(ii) * * * In those instances, assumption may be on NP terms only, in accordance with subpart J of part 1951 of this chapter. * * *

* * * * *

(d) *Assumption on NP terms.* When a borrower sells or proposes to sell security property and the purchaser does not meet the eligibility requirements for an RH loan, or the property is not suited for retention in the housing program, the debt may be assumed on NP terms in accordance with subpart J of part 1951 of this chapter.

* * * * *

Dated: June 29, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–24834 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–07–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is repealing provisions of its regulations on the ethical conduct of employees. These provisions are superseded by Office of Government Ethics ("OGE") rules set forth in 5 CFR part 2635 and part 2634. In a related action, the Commission is today issuing jointly with OGE supplemental regulations which the Commission has determined are necessary and appropriate to fulfill the purposes of part 2635. These supplemental regulations will be codified in 5 CFR part 5100 of chapter XLI, and concern restrictions on financial interests and transactions and on outside employment and activities.

The Commission is not repealing those provisions of its conduct regulations in 17 CFR part 140 which the CFTC has authority to issue independent of the OGE ethics rules. These provisions will continue to apply to the conduct of Commission members and employees. The Commission is, however, revising certain aspects of these rules to conform to current agency administrative practice and to reflect statutory and regulatory changes that have occurred since Subpart C of part 140 was last amended.

This action relates solely to the Commission's organization, procedure, and practice.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Larry D. Gasteiger, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION: On August 7, 1992, OGE issued new Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. These standards of conduct, effective February 3, 1993, supersede the Commission's part 140 conduct regulations promulgated pursuant to 5 CFR part 735. The new standards also authorize agencies to issue (jointly with OGE) "supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes" of part 2635.

Accordingly, the Commission is repealing those provisions of part 140 that have been superseded: §§ 735–2 through 735–3, 735–5 (other than paragraph (a)(1)), 735–6, 735–8, 735–11, and 735–13 through 735–15. In connection with the repeal of most of § 735–5 (Non-governmental employment and other outside activity), the CFTC is jointly issuing with OGE a regulation that will supplement 5 CFR part 2635 Subpart H (Outside Activities). As is the case under existing § 735–5, the supplemental regulation sets forth procedures for CFTC employees to obtain prior approval of certain outside activities. The rule also includes exceptions, under specified circumstances, for special government employees that were formerly contained in § 735–13.

Additionally, the Commission is repealing § 735–7 (Statement of financial interests and outside employment; certification of compliance) to reflect OGE rules in 5 CFR part 2634, which, effective October 5, 1992, superseded the prior executive branch confidential reporting regulations at 5 CFR part 735, subpart D, § 735.106, and agencies' implementing regulations. Further, in connection with the repeal of § 735–13, which applied to special government employees, the obligation of such employees to file financial disclosure reports is also covered by OGE rules codified in 5 CFR part 2634.

As noted above, the government-wide conduct regulations issued by OGE do not supersede regulations that an agency has separate authority, independent of 5 CFR part 2635, to issue. Accordingly, the Commission is retaining 17 CFR 735–1 (Authority and purpose), 735–4 (restrictions on business and financial transactions and interests), 735–5(a)(1) (restrictions on accepting employment or compensation from persons regulated by the Commission), 735–8A (Receipt and disposition of foreign gifts and decorations), 735–9 (Disclosure of information), 735–10 (Practice by former members and employees of the Commission), 735–12 (Statutory violations applicable to conduct of Commission members and employees), and 735–16 (Interpretative and advisory service). These provisions have been renumbered and, in some cases, revised to reflect recent amendments to the Commodity Exchange Act and other pertinent statutes.

The Commission has determined that these rules relate solely to agency organization, procedure, and practice. Therefore, the provisions of the Administrative Procedure Act, as codified, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation, are not applicable. Since the OGE rules became effective on October 5, 1992 and February 3, 1993, the Commission further finds that there is good cause to make these rules effective upon publication in the **Federal Register.**

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Public Law No. 96–354, 94 Stat. 1164 (1980), 5 U.S.C. 601 *et seq.*, requires each federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. The Commission has determined that the provisions of the RFA do not apply to the promulgation of these regulations since they relate solely to agency procedure or practice.

Paperwork Reduction Act

The Paperwork Reduction Act of 1989 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission has determined that this rulemaking does not impose any information collection requirements as defined by the PRA.

List of Subjects in 17 CFR Part 140

Conflict of interests, Ethics, Organizations and functions.

PART 140—[AMENDED]

Subpart C—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

1. The authority citation for part 140, subpart C, is revised to read as follows:

Authority: 7 U.S.C. 4a (f) and (j), 12a(5), and 13.

2. Section 140.735–1 is revised to read as follows:

§ 140.735–1 Authority and purpose.

This subpart sets forth specific standards of conduct required of members, employees, and special government employees, and regulations concerning former members, employees, and special government employees of the Commodity Futures Trading Commission. These rules are separate from and in addition to the Office of Government Ethics' conduct rules, Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Commission's supplemental rules set forth in 5 CFR part 5100. In addition, this subpart contains references to various statutes governing employee conduct in order to aid members and employees in their understanding of statutory restrictions and requirements.[1]

§§ 140.735–2, 140.735–3 [Removed]

3. Sections 140.735–2 and 140.735–3 are removed.

4. Section 140.735–4 is redesignated Section 140.735–2 and revised to read as follows:

§ 140.735–2 Business and financial transactions and interests.

(a) *Application.* This section applies to all transactions effected by or on behalf of a Commission member or employee, including transactions for the account of other persons effected by the member or employee, directly or indirectly under a power of attorney or otherwise. Since this section applies to "indirect" participation in transactions, a member or employee is considered to have sufficient interest in the transactions of the spouse or minor child of the member or employee, or other relatives who are residents of the immediate household of the member or employee, so that such transactions must be reported and, absent compelling countervailing reasons, are subject to all the terms of this section.

(b) *Prohibitions.* No Commission member or employee shall:

(1) Participate, directly or indirectly, in any transaction—

(i) Involving a contract of sale of any commodity for future delivery;

(ii) Involving any commodity that is of the character of, or is commonly known to the trade as, an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty; or

(iii) For the delivery of any commodity that is or is to be executed pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract or similar contracts when subject to regulation by the Commission under section 19 of the Act; except that the prohibitions in paragraphs (b)(1) (i) and (ii) of this section shall not apply to:

(A) A transaction in connection with a farming, ranching, oil and gas, mineral rights or other natural resource operation in which the Commission member or employee has a financial interest, if the Commission member or employee is not involved in the decision to engage in, and does not have prior knowledge of, the actual futures or option transaction and has previously notified the General Counsel in writing of the nature of the operation, the extent of the member's or employee's interest, the types of transactions in which the operation may engage and the identity of the person or persons who will make trading decisions for the operation; or

(B) A transaction entered into by any investment company (*e.g.*, a mutual fund) or similar pooled investment entity other than one operated by a person who is a commodity pool operator with respect to that entity, in which the direct or indirect ownership interest of the Commission member or employee is limited to and represents less than 1 per cent of the total ownership interest of the fund or entity and with which the Commission member or employee has no other relationship;[2]

(2) Participate, directly or indirectly, in any investment transaction involving an actual commodity if:

(i) The transaction involves the use of nonpublic information, or

(ii) The transaction is effectuated by an instrument regulated by the Commission, and is not in connection with a transaction permitted under paragraph (b)(1) of this section, or

(iii) The transaction is effected by an instrument functionally equivalent to an instrument regulated by the Commission;[3]

(3) Have a beneficial interest, through ownership of securities or otherwise, in any person[4] regulated by the Commission,[5] such as a contract market or clearinghouse or member thereof, a registered futures commission merchant,[6] any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor or commodity pool operator, or any other person required to be registered in a fashion similar to any of the above under the Commodity Exchange Act or pursuant to any rule or

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[1] These references, however, do not purport to cover all restrictions and requirements, and the paraphrased restatements of statutory provisions, such as that of 18 U.S.C. 201, *et seq.*, appearing in this subpart C, are not intended to be, and should not be construed as, verbatim quotations of the law. The statutory text should be consulted in any situation in which it might apply.

[2] Attention is directed to section 9(c) of the Commodity Exchange Act, which makes it a felony for any member or employee of the Commission, or agent thereof, to participate, directly or indirectly, in, *inter alia*, any commodity futures, option or leverage transaction, unless authorized to do so by Commission rule or regulation. Attention is also directed to 17 CFR 4.5, which excludes certain otherwise regulated persons from the definition of "commodity pool operator" with respect to the operation of specific investment entities enumerated in the regulation.

Although not required, if they choose to do so, Commission members or employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of, futures or option transactions permitted under paragraph (b)(1)(A) of this section. A Commission member or employee considering such arrangements should consult with the Office of the General Counsel in advance for approval. Should a Commission member or employee gain knowledge of an actual futures or option transaction that has already taken place and the market position represented by that transaction still remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from pending matters involving that market, may be appropriate.

[3] Attention is directed to section 9(c) of the Commodity Exchange Act which provides, among other things, that it shall be a felony for any Commission member or employee to participate in any investment transaction in an actual commodity that the Commission by rule or regulation has prohibited to Commission members and employees. A transaction involving an instrument that is the "functional equivalent to an instrument regulated by the Commission" would include, for example, but is not limited to, a transaction in a stock index effectuated through the purchase or sale of an option traded on a national securities exchange where the stock index also underlies a futures contract regulated by the Commission. Attention is also directed to § 140.735–8 of this subpart for information regarding interpretative and advisory service by the General Counsel of the Commission.

[4] As defined in section 1a(16) of the Commodity Exchange Act and 17 CFR 1.3(u) thereunder, a "person" includes an individual, association, partnership, corporation, and a trust.

[5] Attention is directed to sections 2(a)(7) and 9(c) of the Commodity Exchange Act. See footnotes 1, 2, and 8 to this subpart.

[6] This provision does not, however, preclude a member or employee from carrying securities on margin, pursuant to customary margin requirements, with a broker who is also a registered futures commission merchant, or engaged in the trading of commodity options, or commodity leverage transactions.

regulation promulgated by the Commission;

(4) Have a significant beneficial interest, through ownership of securities or otherwise, in any other person required to file reports under the Commodity Exchange Act or pursuant to any rule or regulation promulgated by the Commission;[7] or

(5) Purchase or sell any securities of a company which, to his knowledge, is involved in any:

(i) Pending investigation by the Commission;

(ii) Proceeding before the Commission or to which the Commission is a party; or

(iii) Other matter under consideration by the Commission that could significantly affect the company.

5. Section 140.735–5 is redesignated 140.735–3 and revised to read as follows:

§ 140.735–3 Non-governmental employment and other outside activity.

A Commission member or employee shall not accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission. For purposes of this section, a person subject to regulation by the Commission includes but is not limited to a contract market or clearinghouse or member thereof, a registered futures commission merchant, any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator or any person required to be registered in a fashion similar to any of the above or file reports under the Act or pursuant to any rule or regulation promulgated by the Commission.[8]

§§ 140.735–6–140.735–8 [Removed]

6. Sections 140.735–6 through 140.735–8 are removed.

§ 140.735–8A [Redesignated as § 140.735–4]

7. Section 140.735–8A Receipt and disposition of foreign gifts and decorations is redesignated § 140.735–4.

§ 140.735–9 [Redesignated as § 140.735–5]

8. Section 140.735–9 is redesignated § 140.735–5 and revised to read as follows:

§ 140.735–5 Disclosure of information.

A Commission employee or former employee shall not divulge, or cause or allow to be divulged, confidential or non-public commercial, economic or official information to any unauthorized person, or release such information in advance of authorization for its release.[9] Except as directed by the Commission or its General Counsel as provided in these regulations, no Commission employee or former employee is authorized to accept service of any subpoena for documentary information contained in or relating to the files of the Commission. Any employee or former employee who is served with a subpoena requiring testimony regarding non-public information or documents shall, unless the Commission authorizes the disclosure of such information, respectfully decline to disclose the information or produce the documents called for, basing his refusal on these regulations.[10] Any employee or former employee who is served with a subpoena calling for information regarding the Commission's business shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making such information or document available in the public interest.[11] In any proceeding in which the Commission is not a party, no employee of the Commission shall testify concerning matters related to the business of the Commission unless authorized to do so by the Commission.

§ 140.735–10 [Redesignated as § 140.735–6]

9. Section 140.735–10 is redesignated § 140.735–6 and revised to read as follows:

§ 140.735–6 Practice by former members and employees of the Commission.

(a) Personal and substantial participation or nonpublic knowledge of a particular matter. No person who has been a member or employee of the Commission shall ever knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with any particular matter involving a specific party or parties[12] in which such person, or one participating with him or her in the particular matter, participated personally and substantially, or gained nonpublic knowledge of facts thereof, while with the Commission.[13]

(b) Particular matter under an individual's official responsibility. No person who has been a member or employee of the Commission shall,

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[7] For purposes of this section, the Office of the General Counsel normally views "significant" ownership as being 10 per cent or more of the outstanding securities of a firm or a $25,000 total investment in a firm, regardless of the percentage of stock owned. The Office has also noted that each investment must be considered on a case-by-case basis and that an investment level in excess of $25,000 may not be "significant" in the case of a large company.

[8] Attention is directed to section 2(a)(7) of the Commodity Exchange Act, which provides, among other things, that no Commission member or employee shall accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.

[9] Attention is directed to section 9(d) of the Commodity Exchange Act, which provides that it shall be a felony punishable by a fine of not more than $500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity future or commodity and which information has not been promptly made public, to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty, or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract, or under any contract or other arrangement that the Commission determines to serve the same function or is marketed in the same manner as such standardized contract, and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any of the foregoing transactions.

[10] No employee shall disclose such information unless directed to do so by the Commission.

[11] The prohibitions regarding confidential or nonpublic information stated above are intended to cover the matters addressed in sections 4(c), 8, and 9(d) of the Commodity Exchange Act as well as nonpublic information under the Freedom of Information Act, 5 U.S.C. 552, the rules of the Commission thereunder, 17 CFR Part 145, the Privacy Act, 5 U.S.C. 552a, the rules of the Commission thereunder, 17 CFR Part 146, and cases where, apart from specific prohibitions in any statute or rule, the disclosure or use of such information would be unethical.

[12] The phrase "particular matter involving a specific party or parties" does not apply to general rulemaking, general policy and standards formulation or other similar matters. *See* § 2637.201(c)(1) of the regulations of the Office of Government Ethics, 5 CFR 2637.201(c)(1); *cf.*, memorandum of the Attorney General dealing with the conflict-of-interest provisions prior to amendment by the Ethics in Government Act (reproduced following 18 U.S.C. 201).

[13] Attention is directed to 18 U.S.C. 207(a)(1), as amended, which generally prohibits former Federal officers and employees permanently from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while with the government.

within two years after that employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with a particular matter involving a specific party or parties which was actually pending under his official responsibility as a member or employee of the Commission at any time within one year prior to the termination of government service.[14]

(c) Restrictions on former members and senior employees. A former member or employee of the Commission who occupied a "senior" position specified in 18 U.S.C. 207(c)(2), as amended, shall not within one year after such "senior" employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission on behalf of any other person in connection with any matter in which such person seeks official action by the Commission.[15]

[14] Attention is directed to 18 U.S.C. 207(a)(2), as amended. Section 207(a)(2) generally prohibits former Federal officers and employees, within two years after their Federal employment has ceased, from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and which was actually pending under the official responsibility of the former officer or employee within one year prior to the termination of government service.

As used in paragraph (b) of this section, the term "official responsibility" has the meaning assigned to it in 18 U.S.C. 202(b), namely, the "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

[15] Attention is directed to 18 U.S.C. 207(c), as amended, which places restrictions on the representational activities of certain senior officers and employees after their departure from a senior position. Section 207(c) generally makes it unlawful for one year after service in a "senior" position terminates for a former "senior" Federal employee to knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one year period prior to termination from "senior" service, if that communication or appearance is on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that employee.

Note that the one year period is measured from the date when the employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously. This provision prohibits communications to or appearances before the Government and does not prohibit "behind-the-scenes" assistance. The restriction does not require that the former employee has ever been in any way involved in the matter that is the subject of the communication or appearance. The restriction applies with respect to any matter, whether or not involving a specific party.

(d) Exceptions. The prohibitions contained in paragraphs (a), (b), and (c) of this section do not apply to communications solely for the purpose of furnishing scientific or technological information if approved by the Commission or generally to giving testimony under oath or making a statement which is subject to penalty or perjury. Further, the prohibition contained in paragraph (c) of this section does not apply to an uncompensated statement in a particular area within the special knowledge of the former Commission member or employee.[16]

(e) Reporting requirement. Any former member or employee of the Commission who, within two years after ceasing to be such, is employed or retained as the representative of any person (except the United States) in connection with a matter in which it is contemplated that he will appear before or communicate with the Commission shall, within ten days of such retainer or employment, or of the time when appearance before or communication with the Commission is first contemplated, file with the General Counsel of the Commission a statement as to the nature thereof together with any desired explanation as to why it is deemed consistent with this section. Employment of a recurrent character may be covered by a single comprehensive statement. Each such statement should include an appropriate caption indicating that it is filed pursuant to this section. The reporting requirement of this paragraph does not apply to communications incidental to court appearances in litigation involving the Commission.

(f) Definitions. As used in this section, the phrase "appearance before the Commission" means any formal or informal appearance on behalf of any person (except the United States) before the Commission, or any member or employee thereof with an intent to influence. As used in this section, the phrase "communication with the Commission" means any oral or written communication made to the Commission, or any member or employee thereof, on behalf of any person (except the United States) with an intent to influence.

(g) Advisory ruling. Persons in doubt as to the applicability of this section may apply for an advisory ruling by addressing a letter requesting such a ruling to the General Counsel.

(h) Procedures for administrative enforcement of statutory restrictions on post-government employment conflicts of interest.[17] (1) Scope. The provisions of this paragraph prescribe procedures for administrative enforcement of the restrictions which 18 U.S.C. 207 (a), (b), and (c), as amended, place on appearances before or communications with Federal (and District of Columbia) departments, agencies and courts, and other enumerated entities, as well as the officers and employees thereof, by former Commission members and employees.

(2) Investigations. The General Counsel of the Commission, or his or her designee, shall conduct such investigations as he or she deems appropriate to determine whether any former Commission member or employee have violated 18 U.S.C. 207 (a), (b) or (c), as amended. The General Counsel shall report the results of his or her investigations to the Commission and shall recommend to the Commission such action as he or she deems appropriate.

(3) Hearings. Hearings required to be held under the provisions of this section shall be held before an Administrative Law Judge, utilizing the procedures prescribed by the Commission's rules of practice for adjudicatory proceedings (17 CFR Part 10), except to the extent that those rules are inconsistent with the provisions of this section. Any proceeding brought under the provisions of this section shall be prosecuted by the General Counsel or his or her designee.

(4) Sanctions. If the Commission finds, after notice and opportunity for a hearing, that a former Commission member or employee has violated 18 U.S.C. 207 (a), (b) or (c), as amended, the Commission may prohibit that person from making, on behalf of any other person (except the United States), any formal or informal appearance before, or with the intent to influence any oral or written communication to, the Commission on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 140.735–11 [Removed]

10. Section 140.735–11 is removed.

§ 140.735–12 [Redesignated as § 140.735–7]

11. Section 140.735–12 is redesignated § 140.735–7 and revised to read as follows:

[16] Attention is directed to 18 U.S.C. 207(j), as amended (listing other exceptions). Self-representation is not prohibited under Section 207.

[17] This section does not apply to employees who leave service after December 31, 1990.

§ 140.735–7 Statutory violations applicable to conduct of Commission members and employees.

A violation of Section 2(a)(7), 8 or 9 (c) or (d) of the Commodity Exchange Act, as amended, shall be deemed to be a violation of this subpart as well.

§§ 140.735–13—140.735–15 [Removed]

12. Sections 140.735–13 through 140.735–15 are removed.

§ 140.735–16 [Redesignated as § 140.735–8]

13. Section 140.735–16 is redesignated § 140.735–8 and revised to read as follows:

§ 140.735–8 Interpretative and advisory service.

(a) *Counselor for the Commission.* The General Counsel, or his or her designee, will serve as Counselor for the Commission and as the Commission's representative to the Office of Government Ethics, on matters covered by this subpart. The General Counsel will also serve as the Commission's designated agency ethics official to review the financial reports filed by high-level Commission officials under Title II of the Ethics in Government Act, as well as otherwise to coordinate and manage the Commission's ethics program.

(b) *Duties of the Counselor.* The Counselor shall:

(1) Coordinate the agency's counseling services and assure that counseling and interpretations on questions of conflict of interests and other matters covered by the regulations in this subpart are available as needed to Regional Deputy Counselors, who shall be appointed by the General Counsel, in coordination with the Chairman of the Commission, for each Regional Office of the Commission;

(2) Render authoritative advice and guidance on matters covered by the regulations in this subpart which are presented to him or her by employees in the Washington, D.C. headquarters office; and

(3) Receive information on, and resolve or forward to the Commission for consideration, any conflict of interests or apparent conflict of interests which appears in the Statements of Employment and Financial Interests submitted under this subpart, which is not resolved by the Director of Personnel, and any other conflict of interests or apparent conflict of interests which otherwise appears.

(c) *Regional Deputy Counselors.* Regional Deputy Counselors shall:

(1) Give advice and guidance as requested to the employees assigned to their respective Regional Offices; and

(2) Receive information on and refer to the Director of Personnel, any conflict of interests or appearance of conflict of interests in Statements of Employment and Financial Interests submitted by employees to whom they are required to give advice and guidance.

(d) *Confidentiality of communications.* Communications between the Counselor and Regional Deputy Counselors and an employee shall be confidential, except as deemed necessary by the Commission or the Counselor to carry out the purposes of this subpart and of the laws of the United States.[18]

(e) *Furnishing of conduct regulations.* The Director of Personnel shall furnish a copy of this Conduct Regulation to each member, employee, and special government employee immediately upon his or her entrance on duty and shall thereafter, annually, and at such other times as circumstances warrant, bring to the attention of each member and employee this Conduct Regulation and all revisions thereof.

(f) *Availability of counseling services.* The Director of Personnel shall notify each member, employee, and special government employee of the availability of counseling services and of how and where these services are available at the time of entrance on duty and periodically thereafter.

Issued in Washington, DC, on September 27, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–24656 Filed 10–8–93; 8:45 am]

BILLING CODE 6351–01–M

[18] No attorney-client privilege, however, attaches to such communications since the Counselors are counsel to the Commission, not to the employee. Thus, any evidence of criminal law violations divulged by an employee to the Counselor must be reported by the latter to the Commission, which may refer the matter to the Criminal Division of the Department of Justice and the United States Attorney in whose venue the violations lie.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–8–000]

Revisions to Regulations Implementing Section 5 of the Outer Continental Shelf Lands Act

Issued October 4, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending certain regulations and removing certain other regulations which were promulgated to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA). Section 5 of the OCSLA requires open access, nondiscriminatory transportation of natural gas on the Outer Continental Shelf (OCS).

Among other things, the Commission is removing the regulations governing the OCSLA capacity allocation program, and the regulation which provides for abandonment authority. In Order No. 636, the Commission established a capacity release program which is applicable for all transportation services provided by interstate pipelines that hold a Part 284 blanket transportation certificate, including OCS transactions. Hence, the Commission proposes to remove the Order No. 509 capacity allocation regulations.

EFFECTIVE DATE: November 1, 1993.

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

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

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule 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.

Order No. 559

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending certain regulations and removing certain

other regulations which were promulgated to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA).[1] Section 5 of the OCSLA requires open-access, nondiscriminatory transportation of natural gas on the Outer Continental Shelf (OCS). The pertinent regulations were promulgated in Order No. 509,[2] and are contained in Subpart K of part 284 of the Commission's regulations.[3] The amendments to the regulations will become effective on November 1, 1993.

Among other things, the Commission is removing the regulations governing the OCSLA capacity allocation program,[4] and the regulation which provides for abandonment authority.[5] In Order No. 636,[6] the Commission established a capacity release program which is applicable for all transportation services provided by interstate pipelines that hold a Part 284 blanket transportation certificate, including OCS transactions. With implementation of the Order No. 636 capacity release program, the Order No. 509 capacity allocation program will become obsolete. Therefore, the Commission is removing the Order No. 509 capacity allocation regulations. However, existing Order No. 509 allocations will be subsumed by the pipeline's new Order No. 636 capacity release program so that these existing arrangements will not be unnecessarily disturbed.

As discussed more fully below, this rulemaking also resolves the matters raised in a related court order remanding certain orders to the Commission for further consideration.[7] In the remanded orders, the Commission had applied the newly-promulgated Order No. 509 regulations to Tennessee Gas Pipeline Company (Tennessee).

II. Reporting Requirements

By this final rule, the Commission is amending its regulations to eliminate duplicative requirements that currently exist under the Order No. 509 capacity allocation program and under the Order No. 636 capacity release program. The Order No. 636 regulations established a capacity release program applicable to all interstate transactions, both offshore and onshore; therefore, the information requirements under Order No. 509 have been subsumed by the Order No. 636 regulations. Thus, there is no change in the OCS information requirements and no change in reporting burden.

The Commission estimates that the public reporting burden will not change with the adoption of this final rule. The current average burden estimate of 225.34 hours per response/filling under FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal), (1902–0154) is representative of the burden required for an average non-formal rate filing. The per filing estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden associated with the collection of OCS transportation information, was estimated to total 10,320 hours when Order No. 509 was first issued. The only Order No. 509 burden was a one-time filing that has since been completed. That burden reduction has been reflected in previous FERC–545 submissions to the Office of Management and Budget (OMB). Thus, the one-time Order No. 509 burden is not part of the current FERC–545 total burden. The total burden for 100 pipelines companies providing information under FERC–545 is expected to remain unchanged at 757 filings and 170,585 hours annually.

The Commission is notifying OMB of this amendments. Interested persons may send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this order can also be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–6880].

III. Background

On April 21, 1993, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this docket[8] which proposed to amend the Commission's existing regulations to conform with the regulations adopted in Order No. 636. A companion order to the NOPR was issued[9] which determined that the matters remanded to the Commission by the Court of Appeals for the District of Columbia Circuit would be resolved by this rulemaking.[10]

In the NOPR, the Commission ascertained that, as a result of the implementation of the Order No. 636 capacity release programs, the OCSLA capacity allocation program would become redundant. Also, since the Order No. 636 capacity release program is applicable to all interstate transactions, including those occurring on the OCS, the Commission further determined that conflict and/or confusion could arise as to which program should be applied to OCS transactions. The Commission decided that one uniform capacity release program applicable to all interstate transactions, offshore and onshore, would best serve the public interest. Hence, the Commission proposed to remove the regulations authorizing the Order No. 509 capacity allocation programs.[11]

The Commission also proposed to remove the Order No. 509 regulations, provided at 18 CFR 284.305, which required OCS pipelines to make certain rate filings needed to implement Order

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[1] 43 U.S.C. 1334.

[2] Order No. 509, Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf, FERC Stats. & Regs. Preambles ¶ 30,842 (1988), 53 FR 50,925 (Dec. 9, 1988), *order on rehearing*, Order No. 509–A, FERC Stats. & Regs. Preambles ¶ 30,847 (1989), 54 FR 8301 (Feb. 17, 1989).

[3] 18 CFR 284.301–284.305.

[4] 18 CFR 284.304.

[5] 18 CFR 284.303(c)(3).

[6] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13,267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992); *Order on reh'g*, Order No. 636–A, 57 FR 36,128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992), *order on reh'g*, Order No. 636–B, 57 FR 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992).

[7] *Tennessee Gas Pipeline Company* v. *FERC*, 972 F.2d 376 (D.C. Cir. 1992).

[8] Revisions to Regulations Implementing Section 5 of the Outer Continental Shelf Lands Act, 58 FR 25583 (Apr. 27, 1993), corrected, 58 FR 27691 (May 11, 1993), III FERC Stats. & Regs. Preambles ¶ 32,494 (Apr. 21, 1993). Regs. Preambles at 30,552–553. However, the OCS capacity allocation program, which was authorized by regulation as opposed to Commission order, remained intact.

[9] Tennessee Gas Ptpeline Company, 63 FERC ¶ 61,096 (1993).

[10] However, the companion order directed Tennessee to inform the Commission, in its comments to the NOPR, if remaining matters need to be resolved. No requests for rehearing of the companion order ware filed.

[11] It should be noted here that the Commission issued a companion order to Order No. 636 which required the modification of all pre-Order No. 636 capacity brokering, capacity release, and upstream pipeline capacity assignment programs to bring those programs into conformance with the Order No. 636 capacity release program. That Order resolved any disparity between the Order No. 636 capacity release program and existing programs which had been authorized by Commission order. Algonquin Gas Transmission Co., *et al.*, 59 FERC ¶ 61,032 (1992), *Reh'g denied*, 60 FERC ¶ 61,113 (1992). *See* Order No. 636, III FERC Stats. & Regs. Preambles at 30, 416; Order No. 636–A, III FERC Stats. &

No. 509. The Commission concluded that, since all existing OCS interstate pipelines now have rates on file for transportation service under the part 284 blanket certificates issued to them in Order No. 509, these filing requirements would no longer be needed.

However, the Commission emphasized that it was not proposing to rescind or alter the requirement that new interstate pipelines that transport natural gas on the OCS offer open-access transportation under a part 284 blanket transportation certificate. Under the Commission's proposal, that requirement would continue to be imposed on all OCS pipelines, as required by Commission policy and in order to ensure compliance with the open-access, nondiscriminatory standard for OCS transportation required by section 5 of the OCSLA.

IV. Comments

In response to the NOPR, comments were filed by three parties: High Island Offshore System (HIOS), U–T Offshore System (U–TOS), and Tennessee. No reply comments were filed.

VI. Discussion

A. Effectiveness of Blanket Certificates Issued in Order No. 509

HIOS and U–TOS request that the Commission clarify and confirm that the part 284, Subpart G blanket certificates previously issued to all OCS pipelines in Order No. 509 remain effective despite the proposed revisions to the regulations. We will grant this request by clarifying that the revisions to the regulations made in this rule do not affect the validity of the certificates issued in Order No. 509.

The regulations being removed were needed for the initial implementation of the requirement of the OCSLA that interstate pipelines provide open access transportation on the OCS. Since all existing OCS interstate pipelines were issued Part 284, Subpart G blanket transportation certificates in Order No. 509, and now have rates on file for service under those certificates, the regulations being removed have become superfluous. Of course, as stated above, any new OCS interstate pipeline would be required to provide open access under a Part 284 blanket transportation certificate in order to conform to the requirements of section of the OCSLA.

B. Abandonment Authorization

Section 284.303(c)(3) of the regulations was promulgated in order to give additional abandonment authorization to OCS blanket certificate holders. This additional abandonment authority was needed to facilitate the OCS allocation program. Since we are removing the OCS allocation program from the regulations, this additional authority is no longer warranted. Therefore, by removing § 284.303 (c)(3) from the regulations, we are rescinding the abandonment authorization provided to OCS pipelines.

C. Existing Order No. 509 Capacity Allocations

HIOS and U–TOS request that we clarify and confirm that capacity relinquishment implemented under the Order No. 509 regulations remain authorized despite the discontinuation of those regulations. We will grant the requests.

In *Algonquin*,[12] the Commission required the modification of all pre-Order No. 636 capacity brokering, capacity release, and upstream pipeline capacity assignment programs to bring those programs into conformance with the Order No. 636 capacity release program. The *Algonquin* order also addressed the treatment of pre-existing capacity assignments and reassignments. We will follow the reasoning expressed in that order.

Accordingly, existing Order No. 509 capacity allocations will be subsumed with the pertinent pipeline's new Order No. 636 capacity release program. The existing Order No. 509 capacity allocations will be allowed to continue to be effective for the term agreed upon between the parties. However, once a pipelines's Order No. 636 capacity release program goes into effect, the pipeline must post notice of all preexisting Order No. 509 capacity allocations on its electronic bulletin board.

C. Termination Date for Order No. 509 Capacity Allocation Programs

HIOS and U–TOS request that we establish November 1, 1993, as the termination date for the Order No. 509 capacity allocation programs in order to ensure an orderly transition between the Order No. 509 programs and the Order No. 636 programs. We agree that a date certain should be established for termination so that there is no break between the two programs. However, it is important that this date not precede the effective date of the tariff filings establishing the Order No. 636 capacity release programs. Otherwise, a gap in time would occur when capacity releasing could not be performed under any program, *i.e.*, the Order No. 509 program would have been terminated, but the Order No. 636 program may not have become effective as yet for the pertinent pipeline.

It is anticipated that most interstate pipelines will have effective tariffs with capacity release provisions by November 1, 1993. Since the effective date of this rule will operate to terminate the Order No. 509 capacity allocation programs, we will establish November 1, 1993, as the date upon which the amendments to the regulations contained in this rule will become effective. After the November 1 date, capacity allocations must be formulated under the Order No. 636 programs. However, new capacity allocations may be made under the Order No. 509 capacity allocation programs until that time. Further, if the November 1 effective date interferes with ongoing transactions for the few pipeline whose Order No. 636 tariffs become effective after November 1, the pipeline may notify the Commission and request appropriate relief.

D. Individually Certificated (Part 157) Services

Tennessee states that its difficulties with the Order No. 509 capacity allocation program, which ultimately resulted in the court remand discussed above, are resolved by the revisions to the regulations proposed in the NOPR "only if the Commission approves Tennessee's proposed procedure for shippers served under individually certificated rate schedules to convert to Tennessee's part 284 firm transportation rate schedule, as set forth in Tennessee's restructuring filing in Docket No. RS92–23." Otherwise, Tennessee argues, part 157 services (which are not eligible for Order No. 636 capacity release) would remain in place and hinder open-access transportation on the OCS.

It appears that we have come full circle on this issue. It was this very concern for open-access transportation on the OCS (as mandated by the OCSLA) that prompted us to encourage the abandonment of part 157 services where necessary to facilitate the Order No. 509 capacity allocation program. Under that scenario, once the part 157 service was abandoned, new service would be provided under the pipeline's part 284 blanket transportation certificate and the pipeline would charge its part 284 rates for service. However, Tennessee balked at this approach because it appeared to require a pipeline to abandon services and rates the pipeline might prefer to retain. Therefore, Tennessee argued to the Court of Appeals for the District of Columbia Circuit that we have no authority to *require* and unwilling

[12] *Supra* note 11.

pipeline such as Tennessee to abandon a certificated service. Unable to reach a definitive conclusion based on the record before it, the court remanded the matter to the Commission for further review.

Tennessee now argues that unless individually certificated services are converted to part 284 service: (1) The potential exists for discriminatory treatment among similarly situated shippers, (2) to the extent that the costs of part 157 service have been rolled into system-wide costs, the part 157 shipper would pay general, rolled-in rates, but would not receive the advantages of Part 284 service, (3) Part 157 shippers would escape responsibility for their fair share of Order No. 636 transition costs, and (4) merchants serving customers with part 157 transportation service would be able to command higher netback wellhead prices because the transportation cost would be artificially lower. We need not address these specific assertions directly because part 157 services may be converted to part 284 services only upon consent of the pipeline and its customer. Therefore, we encourage Tennessee to negotiate directly with its customers to encourage conversion part 284 services and thereby avoid the potential for types of abuses Tennessee perceives.

Tennessee argues that its problems with the Order No. 509 capacity allocation program are resolved only if the procedure it has proposed in its restructuring proceeding is approved by the Commission. It is unclear from Tennessee's request for rehearing how the specifics of a conversion procedure undertaken within the context of an Order No. 636 restructuring proceeding relate to the rescission of the Order No. 509 capacity allocation program. However, this is not a matter appropriately addressed here. Instead, the specifics of the conversion procedure must be, and currently are being, addressed in Tennessee's restructuring docket.[13]

VII. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any Commission action that may have a significant adverse effect on the human environment.[14] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment. The action taken here falls within the categorical exemptions provided in the Commission's regulations.[15] Therefore, an environmental assessment is unnecessary and was not prepared in this proceeding.

VIII. Information Collection Requirement

Office of Management and Budget (OMB) regulations require that OMB approve certain information and recordkeeping requirements imposed by agency rules. The information collection requirements in this rule have not changed from those proposed in the Notice of Proposed Rulemaking published in the Federal Register on April 27, 1993 (58 FR 25583), as corrected on May 11, 1993 (58 FR 27691). Therefore, this rule does not have to be submitted to OMB for review. A copy will be sent to OMB for informational purposes only.

The information collection requirement amended by this order is FERC–545, Gas Pipeline Certificates: Rate Change (Non-Formal) (1902–0154). The information collected under FERC–545 enables the Commission to carry out its legislative mandate and regulatory responsibilities under the OCSLA and the NGA. Specifically, the Commission's Office of Pipeline and Producer Regulation uses the data to ensure that all rates and charges in proposed tariff sheets are just and reasonable in light of the transportation activities authorized for OCS pipelines.

The Commission is submitting notification of this rule to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of the subject order may also be sent to the Office of Information and Regulatory Affairs at OMB [Attention: Desk Officer for Federal Energy Regulatory Commission, (202) 395–6880].

List of Subjects 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

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

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

1. The authority citation for part 284 continues to read as follows:

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

2. Section 284.303 is revised to read as follows:

§ 284.303 OCS blanket certificates.

Every OCS pipeline [as that term is defined in § 284.302(b)] is required to provide open-access, nondiscriminatory transportation service pursuant to a blanket transportation certificate issued under subpart G of this part.

§§ 284.304 and 284.305 [Removed]

3. Sections 284.304 and 284.305 are removed.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24925 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 92–25]

RIN 2125–AD01

National bridge inspection Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting, as final, a current interim final rule that specifies a maximum frequency at which highway bridges must be inspected under the National Bridge Inspection Standards (NBIS). This final rule establishes 4 years as the maximum period between inspections. However, States must inspect bridges at intervals not to exceed 2 years unless the FHWA grants an exemption. The NBIS regulation permits an exemption from the 2-year inspection frequency for certain types or groups of bridges where past inspection reports and favorable experience and analysis justify the increased interval of inspection. A State proposing to inspect some bridges at

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[13] See Tennessee Gas Pipeline Company, 64 FERC ¶ 61,020 (1993). In that order, we denied Tennessee's request that it be allowed to require customers to convert part 157 services to part 284 services. Observance of that directive will occur in Tennessee's subsequent compliance filing, and will be addressed in our next order in the restructuring proceeding.

[14] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles ¶ 30,783 (1987).

[15] 18 CFR 380.4(a)(27).

intervals exceeding 2 years must submit a detailed proposal and supporting data to the FHWA for approval. In such cases, the interval between inspections would be determined on the basis of the State's proposal and supporting data, but is not to exceed 4 years.

DATES: This regulation is effective October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Densmore, Bridge Management Branch, Bridge Division, Office of Engineering, (202) 366–4617; or Ms. Vivian Philbin, Office of Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: The NBIS for bridges on all public roads are set forth in 23 CFR part 650, subpart C. Section 650.305 specifies the frequency at which bridges must be inspected. Under § 650.305(a), the normal maximum interval between inspection is 2 years. The FHWA's rulemaking of August 26, 1988 (53 FR 32611), added provisions for varying from this normal frequency for certain types or groups of bridges. Section 650.305(b) requires more frequent inspection than at 2-year intervals for certain types and groups of bridges which, because of such factors as age, traffic characteristics, state of maintenance, or known deficiencies, require closer monitoring. Section 650.305(c) permits the maximum interval between inspections to exceed 2 years for certain types or groups of bridges where past inspection reports and favorable experience and analysis justify the increased interval of inspection. If a State proposes to inspect some bridges at greater than the specified 2-year interval, the State must submit a detailed proposal and supporting data to the FHWA, and obtain FHWA approval. Although the preamble to the 1988 rulemaking suggested a maximum of 4 years between inspections, the rule itself did not establish a maximum interval. The FHWA's November 9, 1992, interim final rule (57 FR 53278) requested comments on an amendment to § 650.305(c) that specified, effective December 9, 1992, that 4 years is the maximum interval between inspections. This action was taken in response to the decision in *Center for Auto Safety* v. *FHWA*, 956 F.2d 309 (D.C. Cir. 1992), in which the U.S. Court of Appeals for the D.C. Circuit ruled that the current regulation was not valid because it failed to "establish" any "maximum time period between inspections" as required by 23 U.S.C. 151(b)(2).

Discussion of Comments

Eight commenters responded to the rulemaking. Comments were received from 5 State Departments of Transportation, 1 consulting firm that performs bridge inspections, and 2 safety groups.

Two safety groups, the Advocates for Highway and Auto Safety (Advocates), and the Center for Auto Safety (CAS), in letters to the Federal Highway Administrator, opposed the rulemaking. These letters were added to the FHWA docket. The Advocates and the CAS subsequently submitted separate comments directly to the docket.

Comment 1

Comments from the State Departments of Transportation and the consulting firm supported the rulemaking. One State that had obtained approval from the FHWA for inspecting some 527 bridges at 4-year intervals indicated that its experience reinforced its belief that the 4-year maximum interval is adequate for certain bridges. Two States that have not applied for an exemption to the 2-year inspection interval under § 650.305(c) indicated that they may take advantage of the provision as bridge management systems are implemented. Two other States indicated that the flexibility provided by the rule should permit them to better direct their financial and personnel resources. One State suggested a need for more specific guidelines for selecting candidate bridges for inspection intervals longer than 2 years, and one State suggested changes to the current guidelines.

Response

The current guidelines for selecting candidate bridge projects are contained in the FHWA's September 16, 1988, Technical Advisory T 5140.21. Paragraph 5a(1) identifies classes of bridges that, in general, would be excluded from consideration for inspection intervals longer than 2 years. Bridges that are outside of the excluded classes could become candidates for inspection at intervals exceeding 2 years but not exceeding 4 years under the application process. The FHWA has no plans to modify the current guidelines for selecting candidate bridge projects.

Comment 2

The consulting firm indicated that there are cases where, in its judgment, it is not necessary to inspect at 2-year intervals. Several examples were given. The firm suggested that some agency at the State level should be allowed to establish criteria for extension of inspection intervals on rural bridges.

Response

Section 650.305(c) does not extend the authority to the States to approve inspections at intervals greater than 2 years. Under § 650.305(c) a State may develop and submit to the FHWA proposed criteria and supporting data for extending inspection intervals.

Comment 3

The Advocates and the CAS urged the FHWA not to proceed with a final rule prior to receipt of full public comment. The Advocates cited increased funding under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, and the current emphasis on maintaining cost-effective programs as reasons not to proceed. The Advocates also commented that providing an opportunity for comment subsequent to the issuance of an interim final rule violates the notice and comment requirements applicable to informal rulemaking. The group indicated that it was not afforded the opportunity to comment on the original rulemaking because it was not in existence at that time (1987).

Response

As stated in the preamble to the November 9, 1992, interim final rule, the FHWA decided to amend the bridge regulation through an interim final rule without further prior notice and additional opportunity for comment because inspection frequency was the subject of public comment in an earlier rulemaking. A 60-day comment period was also provided in the interim final rule published on November 9, 1992.

Comment 4

The Advocates commented that lengthening the time between inspections will increase the cost of bridge work when it is undertaken.

Response

The FHWA disagrees with the comment. Bridge maintenance and repair costs would not be affected since eligible bridges would, in general, not require special or preventive maintenance in the timeframe between inspections.

Comment 5

The Advocates commented that the FHWA's exemption criteria should consider the importance of a bridge to the surrounding community and the length of detour routes.

Response

Bridge importance is not listed in the exemption criteria (Paragraph 5a of the FHWA's September 16, 1988, Technical Advisory T 5140.21 on Revisions to the National Bridge Inspection Standards (NBIS)) because the goal of the NBIS is to assure the proper safety inspection of all bridges. Exemptions are not permitted where structural reliability is an issue, irrespective of the bridge's location or perceived importance.

Comment 6

The Advocates commented concerning the need, in its view, for the States to report on how they are redirecting inspection resources as a result of using longer inspection intervals on some bridges.

Response

Several States have indicated that the provisions of § 650.305(c) would enable them to use their inspection resources more effectively. However, the FHWA has no plans to require States to track and report how bridge inspection resources are being used. The FHWA believes that this would divert needed resources to accounting exercises and report writing without a concomitant safety benefit. Also, changes in inspection and reporting practices that are taking place as a result of bridge management systems would frustrate any attempt to track and compare current and historical inspection efforts.

Comment 7

The Advocates commented that there should be separate State reporting of the conditions of bridges inspected on 4-year intervals, and criteria governing the circumstances under which a bridge must be returned to a 2-year inspection interval.

Response

The condition of bridges that are permitted to be inspected at intervals exceeding two years are reported to the FHWA in a manner that permits separate review whenever desired. To qualify for an inspection interval exceeding two years, a bridge must meet criteria approved by the FHWA. These criteria are approved on the basis of the State's detailed proposal and supporting data which must be provided to the FHWA at the time of application. If, as a result of an inspection, a bridge no longer meets the approved criteria, it must be returned to an appropriate inspection interval not to exceed 2 years.

Comment 8

The CAS urged the FHWA to reconsider and withdraw the interim final rule in the light of the agency's 1983 benefit/cost analysis that, the CAS suggests, supports the universal application of a 2-year inspection rule.

Response

The conclusion that the FHWA's 1983 benefit/cost analysis supports the universal application of a 2-year inspection rule is not accurate. The 1983 cost analysis provided a rough estimate of the benefits to the public from application of the NBIS. It has no direct bearing on this rulemaking action since it did not evaluate the benefits and costs of altered inspection frequencies.

Comment 9

The CAS commented that the FHWA has not supplied a viable benefit/cost analysis that supports the interim final rule, i.e., estimated the cost to society for increasing the inspection interval, either in economic terms or in increased injuries or fatalities. CAS also commented that the FHWA has not explained how the use of inspection resources would, in fact, be redistributed as a result of the granting of 4 year inspection intervals. It expressed concern that resources now spent on inspection may no longer be used for bridge inspection.

Response

The FHWA stated its conclusions with regard to the effects on public safety in the preamble to the November 9, 1992, rulemaking. Permitting up to a 4-year interval between inspections under the exemption process outlined will not present a risk to public safety. 57 FR 53278, 53281. Changes in the cost of inspection will depend on the extent to which States utilize the § 650.305(c) exemption provision and how they choose to redistribute those resources. As previously noted, State comments indicate that the added flexibility would permit them to better direct these resources.

Comment 10

The CAS commented that in issuing an interim final rule in advance of public comment the FHWA has proceeded on a predetermined course, is relying on a stale docket, and is relying heavily on new information that has not been examined or explained by the agency.

Response

The FHWA's decision to proceed in issuing the interim final rule is well supported by the information available on bridge deterioration rates and by public comment. The 1988 rulemaking on frequency of inspection was based on extensive review and evaluation of the available information which included the views of 46 commenters and several studies. Studies that were examined by the FHWA in connection with the 1988 rulemaking are identified in the November 9, 1992, rulemaking preamble. Several studies that were published since 1988 are also listed. The FHWA relied on the information that was published prior to 1988 as the basis for its interim rule. Studies which were published since 1988 were identified to provide an up-to-date list of relevant information and to document the administrative record as to the information which the FHWA has examined as a part of the rulemaking. The studies published since 1988 corroborate the findings of earlier studies and they fully support the determinations of the 1988 rulemaking. This rulemaking action is based on all information cited in FHWA's rulemaking of August 26, 1988, of November 9, 1992, and on an analysis of the comments that were received in response to the November 9, 1992, rulemaking and summarized herein.

Comment 11

The CAS commented that the FHWA has made no attempt to provide current data or analysis of the experience of the States that have been operating under a 4-year inspection frequency in support of the rulemaking.

Response

The time that elapsed between the first FHWA approvals to inspect some bridges at intervals exceeding 2 years, and the time those approvals were withdrawn, was insufficient for the States to gain much experience in operating under a 4-year inspection frequency. The earliest FHWA approval date was August 22, 1990; withdrawal of all approvals took place on May 8, 1992, following the appellate court's remand of the 1988 rulemaking to the FHWA for further proceedings. Accordingly, there is no meaningful data regarding any experience with a 4-year inspection interval.

Comment 12

The CAS indicated concern that the appellate court opinion in *Center for Auto Safety* v. *FHWA*, concerning the non-applicability of § 650.305(a) to underwater bridge members, leaves the impression that the underwater portion of bridge supports are not a part of the bridge inspection program. The CAS suggests that the FHWA amend the

definition of "bridge," in § 650.301 to undo this impression.

Response

The FHWA believes that the decision in *Center for Auto Safety* v. *FHWA* in upholding § 650.303(e)(2) leaves no doubt that underwater members, inspected under 650.303(e)(2), remain part of the national bridge inspection program, regardless of how the term "bridge" is defined in § 650.301.

In 1988, the FHWA recognized a need for specific requirements for underwater inspections, but because these inspections were not the general practice in most States, the FHWA lacked sufficient historical data to determine an appropriate maximum inspection interval. Lacking factual data, the FHWA drew from the collective expertise and judgment of professional bridge, hydraulic, and geotechnical engineers by adopting the 5-year standard set forth in relevant guidelines established by the American Association of State Highway and Transportation Officials as the maximum interval between underwater inspections.

The appellate court declined to find, as CAS argued it should, that the FHWA's action in adopting this 5-year standard was arbitrary and capricious and constituted a relaxation of prior standards. (CAS claimed § 650.305(a) already required underwater members to be inspected every 2 years). The appellate court found that this reliance on policy considerations in the absence of factual data was justified and it upheld § 650.303(e)(2) against CAS' challenge that the agency acted arbitrarily and capriciously in establishing the 5-year standard.

With the addition of § 650.303(e)(2) to the NBIS in 1988, and the court's action upholding this section, the FHWA believes there is no need for further clarification on the issue of whether underwater bridge supports are included in the bridge inspection program, such as an amendment to § 650.301.

Based on its analysis of all the comments received and the various studies cited above, and for the reasons discussed above and in the preamble to the November 9, 1992, interim final rule, the FHWA concludes that establishing a 4-year maximum interval between inspections under § 650.305 is warranted.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

This final rule is made effective upon publication. As a matter of law, the interim final rule on the frequency of bridge inspections has been in effect since December 9, 1992. This final rule makes no changes on that interim final rule and merely informs the public that the interim final rule remains unchanged. Therefore, the FHWA finds that good cause exists to dispense with the 30-day delay on the effective date normally required under 5 U.S.C. 553(d).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities. This rule would affect State and local governmental entities responsible for bridge inspection activities. This rule provides such governmental entities with flexibility to extend the period between bridge inspections subject to stringent conditions and FHWA approval. The FHWA believes that the increased inspection period permitted by this rule would be available for a very limited number of bridges nationwide, and that relatively few governmental entities will be affected. Based on the evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980. (44 U.S.C. 3501–3520)

National Environmental Policy Act

The agency has analyzed this section for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Services Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Highways and roads, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued on: October 1, 1993.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing and under the authority of 23 U.S.C. 315, the interim rule amending 23 CFR part 650, subpart C, which was published at 57 FR 53278, November 9, 1992, is adopted as final without change.

[FR Doc. 93–24882 filed 10–8–93; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program; Revegetation Standards for Success, Roads, Impoundments and Siltation Structures, Prime Farmland, Coal Preparation Plants, and Incidental Coal Extraction Exemption; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published on Tuesday, July 7, 1992, (57 FR 29788–29794). The