

Central Avenue to Slauson Avenue; then west along Slauson Avenue to Interstate Highway 110; then north along Interstate Highway 110 to Jefferson Boulevard; then northwest along Jefferson Boulevard to Hoover Street; then north along Hoover Street to Alvarado Street; then northeast along Alvarado Street to the point of beginning.

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Done in Washington, DC, this 10th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-30106 Filed 11-14-97; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 650

Protection of Wetlands

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to Government Performance Results Act, the Natural Resources Conservation Service (NRCS) is removing obsolete, unnecessary, or redundant regulations from the Code of Federal Regulations. This action removes the regulations found at 7 CFR 650.26 concerning the NRCS wetland technical assistance policy.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Warren M. Lee (202) 720-3534.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This document does not meet the criteria for a significant regulatory action as specified in E.O. 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

Environmental Evaluation

This final rule will have no significant effect on the human environment and is categorically exempt under 7 CFR 1b.3(a)(6), therefore neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This rule does not contain reporting or record keeping requirements subject to the Paperwork Reduction Act.

Background

Pursuant to the Administration effort to review existing agency regulations and remove unnecessary regulations from the Code of Federal Regulations, the NRCS has determined that the regulation found at 7 CFR part 650.26, "Protection of Wetlands," is unnecessary because the regulation addresses a matter of internal agency policy, does not regulate any member of the public, conflicts with agency implementation of the wetland conservation provisions of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 *et seq.*, and utilizes a superseded classification of wetlands.

Executive Order 11990

Wetlands provide fish and wildlife habitats, maintain ground water supplies and water quality, protect shorelines from erosion, store floodwaters and trap sediments, and provide recreational and educational opportunities. Historically, wetlands have been converted at a rapid rate with the concomitant loss of the functions and values that they provide to the Nation. In some cases, activities of the Federal government contributed to the loss of the Nation's wetlands. To minimize adverse impacts on wetlands resulting from Federally-sponsored activities, President Carter in 1977 issued an Executive Order to protect wetlands. Executive Order 11990 established the policy that, to the extent authorized by law, the Executive Branch would avoid direct or indirect support of new construction in wetlands wherever there exists a practicable alternative.

Pursuant to the Soil Conservation and Domestic Allotment Act of 1935, 16 U.S.C. 590a *et seq.*, the Soil Conservation Service (SCS) of the United States Department of Agriculture provided technical assistance to landowners for the protection of natural resources on private lands. Technical assistance included the personnel and support resources needed to conduct planning and conservation practice survey, layout, design, installation and certification. Among activities conducted prior to 1977, SCS provided technical assistance related to the construction of drainage ditches and other structures that resulted in the conversion of wetlands.

Section 6 of Executive Order 11990 requires agencies to issue or amend

their existing procedures to comply with the policies of the order, and accordingly, SCS revised its policy regarding technical assistance in 1977. These changes restricted the situations in which SCS employees could provide technical assistance to clients related to new construction in wetlands. In 1979, SCS codified the wetland technical assistance policy at 7 CFR 650.26. SCS modified this regulation in 1982 to enable SCS employees to provide assistance for new construction in wetlands when denial of such assistance would lead to "detrimental consequences on soil and water resources or on human welfare and safety." 47 FR 34111 (August 6, 1982).

Since 1982, SCS updated its technical assistance policy several times, but such updates did not require amendments to the regulation at 7 CFR 650.26. Pursuant to Departmental reorganization in 1994, SCS was abolished and the Natural Resources Conservation Service (NRCS) assumed most of the statutory and regulatory responsibilities of the SCS, including the provision of technical assistance on private lands.

The Conflict With the Wetland Conservation Provisions

The wetland conservation provisions of the Food Security Act of 1985 (the 1985 Act), as amended, 16 U.S.C. 3801 *et seq.*, encourage participants in United States Department of Agriculture (USDA) programs to adopt land management measures that protect wetland functions and values by linking eligibility for USDA program benefits to farming practices on converted wetlands. In particular, the wetland conservation (WC) provisions of the 1985 Act provide that after December 23, 1985, a program participant is ineligible for certain USDA program benefits for the production of an agricultural commodity on a converted wetland, or after November 28, 1990, for the conversion of a wetland that makes the production of an agricultural commodity possible. The 1985 Act, however, affords relief to program participants who meet certain conditions identified under the 1985 Act by exempting such actions from the ineligibility provisions.

The current version of the wetland technical assistance rule, 7 CFR 650.26, allows NRCS to provide technical assistance to a producer that could place the producer in violation of the WC provisions. In particular, the rule allows NRCS personnel to provide technical assistance for certain construction in types 1 and 2 wetlands under the Circular 39 classification of wetlands. The wetland classification system in

Circular 39 was established by the Fish and Wildlife Service (FWS), United States Department of the Interior, and used by state and Federal agencies. Currently, the FWS and other agencies do not use Circular 39.

Many types 1 and 2 wetlands correlate with the NRCS definition of "farmed wetlands". A producer can be found ineligible for USDA program benefits if the drainage on farmed wetlands is increased beyond that which existed on or before December 23, 1985. Thus, under the current wetland technical assistance rule, NRCS could help design the drainage system that causes the producer to lose program benefits and also would violate Section 404 of the Clean Water Act if the drainage activities were not permitted by the Army Corps of Engineers.

The current version of the wetland technical assistance rule also hinders the ability of NRCS to assist producers with WC provisions compliance. Since December 23, 1985, program participants are farming in a more environmentally-oriented manner, resulting in more wetlands remaining available to perform the myriad of functions and values for the Nation. Meeting the objectives of the WC provisions, however, has been difficult for some producers. Wherever possible, USDA has helped individual program participants address their unique resource concerns in a manner that meets the requirements of the WC provisions.

The Federal Agriculture Improvement and Reform Act (the 1996 Act), enacted April 4, 1996, made several amendments to the WC provisions which were intended to increase USDA's ability to meet these producers' situations in a more flexible manner. These amendments provide producers who wish to convert a wetland with greater flexibility to mitigate the loss of wetland functions and values through restoration, enhancement, or creation of wetlands.

The WC provisions provide that a person may remain eligible for USDA program benefits even if their action results in the conversion of a wetland if the wetland functions and values are adequately mitigated, as determined by NRCS, and the mitigation: is in accordance with a mitigation plan approved by NRCS; is in advance of, or concurrent with, the wetland conversion; is not at the expense of the Federal government; occurs on lands in the same general area of the local watershed as the converted wetlands; is on lands for which the owner has granted an easement to USDA, and recorded the easement on public land

records; and provides the equivalent functions and values that will be lost as a result of the wetland conversion. A person may also remain eligible for USDA program benefits if the action has been permitted by the Army Corps of Engineers after December 23, 1985, via the individual permit process.

This increased mitigation flexibility for producers creates confusion between NRCS responsibilities under the WC provisions and under the current technical assistance rules. Under the WC provisions, NRCS must approve a mitigation plan if the producer meets the requirements identified above, whether or not the impact to wetlands from the conversion activity could have been minimized or avoided. However, when NRCS delivers technical assistance, the current technical assistance rule applies. Accordingly, NRCS cannot provide technical assistance to a client for the conversion activity unless there is no practicable alternative to the construction and the proposed conversion actions includes all practicable measures to minimize harm to wetlands which may result from such use.

Since 1987, USDA has identified the threshold characteristics that define: when a wetland has been manipulated sufficiently to make the production of an agricultural commodity possible; when a wetland is "converted;" which conditions meet a particular exemption identified under the WC provisions; or when a producer has expanded the drainage system beyond that which existed prior to December 23, 1985. The current wetland technical assistance rule is outdated because it fails to recognize these distinctions, utilizes a superseded classification system, and describes identical terms differently from the current prevailing methodologies and scientific understanding of wetland systems.

The removal of this regulation will not have any effect on the public, any private enterprise, or any other Government agency. This action will result in the removal of an unnecessary regulation from the Code of Federal Regulations. As a matter related to internal agency management, the policies and procedures related to the subject matter of the wetland technical assistance rule is currently addressed through agency manuals, handbooks, and directives.

The Revised NRCS Wetland Technical Assistance Policy

It is the policy of NRCS to protect and promote wetland functions and values in all NRCS planning and application assistance. NRCS recognizes the

beneficial and varied functional attributes of the different wetland types, and as such, strives to reconcile the need for wetland protection with that of promoting viable agricultural enterprises. NRCS supports the restoration, enhancement, creation, and preservation of wetlands as important and realistic components of comprehensive conservation plans, not only on a farm-by-farm basis, but also on a watershed or landscape basis. When providing technical assistance, NRCS will conduct an environmental evaluation, considering the objectives of the client in the context of environmental, economic, and other pertinent factors.

Upon conducting an environmental evaluation, NRCS will identify whether any practicable alternatives exist that will either adequately maintain or improve the wetland functions and values, or avoid or minimize the harm to wetlands. If practicable alternatives exist, NRCS will inform and advise the client of the available options and explain the benefits of conducting the desired activity in a manner that will achieve the objectives of the client, while adequately maintaining or improving the functions and values of wetland resources in the area.

If the client selects one of the practicable alternative options, NRCS may provide technical assistance for the conversion activity, as well as the development of a mitigation plan. If the findings of the environmental evaluation show that no practicable alternatives exist, NRCS may provide technical assistance which allows for the conversion of the wetland and develop a mitigation plan for compensation of the functions and values that were lost through the conversion activity. Prior to or concurrent with NRCS assistance, the client will obtain all necessary permits or approvals related to the conversion activity.

If the client chooses to pursue an activity other than a practicable alternative, NRCS should advise the client about eligibility criteria under the WC provisions of the Food Security Act, as amended.

The regulation at 7 CFR 650.26 defines wetlands in accordance with Circular 39 of the Fish and Wildlife Service, and not the current definition recognized by all Federal agencies with wetland responsibilities. Additionally, the former wetland technical assistance policy and regulation allowed NRCS employees to provide technical assistance to producers which placed such producers in violation of the wetland conservation provisions of the

Food Security Act of 1985, as amended (FSA). The removal of the regulation will prevent the implementation of inconsistent policies.

List of Subjects in 7 CFR Part 650.26

Technical Assistance, wetlands.

§ 650.26 [Removed]

In consideration of the above, 7 CFR part 650.26 is removed.

Signed at Washington, D.C. on November 6, 1997.

Paul W. Johnson,

Chief, Natural Resources Conservation Service.

[FR Doc. 97-29996 Filed 11-14-97; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 271

[Docket No. R-0983]

Federal Open Market Committee; Rules Regarding Availability of Information

AGENCY: Federal Open Market Committee, Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Federal Open Market Committee (Committee) hereby amends its Rules Regarding Availability of Information (Rules) to reflect recent changes in the Freedom of Information Act (FOIA) as a result of the Electronic Freedom of Information Act Amendments (EFOIA).

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT:

Elaine M. Boutilier, Senior Counsel, (202/452-2418), or Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, (202/452-3920), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Last year, Congress passed the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231, which amend the Freedom of Information Act, 5 U.S.C. 552. Among other things, EFOIA requires agencies to promulgate regulations that provide for expedited processing of requests for records. In addition to amendments intended to implement EFOIA, the Committee has updated its fee schedule and made other changes to streamline and clarify the Rules.

To implement these changes, the Committee published proposed amendments to the Rules on August 26, 1997 (62 FR 45178). The Committee received only one comment, submitted by an association established by news editors and reporters to defend First Amendment rights of the media. This comment requested two changes to the Committee's proposed rule—one specific change and one general change. Specifically, the association requested that the Secretary be given the discretion to waive the formal certification requirement for persons requesting expedited treatment of a FOIA request. The second, general suggestion was to incorporate the key mandates of EFOIA into the regulation, because "future FOI officers and specialists at the Committee [may not] realize the additional requirements placed on them by this law if regulations do not make adherence necessary." After review of the comment, the Committee has made the specific change regarding the discretionary waiver of formal certification. With regard to the second comment, the Committee does not believe that the Rules need to be amended to reflect statutory provisions that are not required to be implemented by regulation. When a FOIA request is received, FOMC officers routinely work with attorneys in the Board's Legal Division who are familiar with the law and the procedural requirements. Furthermore, incorporating these changes into the regulation would add nothing to the public's understanding of FOIA and would unnecessarily lengthen and complicate the regulation at a time when all agencies are attempting to simplify and streamline their regulations. The following is a section-by-section discussion of the final amendments.

Section 271.1—Authority and Purpose

This section has been revised to state the statutory authority for promulgation of the Rules and the purpose of the Rules.

Section 271.2—Definitions

The definitions have been alphabetized and now include the definitions relating to the fee schedule that were previously in § 271.8.

Section 271.3—Published Information

No substantive changes have been made to this section.

Section 271.4—Records Available for Public Inspection and Copying

This new section describes the types of Committee records that are available

in the reading room of the Board's Freedom of Information (FOI) Office. Pursuant to EFOIA, it also describes the Committee records available on the Board's website.

Section 271.5—Records Available to the Public on Request

This is a revision of existing § 271.4, which describes the types of records available upon request, and the procedures for making such a request.

Section 271.6—Processing Request

This is a new section that describes the Committee's procedures in processing requests for information and appeals of denials of such requests. This section also contains the procedures for expedited processing of requests. As noted above, this section has been modified to give the Secretary the discretion to waive the formal certification requirement for expedited processing in exceptional situations. It is expected that, as a routine matter, certification will be required. Nevertheless, where time is important and the certification is in fact a formality, then the Secretary has the discretion to waive that formality.

Section 271.7—Exemptions From Disclosure

This section combines the rules currently found in §§ 271.5 and 271.6, regarding deferred release of information and information that is exempt from release under FOIA.

Section 271.8—Subpoenas

There are no substantive changes to this section, except that it is renumbered from § 271.7 to § 271.8.

Section 271.9—Fee Schedules; Waiver of Fees

This section is renumbered from § 271.8 to § 271.9. The Committee has moved the definitions that were in this section to § 271.2, which contains the other definitions for this part. The fee schedule provisions have been revised to clarify that the processing time of a FOIA request does not begin in cases where advance payment is required until payment is received; or, where a person has requested a waiver of the fees, until the person agrees to pay the fees if the waiver request is denied. Additionally, the standards under which the Secretary may grant a request for waiver of fees have been modified to reflect the development of case law in this area. The rule provides for administrative appeal of a denial of a waiver request.