

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 79-20
January 31, 1979

IMPROVEMENT OF RULEMAKING PROCEDURES

TO ALL BANKS
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

The Board of Governors of the Federal Reserve System has issued a policy statement expanding its rulemaking procedures to improve the quality and public understanding of its regulations.

The principal elements of the procedures the Board will follow--with some exceptions--in developing new or revised Federal Reserve regulations include:

- Early involvement of the public, by such means as advance notice of rulemaking; identification of areas in which the Board would particularly like comment; open conferences or informal public hearings; and direct solicitation of the views of interested persons or groups, with attention given to getting views from differing sources.
- Early involvement of designated members of the Board.
- Staff preparation of a regulatory analysis, prior to proposals for rulemaking, that will describe the need for and purposes of a new or revised regulation; examine available alternative courses of action; estimate the possible economic impact and the burdens of compliance, record keeping, and reporting that would be involved, and indicate the reasons for the particular course of action selected.
- Staff presentation of a regulatory proposal to the Board only after the designated Board members are satisfied that the issues have been adequately considered at the staff level, that the proposal is understandable and that it will impose no unnecessary burdens.
- Board consideration of regulatory proposals, ordinarily, at meetings open to public observation.

- Allowance of at least 60 days for public comment.
- Staff analysis of comment received and presentation of the analysis to designated Board members. The Board will consider a proposal for action only after the designated Board members are satisfied that public comment has received full consideration.
- Final Board action, ordinarily at an open meeting. The Board's announcement of its action will discuss reasons for the action and the Board's reasons for accepting or rejecting suggestions received from the public.
- Board publication of a descriptive semi-annual agenda of regulations under development or review, and of the status of regulatory development projects already announced.
- Board review of each of its regulations at least once each five years.

Where delays occasioned by the new lengthier rulemaking procedures would not be necessary or in the public interest, the Board will adopt expedited procedures. Section 1 of the policy statement provides a number of examples of regulatory actions for which expedited procedures are appropriate.

The new procedures do not apply to the formulation of monetary policy or to amendments of regulations required to implement monetary policy decisions of the Board or the Federal Open Market Committee.

The Board's policy statement is enclosed.

Sincerely yours,

Ernest T. Baughman

President

Enclosure

Extract From
Federal Register
VOL. 44, NO. 14
Friday, January 19, 1979
pp. 3957 - 3959

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUPCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Docket No. R-0196]

PART 262—RULES OF PROCEDURE

Statement of Policy

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Statement of policy regarding expanded rulemaking procedures.

SUMMARY: The Board of Governors of the Federal Reserve System desires to improve the quality of its regulations through greater public participation in the development of its regulations and early involvement by Board members in the process to assure that regulations are not unduly burdensome and complex. The Board also wishes to improve public understanding of the considerations underlying the regulations it adopts. To accomplish these objectives, the Board is adopting a general policy of following

rulemaking procedures that will be more elaborate than those prescribed in the Board's Rules of Procedure for Rulemaking (12 CFR 262.2). When the Board has good cause to follow more expedited procedures, such as those set forth in its regulations, it will state the reasons in the FEDERAL REGISTER notice accompanying the action. The new procedures do not apply to the formulation of monetary policy or to amendments of regulations required to implement monetary policy decisions.

The Board believes that this approach fully complies with the spirit of Executive Order No. 12044 ("Improving Government Regulations") and contributes significantly to furthering the President's goals of reducing regulatory burdens and improving regulations.

The Board is implementing this policy immediately and welcomes suggestions for improving the policy.

DATES: Comments should be submitted in writing on or before March 20, 1979. The new policy is effective January 10, 1979.

ADDRESS: Submit comments to the Secretary to the Board, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The comments received will be available for inspection and copying.

FOR FURTHER INFORMATION CONTACT:

Jerauld C. Kluckman, Associate Director, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Telephone: (202) 452-3401.

SUPPLEMENTARY INFORMATION: The Board, with participation by the Federal Reserve Banks, is engaged in a Regulatory Improvement Project involving a zero-base review of all Federal Reserve regulations that affect the public. Each regulation is being analyzed to determine: the fundamental objectives of the regulation; whether the regulation is obsolete or a different approach would be appropriate; the costs and benefits of the regulation; whether it can be made less burdensome or nonregulatory alternatives adopted without reducing its effectiveness to achieve present-day goals; and whether the regulation is as simple as possible and understandable to those who must comply. To date, this review has been completed for two regulations (Regulations C and E; see 43 FR 53708 and Board release of Nov. 9, 1978), and substantial staff work has been done on others. Deadlines have been set to assure that the review of remaining regulations will be completed as soon as possible.

The Board also has decided to improve access to all Federal Reserve regulatory materials by authorizing is-

suance of a new, publicly distributed regulatory service that will include regulations, published and previously unpublished Board interpretations, previously uncirculated Board and staff rulings and opinions, relevant policy statements and other materials that affect the public. The Board plans to introduce this service in early 1980 and will update it periodically. The Board believes that ready access to the full range of regulatory materials will enable those regulated to operate with a far greater degree of certainty, and understanding of and compliance with Board rules will be enhanced.

As a further effort to improve its regulations and the regulatory process, the Board as a matter of policy also will apply expanded procedures to the development of new regulations. These procedures are more elaborate than those prescribed in the Board's Rules of Procedure for Rulemaking (12 CFR 262.2).

At the same time, the Board is aware that a lengthier, more involved rulemaking procedure may result in delays detrimental to those making plans or seeking immediate relief from undue burdens. Therefore, when the Board believes that more expedited procedures are fair, necessary, or desirable, it will follow such procedures and inform the public of the reasons for its decision. Ordinarily, consideration of a regulation in a new area of the law will involve greater time and public participation than an amendment to an existing regulation in an established area of the law.

Examples of regulatory actions for which expedited procedures may be appropriate are the following:

- (1) The regulation is a technical amendment (e.g., reflecting a name change) or a clarifying change;
- (2) The regulation requires prompt action in the public interest (e.g., changes in reserve requirements, stock market margin requirements, or the discount rate, or actions designed to eliminate a loophole);
- (3) The regulation reduces a burden where further delay would cause unnecessary harm;
- (4) The regulation is a reformulation of a proposal previously issued for public comment; and
- (5) The regulation must be adopted within a statutory deadline.

The Board believes its policy will result in improved Board regulations and fully complies with the spirit of Executive Order No. 12044, dated March 23, 1978 ("Improving Government Regulations") (43 FR 12661). In several ways, it goes beyond that Order. For example, the policy generally will be followed for all new proposals, whether or not they are re-

garded as "significant," and a regulatory analysis will be made in all cases. To implement this approach the Board has adopted the following policy statement:

STATEMENT OF POLICY REGARDING EXPANDED RULEMAKING PROCEDURES

SECTION 1

Policy. It is the policy of the Board of Governors of the Federal Reserve System to improve the quality and minimize the burdens of its regulations by carefully considering an analysis of proposed regulations before they are published for comment, encouraging maximum public participation in the development of the regulations, and informing the public of the reasons for the Board's regulatory actions.

To achieve these objectives and to comply with the spirit of Executive Order 12044, the Board is setting forth in this statement expanded rulemaking procedures that it intends to follow in developing regulations. If the Board finds it necessary or beneficial in the public interest to avoid delay by following more expedited procedures, such as those set forth in the Board's Rules of Procedure for Rulemaking (12 CFR 262.2), the Board will state its reasons in a notice accompanying its actions. The new procedures do not apply to the formulation of monetary policy or to amendments of regulations required to implement monetary policy decisions.

Examples of regulatory actions for which expedited procedures may be appropriate are the following:

- (1) The regulation is a technical amendment (e.g., reflecting a name change) or a clarifying change;
- (2) The regulation requires prompt action in the public interest (e.g., changes in reserve requirements, stock market margin requirements, or the discount rate, or actions designed to eliminate a loophole);
- (3) The regulation reduces a burden where further delay would cause unnecessary harm;
- (4) The regulation is a reformulation of a proposal previously issued for public comment; and
- (5) The regulation must be adopted within a statutory deadline.

SECTION 2

Development of regulatory plan. Designated members of the Board will become involved at an early stage in the development of regulations and will meet with staff to review the issues to be considered, the alternative approaches to be explored, a tentative plan to obtain public comment, and target dates for completion of steps in the development of the regulation.

SECTION 3

Public involvement in the development of proposals. The Board believes that the public can make valuable contributions in identifying issues that should be addressed in its regulations. With respect to regulations implementing new areas of law or major revisions of existing regulations, the Board will endeavor to obtain preliminary views of interested persons prior to the development of a proposed regulation. For this purpose, the Board will utilize such procedures as it deems appropriate, including publication of an advance notice of proposed rulemaking, which may suggest specific issues on which comments should be focused; scheduling of an open conference or informal public hearing; and direct solicitation of views from interested persons or groups, selected so as to assure that conflicting interests and appropriate public bodies are fairly represented.

SECTION 4

Initial analysis of proposals. Before presenting any proposals regarding a regulation to the Board for formal action, the staff will prepare a regulatory analysis of the proposal. The extent of the regulatory analysis at this stage will vary, depending upon the nature of the regulation. In every case, at a minimum, the regulatory analysis will discuss the need for and purposes of the regulation, set forth the various options available, discuss, where appropriate, their possible economic implications, evaluate their compliance, recordkeeping and reporting burdens, and recommend the best course of action based on an evaluation of the alternatives. If the regulation concerns an area where considerable information is available, a correspondingly more exhaustive regulatory analysis will be expected.

When the designated Board members involved are satisfied that the issues have been adequately treated by the staff, that the proposals are as simple as possible and understandable to those who must comply and that no unnecessary burdens would be imposed, the staff will present the proposals to the Board for action.

SECTION 5

Preliminary action by the Board. Consideration of the proposals by the Board ordinarily will take place at a meeting open to public observation. The Board ordinarily will authorize publication of a proposed regulation for comment. At that time, the regulatory analysis of the proposals will be made available to the public.

SECTION 6

General public participation. The Board generally will allow at least 60 days for public comment on a proposed regulation. The notice accompanying the proposal will contain a summary analysis of the regulation and inform the public that copies of the regulatory analysis are available through the Freedom of Information Office. When deemed appropriate, the Board may also schedule an informal public hearing.

SECTION 7

Staff analysis following public comments. The staff will prepare a summary of comments received, and this document, as well as the written comments, will be made available to the public. After taking account of the public comments, the staff will prepare recommendations for consideration by the designated Board members. When these members are satisfied that the public comments have received full and appropriate attention, the staff's analysis and recommendations will be presented to the Board for action.

SECTION 8

Final action by the Board and announcement of its decision. Final action on the proposals by the Board ordinarily will take place at a meeting open to public observation. The Board will announce the reasons for whatever action it takes regarding a proposed regulation. The announcement will discuss the Board's rationale for accepting or rejecting arguments regarding the significant issues raised by the public. If the earlier regulatory analysis made available to the public is changed materially, a revised regulatory analysis will be made available.

SECTION 9

Semiannual agenda of regulations. On the first Monday in October, the Board will publish in the FEDERAL REGISTER a schedule showing the times during the next twelve months when it will publish a semiannual agenda of regulations under development or review. The agenda shall describe the regulations that the Board anticipates will be considered, the need and legal basis for the action being taken, and the status of regulations previously listed on the agenda. Each item on the agenda will include the name and telephone number of a knowledgeable member of the Board's staff. Supplements to the agenda may be published at other times during the year as appropriate.

SECTION 10

Periodic review of regulations. The Board will review each of its existing

regulations at least once every five years. Each regulation is to be re-examined with a view toward eliminating or simplifying it and easing burdens imposed by it. In selecting regulations to be reviewed, the Board will consider such factors as the length of time since the last evaluation of the regulation, the continued need for it, the type and number of complaints and suggestions received, the direct and indirect burdens imposed by the regulation, and the need to simplify or clarify the regulation and eliminate duplication. Essentially the same procedures described in this policy statement will be followed in the periodic review of regulations.

Board of Governors of the Federal Reserve System, January 15, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-1910 Filed 1-18-79; 8:45 am]
