gas Company, Transwestern Pipeline Company and Florida Gas Transmission Company).
9. Florida Power & Light Company.
10. Green Mountain Power Corporation.
11. Iowa-Illinois Gas and Electric Company.
12. JMC Power Projects (consisting of Ocean State Power, Ocean State Power II,

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[65] See Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[66] See 18 CFR 380.4(a)(1).

[67] 5 CFR part 1320.

[68] Public Systems at 6.

Selkirk Cogen Partners, L.P., and MASSPOWER).

13. National Fuel Gas Supply Corporation.

14. New England Power Company.

15. Northern Distributor Group (consisting of the Great Plains Natural Gas Company, Interstate Power Company, Iowa Electric Light & Power Company, Iowa Southern Utilities Company, Metropolitan Utilities District of Omaha, Michigan Gas Company, Midwest Gas, a division of Midwest Power Systems, Inc., Northern Minnesota Utilities, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), Northwestern Public Service Company, Peoples Natural Gas Company, Division of UtiliCorp, Inc., Wisconsin Gas Company, and Wisconsin Power & Light Company).

16. Pacific Gas Transmission Company.

17. Philadelphia Electric Company.

18. Public Systems (consisting of the American Public Power Association, Belmont, Massachusetts Municipal Light Department, the City of Burlington, Vermont Electric Light Department, the Connecticut Municipal Electric Energy Cooperative, the Florida Municipal Power Agency, the Indiana Municipal Power Agency, the Massachusetts Municipal Wholesale Electric Company, the Michigan Municipal Cooperative Group, the Northern California Power Agency, the City Utilities of Springfield, Missouri, the City of Westfield, Massachusetts Gas and Electric Department, and the City of Riverside, California).

19. Tennessee Gas Pipeline Company.

20. Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company, and Algonquin Gas Transmission Company (the "PEC Pipeline Group") (filed joint comments).

21. Transok, Inc. and Transok Gas Transmission Company.

22. UtiliCorp United Inc.

23. Washington Water Power.

24. Williston Basin Interstate Pipeline Company.

Elimination of Certain Filing Fees in Parts 346 and 381

[Docket No. RM92-17-000]

Issued January 4, 1993.

Jerry J. Langdon, Commissioner, *dissenting.*

In light of the many negative comments received in response to the NOPR in this Docket, I will dissent from this order's departure from the time-honored principle of "cost responsibility stems from cost incurrence." In my concurrence to the NOPR, I noted that we were well down the road toward this departure by already having a large portion of our budget be recovered through annual charges. Nevertheless, I still believe that, despite the small percentage of our revenue that it recovers, the filing fee structure has multiple benefits.

Filing fees force parties to make more complete filings at the Commission. For example, rather than piecemealing tariff provision changes through the soon-to-be cost-free filing process, a pipeline, under our current provisions, has an incentive to put these provisions together into a rate case.[1] This allows its customers and the Commission to view the issues more globally.

In addition, individual filing fees are good indications to parties about the relative amount of Commission effort needed to process an application. This Final Rule would limit such instances to extraordinary direct bill situations.

Also, filing fees are a good check on our own efficiency. By having our employees allocate their time to projects (much as a law firm does for its lawyers), we have a useful way of tracking employee efficiency, if necessary. By having filing fees, the ratepaying public can look over our shoulder to see how we're doing.

The statutory language relied upon in this order to support a further move away from filing fees is selectively quoted. A review of the statute reveals that both fees and annual charges were envisioned. I see no reason to eliminate them altogether here; the statute, certainly, does not require it.

In response to the NOPR, some parties complained about the seeming inadequacy of the present filing fee structure to accommodate various levels of complexity within filings. This should be addressed by *reforming* the filing fee structure, not by eliminating it!

I am pleased that parties responded to the concerns I raised in my NOPR concurring statement about problems with the ACA charge, particularly in multiple pipeline transactions. I welcome the Commission's decision to examine this issue in the near future through a Notice of Inquiry. In my review of the legislative history of the statute, I discovered that this precise point was of concern to its drafters.

This Final Rule is a step backward from our progress toward implementing "good government" procedures at the Commission; therefore, I will dissent from its issuance.

Jerry J. Langdon,

Commissioner.

[FR Doc. 93-286 Filed 1-6-93; 8:45 am]

BILLING CODE 6717-01-M

[1] The order mistakenly views the arguments in this vein as asserting that such filings will be "frivolous." *Mimeo* at page 11. Although I suppose they could be "frivolous," piecemealed filings are not necessarily so by definition.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 89F-0115]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the additional use of Nylon 12 in coatings for repeated use in contact with food. This action responds to a petition filed by Huls America, Inc.

DATES: Effective January 7, 1993; written objections and requests for a hearing by February 8, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 10, 1989 (54 FR 20203), FDA announced that a food additive petition (FAP 9B4137) had been filed by Huls America, Inc., 80 Centennial Ave., Piscataway, NJ 08855-0456, proposing that § 177.1500 *Nylon resins* (21 CFR 177.1500) be amended to provide for the additional use of Nylon 12 in coatings intended for repeated use in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of the food additive is safe. The agency further concludes that § 177.1500 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of

this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before (*insert date 30 days after date of publication in the* **Federal Register**), file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.1500 is amended in the table in paragraph (b) by revising entry "9" in the first column under the heading "Nylon resins" to read as follows. The text under the remaining headings is unchanged.

§ 177.1500 *Nylons resins.*

* * * * *

(b)

Nylon resins	Specific gravity	Melting point (degrees Fahrenheit)	Solubility in boiling 4.2*N* HC1	Viscosity No. (mL/g)	Maximum extractable fraction in selected solvents (expressed in percent by weight of resin)			
					Water	95 percent ethyl alcohol	Ethyl acetate	Benzene
* * * * *								
9. Nylon 12 resins for use only:	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
a. In food-contact films having an average thickness not to exceed 0.0016 inch intended for use in contact with nonalcoholic food under the conditions of use A (sterilization not to exceed 30 minutes at a temperature not to exceed 250° F), and B through H of Table 2 of § 176.170(c) of this chapter, except as provided in § 177.1390(d)..								
b. In coatings intended for repeated use in contact with all food types described in Table 1 of § 176.170(c) of this chapter, except those containing more than 8 percent alcohol, under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter..								
* * * * *								

* * * * *

Dated: December 15, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-240 Filed 1-6-93; 8:45 am]

BILLING CODE 4160-01-F

PEACE CORPS

22 CFR Part 309

Claims Collection

AGENCY: Peace Corps of the United States (Peace Corps).

ACTION: Final rule.

SUMMARY: The Peace Corps revises its regulations regarding the Collection of Claims by Administrative Offset. These changes are made to enhance Peace Corps' ability to collect its debts by providing guidance to officers and employees charged with debt collection responsibilities. The rule implements the collection procedures authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701–3719 and 5 U.S.C. 5514) (Pub. L. 97–365, 96 Stat. 1749). In addition, the rule implements 31 U.S.C. 3720A, which authorizes Federal agencies to notify the Internal Revenue Service of a past-due legally enforceable debt for the purpose of offsetting the debtor's tax refund. These laws have been implemented by the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department

of Justice, regulations issued by the Office of Personnel Management, the procedures prescribed by the Office of Management and Budget in Circular A-129, and by the Internal Revenue Service procedures.

On November 24, 1992, the Peace Corps published for comment in the **Federal Register** a proposed regulation for claims collection, 57 FR 55202-55212. Interested parties were invited to submit comments within 30 days. The Peace Corps received no comments by the deadline of December 24, 1992. Except for some editorial changes, the final rule is the same as the proposed regulation.

EFFECTIVE DATE: January 7, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen Rademaker, Peace Corps General Counsel, or Daniel Bosco, Assistant General Counsel at (202) 606-3114 (Voice) or (202) 606-1313 (TDD).

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 authorizes procedures for the collection of debts owed to the United States including: (1) Salary offset, (2) administrative offset, (3) contracting for collection services to recover debts. In addition, section 3720A of title 31 U.S.C. authorizes agencies to notify the Internal Revenue Service of a past-due legally enforceable debt for the purpose of offsetting the debtor's tax refund. Although these are separate procedures, any procedure may be used by itself or in conjunction with other procedures.

Salary Offset. Section 5 of the Debt Collection Act (codified at 5 U.S.C. 5514) establishes the procedures to be used when an agency collects money owed it by offsetting the salary of a federal employee. Agencies of the Government may cooperate with one another in order to effectuate recovery of the claim. Salary offset procedures permit an employee to review the determination of indebtedness before offset is implemented, and an employee against whom an offset is sought is automatically entitled to a hearing on matters surrounding the determination of the debt, or the percentage of disposable pay to be deducted each pay period.

Administrative Offset. The procedures authorized for administrative offset are contained in section 10 of the Debt Collection Act (codified at 31 U.S.C. 3716). The Act requires that notice procedures be observed by the agency. The debtor is also afforded an opportunity to inspect and copy government records pertaining to the claim, enter into an agreement for repayment, and to a review of the claim (if requested). Like salary offset, agencies may cooperate with one another in order to effectuate recovery of the claim.

Collection Services. Section 13 of the Debt Collection Act (codified at 31 U.S.C. 3718) authorizes agencies to enter into contracts for the collection services to recover debts owed the United States. The Act requires that certain provisions be contained in such contracts including:

(1) The agency retains the authority to resolve a dispute, including the authority to terminate a collection action or refer the matter to the Attorney General for civil remedies; and

(2) The contractor is subject to the Privacy Act of 1974, as it applies to private contractors, as well as subject to State and Federal laws governing debt collection practices.

Tax Refund Offset. Title 31 U.S.C. 3720A authorizes the Internal Revenue Service (IRS) to reduce a refund of a taxpayer's overpayment of tax by the amount of any legally enforceable debt which is owed to a Federal agency and is at least three months overdue. This section also requires the agency to give taxpayer-debtors at least 60 days notice of the agency's intention to use the provisions of this section. Under this authority, the Peace Corps may refer to the IRS for collection by tax refund offset from refunds otherwise payable, past-due legally enforceable debts owed to the Peace Corps if: (i) the debts are eligible for offset pursuant to 31 U.S.C. 3720A, section 6402(d) of the Internal Revenue Code, 26 CFR 301.6420T, and the agreement between the Peace Corps and the IRS, and (ii) the Peace Corps provides the information required by the agreement for each debt.

Executive Order 12291

This rule is not a "major rule" as defined under Executive Order 12291 because it 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, individual industries, Federal, State, or local government agencies or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act of 1980

The Director of the Peace Corps certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The economic impact of the rule is expected to be minimal. In this regard, measures would be triggered only by a failure to pay debts owed the United States and, therefore, are avoidable. Peace Corps has no reason to believe that small entities, in particular, would be seriously effected by this rule.

Paperwork Reduction Act of 1980

In accordance with the Paperwork Reduction Act (Pub. L. 96.511, 44 U.S.C. Chapter 35), any reporting or recordkeeping provisions that are included in this rule will be submitted for approval to the Office of Management and Budget (OMB).

Environmental Impact

This rule does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*), because it is not a major Federal action significantly affecting the quality of the human environment.

Executive Order 12778

This final rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195) on Civil Justice Reform. The Peace Corps has determined that this rule meets the applicable standards of section 2 of Executive Order 12778.

List of Subjects in 22 CFR Part 309

Administrative practice and procedure, Claims collection, Government employees, Salary offset, Tax refund offset, Volunteers, and Trainees.

Accordingly, the Peace Corps hereby amends title 22 of the Code of Federal Regulations chapter III by revising part 309 to read as follows:

PART 309—CLAIMS COLLECTION

Subpart A—General Provisions

Sec.

309.1 General purpose.
309.2 Scope.
309.3 Definitions.
309.4 Interest, penalties, and administrative costs.
309.5 Designation.

Subpart B—Salary Offset

309.6 Purpose.
309.7 Scope.
309.8 Applicability of regulations.
309.9 Waiver requests and claims to the General Accounting Office.
309.10 Notice requirements before offset.
309.11 Review.
309.12 Certification.
309.13 Voluntary repayment agreements as an alternative to salary offset.
309.14 Special review.

309.15 Notice of salary offset.
309.16 Procedures for salary offset.
309.17 Coordinating salary offset with other agencies.
309.18 Interest, penalties and administrative costs.
309.19 Refunds.
309.20 Request for the services of a hearing official from the creditor agency.
309.21 Non-waiver of rights by payments.

Subpart C—Tax Refund Offset

309.22 Applicability and scope.
309.23 Past-due legally enforceable debt.
309.24 Definitions.
309.25 Peace Corps participation in the IRS tax refund offset program.
309.26 Procedures.
309.27 Referral of debts for offset.
309.28 Notice requirements before offset.

Subpart D—Administrative Offset

309.29 Applicability and scope.
309.30 Definitions.
309.31 General.
309.32 Demand for payment—notice.
309.33 Debtor's failure to respond.
309.34 Agency review.
309.35 Hearing.
309.36 Written agreement for repayment.
309.37 Administrative offset procedures.
309.38 Civil and Foreign Service Retirement Fund.
309.39 Jeopardy procedure.

Subpart E—Use of Consumer Reporting Agencies and Referrals to Collection Agencies

309.40 Use of consumer reporting agencies.
309.41 Referrals to collection agencies.

Subpart F—Compromise, Suspension or Termination and Referral of Claims

309.42 Compromise.
309.43 Suspending or terminating collection.
309.44 Referral of claims.

Authority: 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 22 U.S.C. 2503(b); 31 U.S.C. 3720A; 4 CFR parts 101–105; 5 CFR part 550; 26 CFR 301.6402–6T.

Subpart A—General Provisions

§ 309.1 General purpose.

This part prescribes the procedures to be used by the Peace Corps of the United States (Peace Corps) in the collection of claims owed to Peace Corps and to the United States.

§ 309.2 Scope.

(a) Applicability of Federal Claims Collection Standards (FCCS). Except as set forth in this part or otherwise provided by law, Peace Corps will conduct administrative actions to collect claims (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the Federal Claims Collection Standards of the General Accounting Office and the Department of Justice, 4 CFR parts 101 through 105.

(b) This part is not applicable to: (1) Claims against any foreign country or any political subdivision thereof, or any public international organization.

(2) Claims where the Peace Corps Director (or designee) determines that the achievement of the purposes of the Peace Corps Act, as amended, 22 U.S.C. 2501 *et seq.*, or any other provision of law administered by the Peace Corps require a different course of action.

§ 309.3 Definitions.

As used in this part (except where the context clearly indicates, or where the term is otherwise defined elsewhere in this part) the following definitions shall apply:

(a) *Agency* means: (1) An Executive Agency as defined by section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined by section 102 of title 5, United States Code.

(3) An agency or court of the judicial branch including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) *Certification* means a written debt claim form received from a creditor agency which requests the paying agency to offset the salary of an employee.

(c) *Consumer reporting agency* means a reporting agency as defined in 31 U.S.C. 3701(a)(3).

(d) *Creditor agency* means the agency to which the debt is owed.

(e) The term *debt and claim* refers to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization or entity, except another Federal agency. A debtor's liability arising from a particular contract or transaction shall be considered a single claim for purposes of monetary ceilings of the FCCS.

(f) *Delinquent debt* means any debt which has not been paid by the date specified by the Government in writing or in an applicable contractual agreement for payment or which has not been satisfied in accordance with a repayment agreement.

(g) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. These deductions are described in 5 CFR 581.105(b) through (f). These deductions include, but are not limited to: Social Security withholdings; Federal, State and local tax withholdings; retirement contributions; and life insurance premiums.

(h) *Employee* means a current or former employee of the Peace Corps or other agency, including a member of the Armed Forces or Reserve of the Armed Forces of the United States.

(i) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR parts 101 through 105.

(j) *Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of such hearing. Except in the case of an administrative law judge, a hearing official may not be under the supervision or control of the Peace Corps when the Peace Corps is the creditor agency.

(k) *Paying agency* means the agency which employs the individual and authorizes the payment of his or her current pay. In some cases, the Peace Corps may be both the creditor and the paying agency.

(l) *Notice of intent to offset* or *notice of intent* means a written notice from a creditor agency to an employee which alleges that the employee owes a debt to the creditor agency and apprising the employee of certain administrative rights.

(m) *Notice of salary offset* means a written notice from the paying agency to an employee after a certification has been issued by a creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

(n) *Payroll office* means the payroll office in the paying agency which is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee.

(o) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction at one or more officially established pay intervals from the current pay account of an employee, without the employee's consent.

(p) *Salary Offset Coordination Officer* means an official designated by the Director who is responsible for

coordinating debt collection activities for the Peace Corps.

(q) *Waiver* means the cancellation, remission, forgiveness, or nonrecovery of a debt or debt related charge as permitted or required by law.

§ 309.4 Interest, penalties, and administrative costs.

(a) Except as otherwise provided by statute, contract or excluded in accordance with FCCS, Peace Corps will assess:

(1) Interest on unpaid claims in accordance with existing Treasury rules and regulations, unless the agency determines that a higher rate is necessary to protect the interests of the United States.

(2) Penalty charges at a rate of 6 percent a year on any portion of a claim that is delinquent for more than 90 days.

(3) Administrative charges to cover the costs of processing and handling the debt beyond the payment due date.

(b) Late payment charges shall be computed from the date of mailing or hand delivery of the notice of the claim and interest requirements.

(c) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and then to outstanding principal.

(d) Waiver. Peace Corps will consider waiver of interest, penalties and/or administrative costs in accordance with the FCCS, 4 CFR 102.13(g).

§ 309.5 Designation.

The Chief Financial Officer and his or her delegates, or any person discharging the functions presently vested in the Chief Financial Officer, are designated to perform all the duties for which the Director is responsible under the foregoing statutes and Joint Regulations: Provided, however, That no compromise of a claim shall be effected or collection action terminated except with the concurrence of the General Counsel. No such concurrence shall be required with respect to the compromise or termination of collection activity on any claim in which the unpaid amount of the debt is $300 or less.

Subpart B—Salary Offset

§ 309.6 Purpose.

The purpose of the Debt Collection Act of 1982 (Pub. L. 97–365), is to provide a comprehensive statutory approach to the collection of debts due the United States Government. This subpart implements section 5 thereof which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offsets. No claim may be collected by salary offset if the debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 309.7 Scope.

(a) This subpart provides Peace Corps' procedures for the collection by salary offset of a Federal employee's pay to satisfy certain past due debts owed the United States Government.

(b) This subpart applies to collections by the Peace Corps from:

(1) Federal employees who owe debts to the Peace Corps; and

(2) Employees of the Peace Corps who owe debts to other agencies.

(c) This subpart does not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) This subpart does not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) Nothing in this subpart precludes the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*; 4 CFR parts 101 through 105).

§ 309.8 Applicability of regulations.

The provisions of this subpart are to be followed in instances where:

(a) The Peace Corps is owed a debt by an individual currently employed by another agency;

(b) The Peace Corps is owed a debt by an individual who is a current employee of the Peace Corps; or

(c) The Peace Corps currently employs an individual who owes a debt to another Federal agency. Upon receipt of proper certification from the creditor agency, the Peace Corps will offset the debtor-employee's salary in accordance with these regulations.

§ 309.9 Waiver requests and claims to the General Accounting Office.

The provisions of this subpart do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office. This subpart also does not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debts being collected.

§ 309.10 Notice requirements before offset.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency first provides the employee with written notice that he/she owes a debt to the Federal Government at least 30 calendar days before salary offset is to be initiated. When Peace Corps is the creditor agency this notice of intent to offset an employee's salary shall be hand-delivered or sent by certified mail to the most current address that is available. The written notice will state:

(1) That Peace Corps has reviewed the records relating to the claim and has determined that a debt is owed, its origin and nature, and the amount of the debt;

(2) The intention of Peace Corps to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full;

(3) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(4) An explanation of the Peace Corps' policy concerning interest, penalties and administrative costs, including a statement that such assessments must be made unless excused in accordance with § 309.4(d);

(5) The employee's right to inspect and copy all records of the Peace Corps pertaining to the debt claimed or to receive copies of such records if personal inspection is impractical;

(6) The right to a hearing conducted by a hearing official (an administrative law judge, or alternatively, a hearing official not under the supervision or control of the Peace Corps) with respect to the existence and amount of the debt claimed, or the repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed in § 309.11;

(7) If not previously provided, the opportunity (under terms agreeable to the Peace Corps) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the creditor agency (4 CFR 102.2(e));

(8) The name, address and telephone number of an officer or employee of the Peace Corps who may be contacted concerning procedures for requesting a hearing;

(9) The method and time period for requesting a hearing;

(10) That the timely filing of a petition for hearing within 15 calendar days after delivery of the notice of intent to offset will stay the commencement of collection proceedings;

(11) The name and address of the office to which the petition should be sent;

(12) That the Peace Corps will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than 30 calendar days from the date of delivery of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(14) That any knowingly false or frivolous statements, representations or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of 5 U.S.C., 5 CFR 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, §§ 3729–3731 of title 31, United States Code, or any other applicable statutory authority; and

(iii) Criminal penalties under 18 U.S.C. sections 286, 287, 1001, and 1002 or any other applicable authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(17) That proceedings with respect to such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

(b) The Peace Corps is not required to comply with paragraph (a) of this section for any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

§ 309.11 Review.

(a) *Request for review.* Except as provided in paragraph (b) of this section, an employee who desires a review concerning the existence or amount of the debt or the proposed offset schedule must send a request to the office designated in the notice of intent. See § 309.10(a)(8). The request for review must be received by the designated office not later than 15 calendar days after the date of delivery of the notice as provided in § 309.10(a). The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it. The employee must also specify whether an oral hearing or a review of the documentary evidence is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(b) *Failure to timely submit.*

(1) If the employee files a petition for a review after the expiration of the 15 calendar day period provided for in paragraph (a) of this section, the designated office may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control, or because of a failure to receive the notice of the filing deadline (unless the employee has actual knowledge of the filing deadline).

(2) An employee waives the right to a review, and will have his or her disposable pay offset in accordance with Peace Corps' offset schedule, if the employee fails to file a request for a hearing unless such failure is excused as provided in paragraph (b)(1) of this section.

(3) If the employee fails to appear at an oral hearing of which he or she was notified, unless the hearing official determines failure to appear was due to circumstances beyond the employee's control, his or her appeal will be decided on the basis of the documents then available to the hearing official.

(c) *Representation at the hearing.* The creditor agency may be represented by a representative of its choice. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her expense.

(d) *Review of Peace Corps records related to the debt.*

(1) An employee who intends to inspect or copy creditor agency records related to the debt in accordance with § 309.10(a)(5), must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be sent within 15 calendar days after receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, copies of such records shall be sent to the employee.

(e) *Hearing official.* Unless the Peace Corps appoints an administrative law judge to conduct the hearing, the Peace Corps must obtain a hearing official who is not under the supervision or control of the Peace Corps.

(f) *Obtaining the services of a hearing official when the Peace Corps is the creditor agency.*

(1) When the debtor is not a Peace Corps employee, and in the event that the Peace Corps cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the Peace Corps may contact an agent of the paying agency designated in appendix A to part 581 of title 5, Code of Federal Regulations or as otherwise designated by the agency, and request a hearing official.

(2) When the debtor is a Peace Corps employee, the Peace Corps may contact any agent of another agency designated in appendix A to part 581 of title 5, Code of Federal Regulations or otherwise designated by that agency, to request a hearing official.

(g) *Procedure.* (1) If the employee requests a review, the hearing official or administrative law judge shall notify the employee of the form of the review to be provided. If an oral hearing is authorized, the notice shall set forth the date, time and location of the hearing. If the review will be on documentary evidence, the employee shall be notified that he or she should submit arguments in writing to the hearing official or administrative law judge by a specified

date, after which the record will be closed. This date shall give the employee reasonable time (not less than 14 calendar days) to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence alone (e.g. when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official or administrative law judge, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(3) *Paper review.* If the hearing official or administrative law judge determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record.

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart. See 4 CFR 102.3. Witnesses who testify in oral hearings will do so under oath or affirmation.

(h) *Date of decision.* The hearing official or administrative law judge shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 calendar days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In such case the 60 day decision period shall be extended by the number of days by which the hearing was postponed.

(i) *Content of decision.* The written decision shall include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(j) *Failure to appear.* In the absence of good cause shown (e.g., excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall schedule a new hearing date upon the request of the agency representative upon showing of good cause. Both parties shall be given the time and place of the new hearing.

§ 309.12 Certification.

(a) The Peace Corps salary offset coordination officer shall provide a certification to the paying agency in all cases where:

(1) The hearing official determines that a debt exists;

(2) The employee admits the existence and amount of the debt by failing to request a review; or

(3) The employee admits the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must state:

(1) That the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Government's right to collect the debt first accrued;

(4) That the Peace Corps' regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

(5) The amount and date of any lump sum payment;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the date of the first installment, if a date other than the next officially established pay period is required; and

(7) The date the action was taken and that it was taken pursuant to 5 U.S.C. 5514.

§ 309.13 Voluntary repayment agreements as alternative to salary offset.

(a) In response to a notice of intent, an employee may propose a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall admit the existence of the debt and set forth a proposed repayment schedule. Any proposal under this paragraph must be received by the official designated in that notice within 15 calendar days after receipt of the notice of intent.

(b) When the Peace Corps is the creditor agency, in response to a timely proposal by the debtor the agency will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the agency's discretion to accept a repayment agreement instead of proceeding by offset.

(c) If the Peace Corps decides that the proposed repayment agreement is unacceptable, the employee will have 15 calendar days from the date he or she received notice of the decision to file a petition for a review.

(d) If the Peace Corps decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing and signed by both the employee and a designated agency official.

§ 309.14 Special review.

(a) An employee subject to salary offset or a voluntary repayment agreement, may at any time request a special review by the creditor agency of the amount of the salary offset or voluntary payment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) In determining whether an offset would prevent the employee from meeting essential subsistence expenses (costs for food, housing, clothing, transportation and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in significant financial hardship to the employee.

(d) The Peace Corps shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes significant financial hardship on the employee. The Peace Corps shall notify the employee in writing of such determination, including, if appropriate, a revised offset or payment schedule.

(e) If the special review results in a revised offset or repayment schedule, the Peace Corps salary offset coordination officer shall provide a new certification to the paying agency.

§ 309.15 Notice of salary offset.

(a) Upon receipt of proper certification of the creditor agency, the Peace Corps payroll office will send the employee a written notice of salary offset. Such notice shall, at a minimum:

(1) Contain a copy of the certification received from the creditor agency; and

(2) Advise the employee that salary offset will be initiated at the next officially established pay interval.

(b) The payroll office shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 309.16 Procedures for salary offset.

(a) The Director (or designee) shall coordinate salary deductions under this subpart.

(b) The payroll office shall determine the amount of the employee's disposable pay and will implement the salary offset.

(c) Deductions shall begin within 3 official pay periods following receipt by the payroll office of certification.

(d) Types of collection. (1) *Lump-sum payment.* If the amount of the debt is equal to or less than 15 percent of disposable pay, such debt generally will be collected in one lump-sum payment.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any period may not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(3) *Lump-sum deductions from final check.* A lump-sum deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Lump-sum deductions from other sources.* Whenever an employee subject to salary offset is separated from the Peace Corps, and the balance of the debt cannot be liquidated by offset of the final salary check, the Peace Corps, pursuant to 31 U.S.C. 3716, may offset any later payments of any kind against the balance of the debt.

(e) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) *Precedence of debts owed to the Peace Corps.* For Peace Corps employees, debts owed to the agency generally take precedence over debts owed to other agencies. In the event that a debt to the Peace Corps is certified while an employee is subject to a salary offset to repay another agency, the payroll office may decide whether to have that debt repaid in full before collecting its claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed the Peace Corps can be collected in one pay period, the payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the Peace Corps' debt. When an employee owes two or more debts, the best interests of the Government shall be the primary consideration in the determination by the payroll office of the order of the debt collection.

§ 309.17 Coordinating salary offset with other agencies.

(a) *Responsibility of the Peace Corps as the creditor agency.*

(1) The Director or Director's designee shall coordinate debt collections and shall, as appropriate:

(i) Arrange for a hearing upon proper petition by a federal employee; and

(ii) Prescribe such practices and procedures as may be necessary to carry out the intent of this subpart.

(2) Designate a salary offset coordination officer who will be responsible for:

(i) Ensuring that each notice of intent to offset is consistent with the requirements of § 309.10;

(ii) Ensuring that each certification of debt sent to a paying agency is consistent with the requirements of § 309.12;

(iii) Obtaining hearing officials from other agencies pursuant to § 309.11(f); and

(iv) Ensuring that hearings are properly scheduled.

(3) Request recovery from current paying agency. Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Peace Corps must:

(i) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payments are due, the date the Government's right to collect the debt first accrued, and that the Peace Corps' regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(ii) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and give the dates the actions were taken (unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency);

(iii) Except as otherwise provided in paragraph (a)(3) of this section, submit a debt claim containing the information specified in paragraphs (a)(3) (i) and (ii) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency;

(iv) If the employee is in the process of separating, the Peace Corps must submit its debt claim to the employee's paying agency for collection as provided in § 309.16. The paying agency must certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (b)(4) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the Peace Corps must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(v) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Peace Corps may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*) or other similar funds, be administratively offset to collect the debt (See 31 U.S.C. 3716 and 41 CFR 102.4).

(4) When an employee transfers to another paying agency, the Peace Corps need not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to continue the collection. The Peace Corps must review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is continued by the new paying agency.

(b) *Responsibility of the Peace Corps as the paying agency.*

(1) *Complete claim.* When the Peace Corps receives a certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The employee must receive written notice that the Peace Corps has received a certified debt claim from the creditor agency (including the amount) and written

notice of the date salary offset will begin and the amount of such deductions.

(2) *Incomplete claim.* When the Peace Corps receives an incomplete certification of debt from a creditor agency, the Peace Corps must return the debt claim with notice that procedures under 5 U.S.C. 5514 and this subpart must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Peace Corps is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Peace Corps, the employee transfers to another agency before the debt is collected in full, the Peace Corps must certify the total amount collected on the debt. One copy of the certification must be furnished to the employee and one copy to the creditor agency along with notice of the employee's transfer.

§ 309.18 Interest, penalties and administrative costs.

The Peace Corps shall assess interest, penalties and administrative costs on debts owed pursuant to 31 U.S.C. 3717 and 4 CFR 102.13.

§ 309.19 Refunds.

(a) In instances where the Peace Corps is the creditor agency, it shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owed to the United States; or

(2) An administrative or judicial order directs the Peace Corps to make a refund.

(b) Unless required or permitted by law or contract, refunds under this subpart shall not bear interest.

§ 309.20 Request for the services of a hearing official from the creditor agency.

(a) The Peace Corps will provide a hearing official upon request of the creditor agency when the debtor is employed by the Peace Corps and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement.

(b) The Peace Corps will provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(c) The salary offset coordination officer will appoint qualified personnel to serve as hearing officials.

(d) Services rendered under this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, as amended, 31 U.S.C. 1535.

§ 309.21 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of a written contract or law unless there are statutory or contractual provisions to the contrary.

Subpart C—Tax Refund Offset

§ 309.22 Applicability and scope.

This subpart implements 31 U.S.C. 3720A which authorizes the Internal Revenue Service (IRS) to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

§ 309.23 Past-due legally enforceable debt.

For purposes of this subpart, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(a) Except in the case of a judgment debt, has been delinquent for at least 3 months and will not have been delinquent more than 10 years at the time offset is made;

(b) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514;

(c) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Peace Corps against amounts payable to the debtor by the Peace Corps;

(d) With respect to which the Peace Corps has given the taxpayer at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such taxpayer, and determined that an amount of such debt is past-due and legally enforceable;

(e) Has been disclosed by the Peace Corps to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100;

(f) Is at least $25; and

(g) With respect to which the Peace Corps has notified or has made a reasonable attempt to notify the taxpayer that:

(1) The debt is past due, and

(2) Unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax. For the purposes of paragraph (g) of this section, in order to make a reasonable attempt to notify the debtor, Peace Corps must use such address for the debtor as may be obtainable from IRS pursuant to section 6103(m)(2), (m)(4), or (m)(5) of the Internal Revenue Code.

§ 309.24 Definitions.

For purpose of this subpart:

Commissioner means the Commissioner of the Internal Revenue Service.

Memorandum of Understanding (MOU or agreement) means the agreement between the IRS and the Peace Corps which prescribes the specific conditions the Peace Corps must meet before the IRS will accept referrals for tax refund offsets.

§ 309.25 Peace Corps' participation in IRS tax refund offset program.

(a) The Peace Corps will provide information to the IRS within the time frame prescribed by the Commissioner of the IRS to enable the Commissioner to make a final determination as to the Peace Corps' participation in the tax refund offset program. Such information will include a description of:

(1) The size and age of the Peace Corps' inventory of delinquent debts;

(2) The prior collection efforts that the inventory reflects; and

(3) The quality controls the Peace Corps maintains to assure that any debt that may be submitted for tax refund offset will be valid and enforceable.

(b) In accordance with the timetable specified by the Commissioner, the Peace Corps will submit test magnetic media to the IRS, in such form and containing such data as the IRS shall specify.

(c) The Peace Corps will provide the IRS with a telephone number which the IRS may furnish to individuals whose refunds have been offset to obtain information concerning the offset.

§ 309.26 Procedures.

(a) The Chief Financial Officer (or designee) shall be the point of contact with the IRS for administrative matters regarding the offset program.

(b) The Peace Corps shall ensure that:

(1) Only those past-due legally enforceable debts described in § 309.23 are forwarded to the IRS for offset; and

(2) The procedures prescribed in the MOU between the Peace Corps and the

IRS are followed in developing past-due debt information and submitting the debts to the IRS.

(c) The Peace Corps shall submit a notification of a taxpayer's liability for past-due legally enforceable debt to the IRS on magnetic media as prescribed by the IRS. Such notification shall contain:

(1) The name and taxpayer identifying number (as defined in section 6109 of the Internal Revenue Code) of the individual who is responsible for the debt;

(2) The dollar amount of such past-due and legally enforceable debt;

(3) The date on which the original debt became past due;

(4) A statement accompanying each magnetic tape certifying that, with respect to each debt reported on the tape, all of the requirements of eligibility of the debt for referral for the refund offset have been satisfied. See § 309.23.

(d) The Peace Corps shall promptly notify the IRS to correct data submitted when the Peace Corps:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on such debt; or

(3) Receives notification that the individual owing the debt has filed for bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

(e) When advising debtors of an intent to refer a debt to the IRS for offset, the Peace Corps shall also advise the debtors of all remedial actions available to defer or prevent the offset from taking place.

§ 309.27 Referral of debts for offset.

(a) The Peace Corps shall refer to the IRS for collection by tax refund offset, from refunds otherwise payable, only such past-due legally enforceable debts owed to the Peace Corps:

(1) That are eligible for offset under the terms of 31 U.S.C. 3720A, section 6402(d) of the Internal Revenue Code, 26 CFR 301.6402–6T and the MOU; and

(2) That information will be provided for each such debt as is required by the terms of the MOU.

(b) Such referrals shall be made by submitting to the IRS a magnetic tape pursuant to § 309.26(c), together with a written certification that the conditions or requirements specified in 26 CFR 301.6402–6T and the MOU have been satisfied with respect to each debt included in the referral on such tape. The certification shall be in the form specified in the MOU.

§ 309.28 Notice requirements before offset.

(a) The Peace Corps must notify, or make a reasonable attempt to notify, the individual that:

(1) The debt is past due; and

(2) Unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any refund of overpayment of tax.

(b) The Peace Corps shall provide a mailing address for forwarding any correspondence and a contact name and telephone number for any questions.

(c) The Peace Corps shall give the individual debtor at least 60 days from the date of the notification to present evidence that all or part of the debt is not past due or legally enforceable. The Peace Corps shall consider the evidence presented by the individual and shall make a determination whether any part of such debt is past due and legally enforceable. For purposes of this subpart, evidence that collection of the debt is affected by a bankruptcy proceeding involving the individual shall bar referral of the debt to the IRS.

(d) Notification given to a debtor pursuant to paragraphs (a), (b), and (c) of this section shall advise the debtor of how he or she may present evidence to the Peace Corps that all or part of the debt is not past due or legally enforceable. Such evidence may not be referred to, or considered by, individuals who are not officials, employees, or agents of the United States in making the determination required under paragraph (c) of this section. Unless such evidence is directly considered by an official or employee of the Peace Corps, and the determination required under paragraph (c) of this section has been made by an official or employee of the Peace Corps, any unresolved dispute with the debtor as to whether all or part of the debt is past due or legally enforceable must be referred to the Peace Corps for ultimate administrative disposition, and the Peace Corps must directly notify the debtor of its determination.

Subpart D—Administrative Offset

§ 309.29 Applicability and scope.

The provisions of this subpart apply to the collection of debts owed to the United States arising from transactions with the Peace Corps. Administrative offset is authorized under section 5 of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716). These regulations are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR part 102.

§ 309.30 Definitions.

(a) *Administrative offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Person* includes a natural person or persons, profit or nonprofit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government shall be excluded.

§ 309.31 General.

(a) The Director of the Peace Corps (or designee) will determine the feasibility of collection by administrative offset on a case-by-case basis for each claim established. The Director (or designee) will consider the following issues in making a determination to collect a claim by administrative offset:

(1) Can administrative offset be accomplished?

(2) Is administrative offset practical and legal?

(3) Does administrative offset best serve and protect the interest of the U.S. Government?

(4) Is administrative offset appropriate given the debtor's financial condition?

(b) The Director (or designee) may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Director (or designee) may request another agency that holds funds payable to a Peace Corps debtor to offset the debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering the debt.

(e) Administrative offset under this subpart may not be initiated against:

(1) A debt in which administrative offset of the type of debt involved is

explicitly provided for or prohibited by another statute;

(2) Debts owed by other agencies of the United States or by any State or local Government; or

(3) Debts arising under the Internal Revenue Code of 1954; the Social Security Act; or the tariff laws of the United States.

(f) The procedures for administrative offset in this subpart do not apply to the offset of Federal salaries under 5 U.S.C. 5514.

§ 309.32 Demand for payment—notice.

(a) Whenever possible, the Peace Corps will seek written consent from the debtor to initiate immediate collection before starting the formal notification process.

(b) In cases where written agreement to collect cannot be obtained from the debtor, a formal notification process shall be followed, 4 CFR 102.2. Prior to collecting a claim by administrative offset, the Peace Corps shall send to the debtor, by certified or registered mail with return receipt, written demands for payment in terms which inform the debtor of the consequences of failure to cooperate. A total of 3 progressively stronger written demands at not more than 30 day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, or other pertinent information indicates that additional written demands would be unnecessary. In determining the timing of the demand letters, the Peace Corps should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within 1 year of the final determination of the fact and the amount of the debt. When appropriate to protect the Government's interests (for example, to prevent the statute of limitations from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(c) Before offset is made, a written notice will be sent to the debtor. This notice will include:

(1) The nature and amount of the debt;

(2) The date when payment is due (not less than 30 days from the date of mailing or hand delivery of the notice);

(3) The agency's intention to collect the debt by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(4) Any provision for interest, late payment penalties and administrative charges, if payment is not received by the due date;

(5) The possible reporting of the claim to consumer reporting agencies and the possibility that Peace Corps will forward the claim to a collection agency;

(6) The right of the debtor to inspect and copy Peace Corps' records related to the claim;

(7) The right of the debtor to request a review of the determination of indebtedness and, in the circumstances described below, to request an oral hearing from the Peace Corps;

(8) The right of the debtor to enter into a written agreement with the agency to repay the debt in some other way; and

(9) In appropriate cases, the right of the debtor to request a waiver.

(d) Claims for payment of travel advances and employee training expenses require notification prior to administrative offset as described in this section. Because no oral hearing is required, notice of the right to a hearing need not be included in the notification.

§ 309.33 Debtor's failure to respond.

If the debtor fails to respond to the notice described in § 309.32 (c) by the proposed effective date specified in the notice, the Peace Corps may take further action under this part or the FCCS under 4 CFR parts 101 through 105. Peace Corps may collect by administrative offset if the debtor:

(a) Has not made payment by the payment due date;

(b) Has not requested a review of the claim within the agency as set out in § 309.34; or

(c) Has not made an arrangement for payment by the payment due date.

§ 309.34 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of the debt, or the terms of repayment. A request to review a disputed debt must be submitted to the Peace Corps official who provided notification within 30 calendar days of the receipt of the written notice described in § 309.32(c).

(b) The Peace Corps will provide a copy of the record to the debtor and advise him/her to furnish available evidence to support his or her position. Upon receipt of the evidence, the Peace Corps will review the written record of indebtedness and inform the debtor of its findings.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's accounts maintained by the Peace Corps may be temporarily suspended. Depending on the type of transaction the suspension could preclude its payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be immediately lifted.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1966, as amended, will continue to accrue.

§ 309.35 Hearing.

(a) A debtor will be provided a reasonable opportunity for an oral hearing when:

(1)(i) By statute, consideration must be given to a request to waive the indebtedness;

(ii) The debtor requests waiver of the indebtedness; and

(iii) The waiver determination rests on an issue of creditability or veracity; or

(2) The debtor requests reconsideration and the Peace Corps determines that the question of indebtedness cannot be resolved by reviewing the documentary evidence.

(b) In cases where an oral hearing is provided to the debtor, the Peace Corps will conduct the hearing, and provide the debtor with a written decision.

§ 309.36 Written agreement for repayment.

If the debtor requests a repayment agreement in place of offset, the Peace Corps has discretion and should use sound judgment to determine whether to accept a repayment agreement in place of offset. If the debt is delinquent and the debtor has not disputed its existence or amount, the Peace Corps will not accept a repayment agreement in place of offset unless the debtor is able to establish that offset would cause undue financial hardship or be unjust. No repayment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of the Peace Corps' request for the statement. At the Peace Corps' option, a confess-judgment note or bond of indemnity with surety may be required for installment agreements. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR part 103 and 31 CFR 5.3.

§ 309.37 Administrative offset procedures.

(a) If the debtor does not exercise the right to request a review within the time

specified in § 309.34, or if as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance with this subpart without further notice.

(b) *Travel advance.* The Peace Corps will deduct outstanding advances provided to Peace Corps travelers from other amounts owed the traveler by the agency whenever possible and practicable. Monies owed by an employee for outstanding travel advances which cannot be deducted from other travel amounts due that employee, will be collected through salary offset as described in subpart B of this part.

(c) *Volunteer allowances.* The Peace Corps may deduct through administrative offset amounts owed the U.S. Government by Volunteers and Trainees from the readjustment allowance account.

(1) Overseas posts will obtain written consent from Volunteers or Trainees who are indebted to the agency upon close of service or termination, to deduct amounts owed from their readjustment allowances. Posts will immediately submit the written consent to Volunteer and Staff Payroll Services Division (VSPS).

(2) In cases where written consent from indebted Volunteers or Trainees cannot be obtained, overseas posts will immediately report the documented debts to VSPS. VSPS may then initiate offset against the readjustment allowance. Prior to offset action, VSPS will notify the debtor Volunteer or Trainee of their rights as required in § 309.32.

(d) *Requests for offset to other Federal agencies.* The Director or his or her designee may request that a debt owed to the Peace Corps be administratively offset against funds due and payable to a debtor by another Federal agency. In requesting administrative offset, the Peace Corps, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That the Peace Corps has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

(e) *Requests for offset from other Federal agencies.* Any Federal agency may request that funds due and payable to its debtor by the Peace Corps be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Peace Corps shall initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency:

(i) That the debtor owes the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review.

(2) A determination by the Peace Corps that collection by offset against funds payable by the Peace Corps would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law.

§ 309.38 Civil and Foreign Service Retirement Fund.

(a) Unless otherwise prohibited by law, Peace Corps may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund, the Foreign Service Retirement Fund or any other Federal retirement fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments, debts owed the United States by the debtor. Such requests shall be made to the appropriate officials of the respective fund servicing agency in accordance with such regulations as may be prescribed by the Director of that agency. The requests for administrative offset will certify in writing the following:

(1) The debtor owes the United States a debt and the amount of the debt;

(2) The Peace Corps has complied with applicable regulations and procedures;

(3) The Peace Corps has followed the requirements of the FCCS as described in this subpart.

(b) Once Peace Corps decides to request offset under paragraph (a) of this section, it will make the request as soon as practical after completion of the applicable procedures in order that the fund servicing agency may identify and flag the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the fund. This will satisfy any requirements that offset will be initiated prior to expiration of the statute of limitations.

(c) If Peace Corps collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, Peace Corps shall act promptly to modify or terminate its request for offset.

(d) This section does not require or authorize the fund servicing agency to review the merits of Peace Corps' determination relative to the debt.

§ 309.39 Jeopardy procedure.

The Peace Corps may effect an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by § 309.32(c) of this subpart if failure to take the offset would substantially jeopardize the Peace Corps' ability to collect the debt, and the time available before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Peace Corps shall be promptly refunded.

Subpart E—Use of Consumer Reporting Agencies and Referrals to Collection Agencies

§ 309.40 Use of consumer reporting agencies.

(a) The Peace Corps may report delinquent debts to consumer reporting agencies (see 31 U.S.C. 3701(a)(3)). Sixty days prior to release of information to a consumer reporting agency, the debtor shall be notified, in writing, of the intent to disclose the existence of the debt to a consumer reporting agency. Such notice of intent may be separate correspondence or included in correspondence demanding direct payment. The notice shall be in conformance with 31 U.S.C. 3711(f) and the Federal Claims Collection Standards.

(b) The information that may be disclosed to the consumer reporting agency is limited to:

(1) The debtor's name, address, social security number or taxpayer identification number, and any other information necessary to establish the identity of the individual;

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

(3) The Peace Corps program or activity under which the claim arose.

§ 309.41 Referrals to collection agencies.

(a) Peace Corps has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(c) and the FCCS (4 CFR 102.6).

(b) Peace Corps will use private collection agencies where it determines that their use is in the best interest of

the Government. Where Peace Corps determines that there is a need to contract for collection services, the contract will provide that:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter to the Department of Justice for litigation or to take any other action under this Part will be retained by the Peace Corps;

(2) Contractors are subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m) and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor is required to strictly account for all amounts collected;

(4) The contractor must agree that uncollectible accounts shall be returned with appropriate documentation to enable Peace Corps to determine whether to pursue collection through litigation or to terminate collection;

(5) The contractor must agree to provide any data in its files relating to paragraphs (a) (1), (2) and (3) of section 105.2 of the Federal Claims Collection Standards upon returning the account to Peace Corps for subsequent referral to the Department of Justice for litigation.

(c) Peace Corps will not use a collection agency to collect a debt owed by a current employed or retired Federal employee, if collection by salary or annuity offset is available.

Subpart F—Compromise, Suspension or Termination and Referral of Claims

§ 309.42 Compromise.

Peace Corps may attempt to effect compromise in accordance with the standards set forth in part 103 of the FCCS (4 CFR part 103).

§ 309.43 Suspending or terminating collection.

Suspension or termination of collection action shall be made in accordance with the standards set forth in Part 104 of the FCCS (4 CFR 104)

§ 309.44 Referral of claims.

Claims on which an aggressive collection action has been taken and which cannot be collected, compromised or on which collection action cannot be suspended or terminated under parts 103 and 104 of the FCCS (4 CFR parts 103 and 104), shall be referred to the General Accounting Office or the Department of Justice, as appropriate, in accordance with the procedures set forth in part 105 of the FCCS (4 CFR part 105).

Barbara Zartman,

Acting Director, Peace Corps of the United States.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 100

Discriminatory Conduct Under the Fair Housing Act

CFR Correction

In title 24 of the Code of Federal Regulations, parts 1-199, revised as of April 1, 1992, on page 786, in § 100.135, paragraph (c) was incorrectly printed and paragraph (d) was inadvertently omitted. The correct paragraphs (c) and (d) appear as follows:

§ 100.135 Unlawful practices in the selling, brokering or appraising of residential real property.

* * * * *

(c) Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

(d) Practices which are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status or national origin.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP St. Louis Regulation 92-10]

Safety Zone Regulations; Upper Mississippi River Mile 202.1 through 202.6

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River, from Mile 202.1 through 202.6, to protect commercial traffic and private vessels from hazards associated with construction of the Clark Highway Bridge. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation is effective daily, from November 6, 1992 through April 30, 1993 between the hours of 7 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Commander Scott Cooper, Captain of the Port, St. Louis, Missouri at 314-539-3823.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying the effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of vessels operating in the regulated area.

Drafting Information

The drafter of this regulation is MSTC M.G. Bryan, project officer for the Captain of the Port.

Discussion of Regulation

This regulation is required to protect commercial traffic and private vessels from hazards associated with construction of the Clark Highway Bridge spanning the Mississippi River. The event requiring this regulation will begin on November 6, 1992 and will conclude on April 30, 1993. Entry into this zone between 7 a.m. and 5 p.m. will be prohibited at various times and dates during the construction period. The M/V MISS JAN will be on scene to update closure periods as conditions warrant. Questions can be directed to the M/V MISS JAN on VHF channels 13 and 16. Reopening broadcasts will be made by M/V MISS JAN. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of 33 CFR part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows: