## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 83

[Docket No. 18948; Gen. Docket 80-108]

### Implement Compulsory Carriage of Radar on Board Vessels of 1600 Tons Gross Tonnage and Over; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a rule on the compulsory installation of radar equipment on vessels, which appeared at page 18986 in the Federal Register of March 27, 1981 (46 FR 18986). This action is necessary to correct typographical errors and an incorrect reference.

**FOR FURTHER INFORMATION CONTACT:** Linda R. Figueroa, Private Radio Bureau (202) 632-7175.

**SUPPLEMENTARY INFORMATION:**

Released: December 23, 1981.

In the matter of amendment of Part 83 of the Commission's rules to implement a provision of the 1974 Safety Convention regarding compulsory carriage of radar on board vessels of 1600 tons gross tonnage and over, Docket No. 18948, Gen. Docket No. 80-108.

The following corrections are made in Gen. Doc. 80-108 (FCC 81-97, adopted on March 11, 1981, and released on March 23, 1981), appearing on page 18986 in the issue of March 27, 1981:

1. On FR page 18987 at the top of column one (page two of Appendix B) § 83.115(a)(i) is corrected by removing the word "of" and replacing it with the word "to" so that the beginning of the sentence reads "Station logs involving communications or other entries incident to a distress * * *"

2. On FR page 18987 column one (page two of Appendix B) immediately following correction (1) above, § 83.115(a)(2) is corrected by inserting the word "or" between the words "communication" and "other" so that the beginning of the sentence reads "Station logs which include entries of communications or other matter * * *"

3. On FR page 18988 near the bottom of column one (page four of Appendix B) § 83.465(b) should be corrected by removing the entire sentence beginning with "This specification including Appendix A * * *" and replacing it with "This specification may be found in Part II of Volume II of the SC-65 Final Report."

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 82-1078 Filed 1-14-82; 8:45 am]

BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1139

[Ex Parte No. MC-141]

### Policy Statement on Motor Carrier Pooling Applications

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final statement of general policy; final rules; clarification.

**SUMMARY:** At 46 FR 21180, April 9, 1981, the Commission adopted rules at 49 CFR Part 1139 which set forth the necessary contents of motor carrier pooling applications and Commission procedures for processing and considering such applications. This notice is to clarify to the public that those regulations apply to motor pooling applications between motor carriers of household goods and their agents.

**EFFECTIVE DATE:** This policy has been in effect since April 9, 1981.

**FOR FURTHER INFORMATION CONTACT:** Richard Kelly (202) 275-7246, or Bruce Kasson (202) 275-7655.

**SUPPLEMENTARY INFORMATION:** Changes to 49 U.S.C. 11342 made by the Household Goods Transportation Act of 1980 (Pub. L. No. 96-454, 94 Stat. 2011) require the Commission to streamline, simplify and expedite, to the maximum extent practicable, the process for submission and approval of applications by household goods motor carriers and their agents to pool or divide their traffic, services, or earnings. In the prior notice of final rules, the Commission issued rules which achieve these goals as to all motor pooling applications. This notice clarifies the fact that the simplified procedures at 49 CFR 1139 shall apply to pooling agreements between motor carriers providing transportation of household goods and their agents.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 82-1086 Filed 1-14-82; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Deregulation of the Tecopa Pupfish

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service removes the Tecopa pupfish (*Cyprinodon nevadensis calidae*) from the list of Endangered and Threatened species, based on a determination, after review of all available data, that the subspecies is extinct. In 1972, its original discoverer reported that it was no longer present in two springs where it was first collected, and extensive 1977 State of California surveys of potential habitats in the same river system produced no evidence that any additional stocks exist. This action constitutes formal Service recognition of Tecopa pupfish extinction, and discontinues protections for the fish and its habitat accorded by the Endangered Species Act of 1973, as amended.

**DATE:** This rule becomes effective on February 16, 1982.

**ADDRESSES:** Questions concerning this action may be addressed to the Director, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this rule are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (703/235-2771).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Cyprinodon nevadensis calidae* was described in 1948 by Dr. Robert Rush Miller from outflow streams of two springs, noth and south Tecopa Hot Springs—about 10 yards apart on the east side of the road leading north from Tecopa, California. Considerably larger scales and several proportional and other differences distinguish this fish from the Amargosa River pupfish subspecies (*C. nevadensis amargosae*), which then as now was widespread and locally common in parts of the river system and in other springs in and near

Tecopa. Available data on the Tecopa pupfish in 1970 indicated that it was Endangered by habitat alteration and introduction of exotic fishes, notably bluegill sunfishes and mosquito fish. In 1970, it was added to both Federal and California State Endangered species lists. By 1972, it was reported to no longer occur at the type locality, and surveys in 1977 failed to locate any other populations.

A proposal to remove the Tecopa pupfish from the list of Endangered species was published in the **Federal Register** on July 3, 1978 (43 FR 2884). This proposal summarized biological and environmental evidence indicating that the fish is extinct, and solicited comments, suggestions, objections, or information from any interested persons. A letter was sent to the Governor of California on July 7, 1978, notifying him of the proposed rule. As indicated below, the California Department of Fish and Game concurred with the available evidence, but proposed to continue surveying potential habitats until 1979, after which removal from the list was recommended if no populations were discovered.

**Summary of Comments and Recommendations**

All comments relating to the possible existence of the Tecopa pupfish, before and subsequent to the 1978 proposed rule, have been considered in the present status determination. A total of eight comments related specifically to the delisting proposal. Seven of these came from concerned citizens, and the Director of the California Department of Fish and Game responded on behalf of his agency and the Governor of California. All seven private citizens responding considered delisting inadvisable. Six respondents had observed pupfishes, five of them in the vicinity of Tecopa, which they logically assumed were Tecopa pupfish. In particular, populations existing in certain bathhouse outflows, and transplanted from them to other nearby springs, are similar in general appearance to the listed form, but biologists generally concur that all specimens examined in the area since 1970 represent the unlisted subspecies *amargosae*. Continuing concern and conservation efforts for that subspecies are justified, because its range and habitat are also limited. At least partly because of the listing of its less fortunate relative, the surviving subspecies and its habitat needs have been considered locally in planning and development of the region, and it is not present by foreseen to become Endangered.

The Director of the California Department of Fish and Game summarized the status findings of his agency, stating that Tecopa pupfish were either extinct or at such low population densities that sampling methods were unproductive. He indicated that a lookout for possible survivors would continue whether or not the species was delisted. In a 1978 report, the Department recommended delisting after 1979 if no populations were found.

**Summary of Status Findings**

After a thorough review and consideration of all available data, the Director has determined that *Cyprinodon nevadensis calidae* is extinct, and no longer requires protection pursuant to the Endangered Species Act of 1973, as amended. This determination is based on passage of time judged sufficient to insure that the fish is in fact extinct. Should evidence to the contrary be forthcoming at a later time, the action is reversible.

The Service's listing regulations at 50 CFR 424.11(b) state:

A Species shall be listed if the Director determines on the basis of the best scientific and commercial data available to him after conducting a review of the species' status that the species is Endangered or Threatened because of any one or more combinations of the following factors:

1. The present or threatened destruction, modification, or curtailment of its habitat or range;

2. Utilization for commercial, sporting, scientific, or educational purposes at levels that detrimentally affect it;

3. Disease or predation;

4. Absence of regulatory mechanisms adequate to prevent the decline of a species or degradation of its habitat; and

5. Other natural or manmade factors affecting its continued existence.

The regulations further state, in § 424.11(d), that:

The factors for removing a species from the list are those in paragraph (b) of this section. The data to support such removal must be the best scientific and commercial data available to the Director to substantiate that the species is neither Endangered nor Threatened for one or more of the following reasons:

1. *Extinction*—Unless each individual of the listed species was previously identified and located, a sufficient period of time must be allowed before delisting to clearly insure that the species is in fact extinct.

2. *Recovery of the species*—The principal goal of the Service is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted if evidence shows that it is no longer Endangered or Threatened.

3. *Original data for classification in error*—Subsequent investigations may produce data that show that the best scientific or commercial data available at the time the species was listed were in error.

The first status survey of the Tecopa pupfish after its listing was conducted in 1972 by Dr. Robert R. Miller, the original discoverer. He reported that all efforts to locate populations in the springs originally inhabited and other springs nearby were unsuccessful.

In 1977, an extensive survey of 44 aquatic habitats in the Tecopa-Hot Springs area of Inyo County, California, was conducted by Douglas Selby for the California Fish and Game Department. *Cyprinodon nevadensis amargosae* was found to be locally abundant in some of these habitats, rare in some, and absent from some. The upper outflow stream from Tecopa Hot Springs, the type locality of the Tecopa pupfish, *C. nevadensis calidae*, in the southern half of section 33, T21N R7E, was reported to contain no fish. This apparently resulted from rechanneling and combining the two hot spring outflows in 1965, which probably increased both current speed and downstream temperatures to levels unsuitable for pupfish survival or propagation or both. At the time these actions occurred, only a few persons were aware of the uniqueness and probable restricted distribution of this fish.

**References Cited**

California Department of Fish and Game. 1978. At the Crossroads, 1978, a Report on California's Endangered and Rare Fish and Wildlife. State of California—Resources Agency, Sacramento, CA. 103 pp.

Miller, R.R. 1948. The cyprinodont fishes of the Death Valley System of eastern California and southwestern Nevada. Misc. Publ. Mus. Zool. Univ. Mich. No. 68. 155 pp.

Selby, D.A. 1977. Report on the aquatic systems of the Tecopa-Shoshone area of the Death Valley System: fish, invertebrate, and habitat status. Unpublished report to California Dept. of Fish and Game. 94 pp.

**Effects of the Rule**

The rule removes the Tecopa pupfish from the list of Endangered and Threatened Wildlife and Plants, and thereby discontinues all protections accorded the fish and its habitat under provisions of the Endangered Species Act of 1973, as amended.

An Environmental Assessment was prepared in conjunction with this rule. It is on file in the Service's Office of Endangered Species, 1000 North Glebe

Road, Arlington, Virginia, and may be examined by appointment during regular business hours. This assessment is the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969 and 40 CFR Parts 1500–1508.

Note.—The Department of Interior has determined that this not a major rule and does not require preparation of a Regulatory Impact Analysis under Executive Order 12291. The Department has also determined, in accordance with the Regulatory Flexibility Act, that this rule will not have a significant economic effect on a substantial number of small entities. The Service is not aware of negative impacts on small entities from the delisting.

**Primary Author**

The primary author of this rule is Dr. George E. Drewry, Office of Endangered Species, Arlington, Virginia (703/235–1975).

**Regulations Promulgation**

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations is amended, as set forth below:

**§ 17.11 [Amended]**

1. Amend the table in § 17.11(h) by removing the Tecopa pupfish (*Cyprinodon nevadensis calidae*) from the List of Endangered and Threatened Wildlife and Plants.

(Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1241 (16 U.S.C. 1531, et seq.))

Dated: October 30, 1981.

**J. Craig Potter,**

*Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 82–1104 Filed 1–14–82; 8:45 am]

BILLING CODE 4310–55–M

# Proposed Rules

Federal Register
Vol. 47, No. 10
Friday, January 15, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### 15 CFR Part 369

### Restrictive Trade Practices or Boycotts

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department is seeking public comment on proposed changes in its antiboycott regulations aimed at reducing unnecessary and burdensome aspects of the reporting requirements, and clarifying the prohibited nature of certain boycott terms in banking and financial transactions. The boycott terms the Department proposes to clarify involve restrictions in letters of credit on negotiations with blacklisted banks and requirements in letters of credit for certifications about a company's blacklist status. The reporting changes will eliminate the requirement for reports of requests for vessel or other transport eligibility clauses, for insurance agent clauses, and for certain risk of loss clauses. The Department expects that the proposed reporting changes would reduce by as much as 50 percent the reporting burden on the business community, particularly on smaller exporters and freight forwarders, without impairing the Department's ability to meet its responsibility for monitoring the nature of foreign boycotts and otherwise meeting the United States Government's antiboycott objectives.

**DATES:** Comments must be received on or before March 16, 1982.

**ADDRESS:** Written comments (three copies when possible) shall be submitted or mailed to William V. Skidmore, Director, Office of Antiboycott Compliance, Room 3886, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Howard N. Fenton, III or Brian C. Murphy, Office of Antiboycott Compliance, U.S. Department of Commerce, Washington, D.C. 20230 Telephone: (202–377–2381).

**SUPPLEMENTARY INFORMATION:**

*Classification:* The Department has determined that this is not a major rule for purposes of Executive Order 12291.

*Regulatory impact analysis:* Not required for this rulemaking.

The Department of Commerce, in an effort to enhance and promote compliance with its regulations implementing the antiboycott provisions of the Export Administration Act of 1979 (15 CFR Part 369) and to reduce unnecessary burdens imposed by those regulations, has identified a number of issues for clarification and revision. The issues fall into two categories, relating to the reporting of boycott requests and to letters of credit transactions. The Department is proposing new examples and revisiond to a portion of its regulations and is inviting comments on these changes. The objectives are to reduce the level of uncertainty surrounding certain provisions of the antiboycott regulations that are now the subject of confusion and to eliminate unnecessary paperwork for companies seeking to comply with these rules.

When the Department adopted final regulations implementing the boycott reporting provisions of the Export Administration Amendments of 1977, it determined that a number of requests for information or agreement that might be used for a boycott purpose were also commonly used for non-boycott purposes. For example, requests for positive certificates of origin, for agreements to comply with local laws, and for vessel routing certifications were specifically determined not to be reportable because of their common use for non-boycott purposes and because of the mandate from Congress to provide clear and precise guidelines in an area of inherent uncertainty and to reduce paperwork (15 CFR 369.6(a)(5) (1981)).

The Department believes that it is appropriate at this time to examine other conditions in commercial transactions in common use that are being reported as boycott requests to determine whether their continued reporting should be required. The Department has identified two particular conditions or requests that it believes fall into this category: (1) Vessel or transport eligibility certificates, and (2) insurance agent residency certificates. The public may disagree with the Department's proposed treatment of these requests or may believe other requests or conditions warrant similar treatment. Therefore, the Department is inviting comments on these proposed amendments to § 369.6(a)(5) of the regulations and welcomes the views and suggestions of the public on this subject.

There is also some confusion over the reportability of another request or condition, the so-called "risk of loss" clause. This condition seeks to impose on the vendor the risk of the loss, if the vendor's goods are denied entry into a country because of that country's laws or regulations. The Department believes that this clause must be treated somewhat differently from the vessel elegibility and insurance agent clauses because the risk of loss clause was adopted for boycott purposes. Indeed, the Department presumes that any company introducing such a clause after the effective date of the regulations is seeking to evade the antiboycott law contrary to § 369.4 of the regulations. However, since those companies that had introduced the clause prior to the effective date are presumed not to be evading the law, some confusion has arisen over when receipt of risk of loss clauses must be reported to the Department. This proposal would make clear that risk of loss clauses received from companies that introduced the clause prior to the effective date of the regulations (January 18, 1978) need not be reported to the Department of Commerce.

The antiboycott regulations also prohibit U.S. banks and other U.S. persons from implementing letters of credit which contain prohibited boycott conditions or requirements. The Department believes this provision has been effective in eliminating or reducing boycott conditions in letters of credit. Banks have generally done an excellent job in implementing this part of the regulations. However, two aspects of the letter of credit provision involving explicit boycott and blacklisting terminology and conditions are in need of clarification. Certain practices have arisen that the Department believes do not meet the requirements for

compliance with the law and regulations. These practices involve:

1. Implementing letters of credit including a condition restricting negotiation or implementation by banks whose names are included in the Israeli Boycott blacklist; and

2. Refusing to pay a letter of credit if the beneficiary will not provide a permissible self-certification as to its blacklist status or the blacklist status of some other party to the transaction (§ 369.2(f), ex. xiv).

The Department is proposing for comment an interpretation and new illustrative examples that will make it clear (1) that implementation of a letter of credit including a restriction on negotiation with blacklisted banks is prohibited; and (2) that refusal to pay a letter of credit where the beneficiary fails to provide a permissible self-certification as to its or any other person's blacklist status constitutes "insisting" that such certification be furnished in violation of § 369.2(a) of the regulations.

**Reporting Requirement Revision**

The Export Administration amendments of 1977 (Pub. L. 95–52) significantly changed the restrictive trade practice or boycott reporting requirements administered by the Department of Commerce (the original reporting requirements were contained in the Export Control Act of 1965 and reenacted in the export Administration Act of 1969.) Both Houses of Congress focused their attention on the reporting issue and mandated significant changes (*See*, H.R. Rep. No. 95–190, 95th Cong., 1st Sess. 25–26 (1977), S. Rep. No. 95–104, 1st Sess. 48–49 (1977)). However, the Congress recognized the need for clarity in the regulations implementing these new reporting requirements and the importance of limiting the burden of the regulations on both the reporting public and the Department of Commerce. The Report of the House International Relations (now foreign Affairs) Committee stated:

> The intention is that certain actions (such as positive certification of country of origin, the name and nationality of the carrier and route of shipment of a cargo, and the furnishing of immigration and passport information) which are normal pratices of commercial or diplomatic relations should not be reported in order not to place unnecessary reporting burdens on U.S. persons, or on the Commerce Department. H.R. Rep. No. 95–190, 1st Sess. 25 (1977).

The Conference Committee also emphasized this concern, concluding its report by saying that the committee "further urged that in the review of current regulations and the development of new regulations pursuant to this act, great care shall be taken to minimize to the greatest extent feasible the amount of paperwork required of those reporting to the Secretary of Commerce". H.R. Rep. No. 95–354, 1st Sess. 29 (1977).

Accordingly, in developing the new reporting regulations, the Department of Commerce sought to identify requests in common use that might have a boycott impact but that actually were of general application or use for non-boycott purposes, and to exempt such requests from the reporting requirements. Thus, for example, a request for a positive certificate of origin, the provision of which necessarily involves furnishing boycott-related information when the transaction involves a boycotting country, was determined to be not reportable. Since the boycott purpose of such a request could only be presumed from the facts and circumstances surrounding a specific transaction and not from the language of the request itself, and because the request was commonly used, the Department decided that in the interest of clarity such requests need not be reported. (It should be noted that the Department has not taken the position that the furnishing of a positive certificate of origin is not a boycott-related action. Under the regulations furnishing such a statement in response to a request from a boycotting country would be prohibited by § 369.2(d) and is only permitted by the exception at § 369.3(b).)

Similarly, the Department decided that a request to supply a positive statement about the destination of exports from a boycotting country should not be reported, though it too necessarily serves a boycott purpose when requested by a boycotting country. Because the request on its face cannot be identified as boycott-related, because those elements which may make it boycott-related may not be readily discernible by parties to the transaction, and because a request is reportable by a United States person only if "he knows or has reason to know that the purpose of the request is to enforce, implement or otherwise further, support or secure compliance with an unsanctioned foreign boycott" (15 CFR 369.6(1980)), the Department did not impose a reporting obligation on requests for positive statements of the destination of exports. Following the explicit instructions of the Congress and given its own concern over developing clear regulations that would encourage maximum compliance, the Department identified these and other requests whose purpose is unclear or ambiguous and whose boycott relationship could only be learned through external circumstances or knowledge. The Department determined that it would be a substantial burden on the reporting public and the Department to proceed transaction by transaction through thousands of transactions searching for boycott implications. Thus, the Department developed regulations eliminating the reporting requirements for such requests.

In the three years since the new reporting regulations were implemented, the frequency and nature of certain types of requests have changed, and language has evolved in commercial contexts that did not exist at the time the regulations were adopted. Consistent with the Congressional mandate and the Department's own desire to minimize the paperwork burden on reporters and on the Department, it is appropriate at this time to add two types of request to the list of non-reportable requests. These requests are:

1. A request that the owner, master, charterer (or any employee thereof) certify that a vessel, aircraft, motor vehicle or other mode of conveyance is eligible or otherwise eligible, permitted, or allowed to enter a specific country, port or category of ports; and

2. A request for a certificate from an insurance company stating that the company has a duly authorized agent or representative within a specific country and/or a request for the name and address of such agent.

**Transport Eligibility Requests**

The Department has been receiving a substantial number of reports of requests for certifications that the vessel carrying the goods involved in the transaction is eligible to enter the port of the purchasing country. During calendar year 1980 over 11,000 such boycott requests were reported from countries other than Saudi Arabia. The Department has taken the position that these requests had to be reported because of its view that such a statement necessarily conveyed information about the blacklist status of the vessel or other mode of conveyance. (*See* Supp. 1, 43 FR 16969 (1978).) However, with respect to requests with identical wording originating in Saudi Arabia and Egypt, the Department has determined that they were not reportable. Saudi Arabia, which initially adopted the use of the transport eligibility clause, has informed the Treasury Department that the criteria for eligibility to enter pertains to maritime matters such as the age of the ship and the condition of the ship and does not relate to the blacklist status of

the vessel. (*See* Supp. 2, 44 FR 67374, (1979).) Since Egypt has terminated its boycott of Israel, the Department no longer considers the language boycott-related by implication and therefore eligibility-to-enter requests originating in Egypt need not be reported. (*See* Supp. 3, 45 FR 29010 (1980).) The language continues to appear in transactions with Saudi Arabia and Egypt, however, causing further confusion on the part of the reporting public. The majority of these requests now come from the United Arab Emirates and Kuwait, although a number of such requests are received from other boycotting and non-boycotting countries. Again, the language is identical or very similar to the language still in use in Saudi Arabia and Egypt.

The Department has noted a considerable amount of uncertainty among regular reporters of boycott requests about whether the eligibility-to-enter language in fact relates to the boycott.

Because the purpose behind requests of this nature is ambiguous, and because a variety of non-boycott factors may be involved in determining if a vessel, aircraft of other means of conveyance is permitted or eligible to enter a given country (age, condition, safety fittings, unloading equipment, etc.), the Department is proposing that such requests no longer be reported regardless of the context in which they arise or the country from which they originate.

**Authorized Insurance Agent Requests**

A request that the insurance company certify that it has a duly authorized agent or representative within a specific country or the request for the name and address of the company's duly authorized agent within a country creates similar uncertainty. This type of request, like the vessel eligible request, was first adopted by Saudi Arabia and was the subject of a subsequent explanation by the Saudi Government as to its non-boycott purpose. (*See* Supp. 2, 44 FR 67374 (1979).) The request is being made by countries other than Saudi Arabia, however, principally the United Arab Emirates. There has also been confusion and uncertainty concerning its boycott purpose and whether or not it must be reported. Because insurance requirements are a common aspect of letter of credit transactions, the request has a legitimate commercial purpose (establishing that a company will be able to service expeditiously claims within the country), and because any possible boycott purpose may only be discerned through inquiry into motives of the parties or details of the transaction, the Department is proposing that these requests need not be reported regardless of the context in which they arise or the country form which they originate.

**Risk of Loss Requests**

The Department has identified another common request that has also generated a substantial amount of confusion as to its meaning, and whether it must be reported to the Department. This is the so-called "risk of loss" clause that imposes liability on the vendor of a product if that product is denied entry into a foreign country because of that country's laws or regulations. This clause is somewhat unusual in that its development was a direct response by U.S. persons to antiboycott legislation in an effort to avoid restricted conduct. When the Department promulgated its final regulations on January 18, 1978, it took the position that persons adopting such a clause or condition after that date would be *presumed to be* in violation of § 369.4 of the Export Administration Regulations, the prohibition on taking any action with the intent to evade the application of the law. Because a number of companies had adopted the clause prior to January 18, 1978, however, the presumption of evasion would not apply to their continued use of the clause. The question that immediately arose was whether receipt of these clauses by vendors would have to be reported to the Department. The final reporting regulations that became effective August 1, 1978 included an example to the effect that, if a person "knew or had reason to know" the risk of loss clause was boycott-related, it must be reported (§ 369.6 Example xxix). The example did not differentiate between requests from firms that developed the clause prior to adoption of the substantive antiboycott regulations of January 18, 1978, and requests from those that began using the clause after that date.

The application of the "know or have reason to know" standard in determining reportability of the risk of loss clause has resulted in considerable confusion because of the way the Department applies the evasion provisions of the regulations to the clause. Many people have assumed that, because those companies which used the clause prior to January 18, 1978, were presumed not to be evading the antiboycott provisions, receipt of the clause from such companies was not reportable. The Department finds nothing in its treatment of the risk of loss clause in § 369.4 that would give rise to the view that the clause is not boycott-related. However, given the confusion surrounding the issue, the widespread legal use of the clause by some companies, and the Department's interest in reducing the burden imposed by the reporting requirements on both the Department and the reporting public, the Department proposes that receipt of risk of loss clauses from companies that made use of such clauses prior to January 18, 1978 not be reported to the Department. A statement from the company seeking to impose the clause, to the effect that such clause was in use by that company prior to January 18, 1978, will be sufficient to void the reporting requirement on the part of the recipient of the clause.

The Department wishes to reaffirm its position that use of risk of loss clauses that expressly impose a financial risk on another because of the import laws of a boycotting country will be presumed to constitute evasion if those clauses were introduced after the effective date of the regulations, January 18, 1978. Receipt of such requests must be reported to the Department, and the Department will thoroughly review and investigate use of such clauses to determine their actual purpose. If a company receives a risk of loss clause as a condition on a transaction, and the company is uncertain as to when the party using the clause began such use, the company should inquire about the introduction date from the other party. In the event that the other party fails to indicate when it began to use the risk of loss clauses, the company receiving it should report its receipt to the Department.

**Letter of Credit Revisions**

*1. Letters of Credit Including a Condition Restricting Negotiations By Banks Whose Names Are Included in the Israel Boycott Blacklist*

Banks in the Middle East opening letters of credit for U.S. beneficiaries occasionally include terms which limit the negotiability of the letter of credit to banks which are not blacklisted. The condition appears as in instruction or directive and requires no certification or acknowledgment, but does place a limitation on the negotiability of the letter of credit. This limitation applies to the beneficiary who receives the letter, because it limits the banks to which he may present the letter of credit for collection. Because it imposes a prohibited condition on the beneficiary, the bank is foreclosed from implementing the letter of credit pursuant to § 369.2(f) of the regulations.

Many banks and/or beneficiaries are reporting receipt of requests of this type and have successfully negotiated the term out of the letter of credit.

Since there is not explicit requirement for an agreement to or certification of the term, some banks and beneficiaries apparently believe that they may simply disregard the statement and remain in compliance with the regulations. It is the Department's position that, although the limitation on negotiation with blacklisted banks does not require any explicit restatement in the form of an agreement or certification, the term serves to limit or control the transaction for boycott-related purposes and a party *is agreeing to it* if that party pursues the transaction *without taking exception* to the term. Thus, even if a company handles the matter in its normal fashion, while it may not have actually refused to deal with blacklisted banks, it has agreed to do so in accepting that condition on negotiability and in presenting the documentation for payment with the term included. The bank implementing that letter of credit has also violated the regulations if it pays, confirms or otherwise implements the letter of credit containing such a term.

The Department has identified a number of variations of this requirement or condition on these letters of credit, including such phrases as, "Do not negotiate with blacklisted banks"; "Negotiations limited to banks not appearing on the blacklist"; and "On no condition may a bank listed in the Arab-Israel boycott blacklist be permitted to negotiate this credit." The phrasing of the condition is not material in the Department's view because the clear purpose of such language is to impose a boycott-related restriction on the negotiability of the letter of credit. Therefore, regardless of the exact phrasing of such terms of conditions, it is the Department's view that terms, conditions, legends, or directives that would result in restricting the negotiation of a letter of credit on prohibited boycott grounds must be eliminated from the letter of credit before it can be implemented, or the beneficiary and implementing bank will be in violation of the regulations. The explicit boycott language of the clause provides all parties to the transactions with clear notice that it is a boycott condition or request. If a United States person goes forward with the transaction knowing that the boycott is at least one of the reasons for a particular requirement or condition, that person is presumed to have the "intent to comply with, further, or support an unsanctioned foreign boycott." See § 369.1(e)(6).

*2. The Bank Practice of Refusing To Pay a Letter of Credit if the Beneficiary Will Not Provide a Self-Certification as to the Blacklist Status of Itself or Some Other Party to the Transaction*

The Department has historically taken the position that any United States person may make a statement that it is or is not on the "blacklist" (commonly called a self-certification). The basis for this position is that making such a statement is not prohibited because it furnishes no information about the person's business relationships with boycotted countries or blacklisted persons. Rather, it simply states the Arab nations' perception of that person's status. Because there are numerous reasons for appearing on the blacklist or for not being included on the blacklist, the Department believes that making such a statement about one's own status is not contrary to any prohibition of the law.

Letters of credit from boycotting countries on occasion require some form of "self-certification" by the beneficiary or other party to the transaction. It has been the Department's position that the beneficiary of the letter of credit could provide self-executed certificates or statements as to blacklist status for himself or other parties to the transaction and that a bank could implement a letter of credit requiring such statements or certificates. *See* 15 CFR 369.2(f) example (xiv) Supp. 1, 43 FR 16969 (1978); *and* Supp. 2, 44 FR 67374 (1979). Example (xiv) states, however, that the bank cannot "insist" that the beneficiary furnish a blacklist certificate about itself and that, if the bank did "insist", it would be *refusing to do business* with a blacklisted person in compliance with a boycott, a violation of § 369.2(a). However, some banks are believed to have taken the position that they are free to refuse to pay the letter of credit if the beneficiary does not provide a self-certification because such refusal on the part of the bank does not constitute "insisting" that the certificate be furnished. These banks argue that some other type of coercion is contemplated by the word "insist", such as a general refusal to provide letter of credit services to that beneficiary.

One basis for this view has been the large number of letter of credit transactions involving requirements for vessel eligibility certificates as discussed in the proposed reporting revisions above. The Department has taken the position in the past that such a statement was the same as stating that the vessel was not blacklisted. The banks have argued that because there is no way to identify the statement on its face as boycott-related, it would impose an unreasonable burden on them and would inject an unacceptable level of uncertainty into letter of credit transactions if the banks could not enforce the provision in the letter of credit by refusing to pay if the certificate were not provided. The Department recognizes this concern and does not believe that Example (xiv) addresses itself to conditions in letters of credit that are ambiguous as to their meaning or that are equally susceptible to boycott or non-boycott interpretation. Therefore, the proposed interpretation will not apply to such statements as, "the vessel is eligible to enter (the boycotting country port)."

However, where the letter of credit requires an explicit statement or certificate from any party as to its blacklist status, the bank cannot refuse to pay that letter of credit if it does not receive such a statement or certificate. There is no firmer method of "insisting" that such a certificate be furnished than refusing to pay the beneficiary. This is the case whether the certificate is required from the beneficiary or some other party to the transaction. Section 369.2(a) prohibits a U.S. person from refusing or requiring another person to refuse to do business with any other person when that action is in response to a boycott request or requirement. By refusing to pay a letter of credit unless the beneficiary furnishes any required blacklist self-certification, a bank is violating that prohibition. The bank may make a limited, ministerial inquiry of the beneficiary to determine if such a certificate required by the letter of credit will be furnished or if it has been inadvertently omitted, but it may not refuse to pay if the beneficiary will not provide the certificate.

**Proposed Effective Date**

The Department proposes that any changes in the reporting requirements take effect upon publication of the final rule after the close of the comment period.

With regard to the proposed clarification of the letter of credit requirements, the Department also believes that, because uncertainty has existed about the two issues addressed, it should apply its proposed position prospectively only, effective upon publication of the final rule. The Department is also considering whether a grace period of some duration would be required to implement effectively one or both of the proposed letter of credit clarifications and would welcome

comments from the public on that question.

**Proposed Rule**

The principal authors of this proposed rulemaking are Howard N. Fenton, Acting Director, Compliance Policy Division, Office of Antiboycott Compliance, and Pamela Breed, Deputy Assistant General Counsel for Enforcement and Litigation, U.S. Department of Commerce.

## PART 369—RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

For the reasons set forth above, 15 CFR part 369 is amended as follows:

1. The Authority citation for Part 369 reads as follows:

**Authority:** Pub. L. 96–72, 93 Stat 503, section 8, 50 U.S.C. 2407 (Supp. III, 1979).

2. In the examples portion of § 369.2, add the following new examples to paragraphs (a) and (f) as set forth below:

**§ 369.2 Prohibitions.**

(a) Refusals to do business.

* * * * *

**Refusals To Do Business**

* * * * *

(xix) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted. B meets all other conditions of the letter of credit but refuses to certify as to his blacklist status. A refuses to pay B on the letter of credit.

A has refused to do business with another person pursuant to a boycott requirement or request.

(xx) U.S. bank A receives a letter of credit in favor of U.S. benficiary B. The letter of credit requires B to provide a certification from the steamship line that the vessel carrying the goods is not blacklisted. B meets all other conditions of the letter of credit but refuses or is unable to provide the certification from the steamship line about the vessel's blacklist status. A refuses to pay B on the letter of credit.

A has required another person to refuse to do business with a person pursuant to a boycott requirement or request. (Either A or B may request an amendment to the letter of credit substituting a certificate of vessel eligibility, however. See Example xxi below.)

(xxi) U.S. bank A receives a letter of credit from a bank in boycotting country Y in favor of U.S. beneficiary B. The letter of credit requires B to provide a certification from the steamship line that the vessel carrying the goods is eligible to enter the ports in Y. B meets all other conditions of the letter of credit but refuses or is unable to provide the certification from the steamship line about the vessel's eligibility. A refuses to pay B on the letter of credit.

A has neither refused, nor required another person to refuse, to do business with another person pursuant to a boycott requirement or request because the vessel eligibility certificate is not an explicit boycott requirement.

(xxii) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted. B fails to provide such a certification when he presents the documents to A for payment. A notifies B that the certification has not been submitted.

A has not refused to do business with another person pursuant to a boycott requirement by notifying B of the omitted certificate. A may not refuse to pay on the letter of credit, however, if B states that B will not provide such a certificate.

(xxiii) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted. A notifies B that it is contrary to the policy of A to handle letters of credit containing this condition and that unless an amendment is obtained deleting or revising this condition A will not implement the letter of credit.

A has not refused to do business with another person pursuant to a boycott requirement, because A has indicated its refusal to implement the letter of credit containing the term without regard to B's ability or willingness to furnish such a certificate.

**Agreements To Refuse To Do Business**

* * * * *

(x) Boycotting country Y orders goods from U.S. company B. Y opens a letter of credit with foreign bank C in favor of B. The letter of credit specifies that negotiation of the letter of credit with a bank that appears on the country X boycott blacklist is prohibited. U.S. bank A, C's correspondent bank, advises B of the letter of credit. B presents documentation to bank A seeking to be paid on the letter of credit, without amending or otherwise taking exception to the boycott condition.

B has agreed to refuse to do business with blacklisted banks because, by presenting the letter of credit for payment, B has accepted all of its terms and conditions.

* * * * *

(f) Letters of credit.

* * * * *

**Prohibition Against Implementing Letters of Credit**

* * * * *

(xvii) Boycotting country Y orders goods from U.S. company B. Y opens a letter of credit with foreign bank C in favor of B. The letter of credit includes the statement, "Do not negotiate with blacklisted banks". C forwards the letter of credit it has opened to U.S. bank A for confirmation.

A may not conform or otherwise implement this letter of credit, because it contains a condition with which a U.S. person may not comply.

3. Section 369.6 is amended by adding paragraphs (a)(5)(viii) and (ix). Also, in the examples portion of 369.6, example (xxix) is revised; examples (xxx) through (xxxii) are redesignated as examples (xxxi) through (xxxiii); and new examples (xxx) t abd (xxxiv) through (xxxvi) are added to read as follows:

**§ 369.6 Reporting requirements.* * ***

(5) * * *

(viii) A request to supply a certificate by the owner, master, charterer, or any employee thereof, that a vessel, aircraft, truck, or any other mode of transportation is eligible, otherwise eligible, permitted, or allowed to enter, or not restricted from entering, a particular port, country, or group of countries pursuant to the laws, rules, or regulations of that port, country, or group of countries.

(ix) A request to supply a certificate from an insurance company stating that the insurance company has a duly authorized agent or representative within a specific country and/or the name and address of such agent.

* * * * *

**Examples**

* * * * *

(xxix) A, a U.S. manufacturer, is engaged from time-to-time in supplying drilling rigs to company B in boycotting country Y. B insists that its suppliers sign contracts which provide that, even after title passes from the supplier to B, the supplier will bear the risk of loss and indemnify B if goods which the supplier has furnished are denied entry into Y for whatever reason. A knows or has reason to know that this contractual provision is required by B because of Y's boycott, and that B has been using the provision since 1977. A receives an order from B which contains such a clause.

B's request is not reportable by A, because the provision was in use by B prior to the effective date of the regulations, January 18, 1978, and B is permitted to make use of the term.

(xxx) Same as (xxix), except that A does not know when B began using the provision.

Unless A receives information from B that B introduced the term prior to the effective date of the regulations, January 18, 1978, A must report receipt of the request.

(xxxiv) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to state on the bill of lading that the vessel is allowed to enter Y's ports. The request further states that a certificate from the owner or captain of the vessel to that effect is acceptable.

The request A received from his customer in Y is not reportable if it was received after the effective date of these rules, because it is a request of a type deemed to be in common use for non-boycott purposes. (A may not make such a statement on the bill of lading himself, if he knows or has reason to know it is requested for a boycott purpose. *See* Supp. 1, 43 Fed. Reg. 16969 (1978) and Supp. 2, 44 Fed. Reg. 67374 (1979)).

(xxxv) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to furnish a certificate from the owner of the vessel that the vessel is permitted to call at Y's ports.

The request A received from his customer in Y is not reportable if it was received after

the effective date of these rules, because it is a request of a type deemed to be in common use for non-boycott purposes.

(xxxvi) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to furnish a certificate from the insurance company indicating that the company has a duly authorized representative in country Y and giving the name of that representative.

The request A received from his customer in Y is not reportable if it was received after the effective date of these rules, because it is a request of a type deemed to be in common use for non-boycott purposes.

Dated: January 11, 1982.

**Bo Denysyk,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 82-1075 Filed 1-12-82; 11:51 am]

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 1

### Registration of Employees of Commodity Trading Advisors and Commodity Pool Operators

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is proposing a rule which, with certain exceptions, would specify the terms by which any individual who (1) solicits customers on behalf of a commodity trading advisor ("CTA") or on behalf of a commodity pool operator ("CPO"), or (2) supervises any person or persons so engaged, must be registered with the Commission as a CTA. The rule would also make it unlawful for a CTA or CPO to allow any such individual to solicit customers on its behalf if the CTA or CPO knows or should know that the individual is not registered with the Commission as a CTA. An individual who is registered with the Commission in some other capacity, however, would not also be required to be registered as a commodity trading advisor if he was not engaged in activities which require registration as a CTA other than the solicitation of customers or the supervision of any person or persons so engaged. In addition, an individual registered under the rule as a CTA would be exempt from the disclosure and recordkeeping requirements normally applicable to CTAs if he did not engage in any other activity which requires registration as a CTA.

**DATES:** Comments on the proposed rules must be received by March 16, 1982.

**ADDRESS:** Send comments to: Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581. Attention: Secretariat.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Shiner, Assistant Director for Registration, or Kenneth M. Rosenzweig, Assistant Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581. Telephone: (202) 254-9703 or 254-8955.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

#### *A. Background*

On March 20, 1980, the Commission published in the **Federal Register** proposed rules which related principally to the "sponsorship" of associated persons by futures commission merchants and the fingerprinting of certain registrants and their principals.[1] Although the Commission had neither proposed rules nor requested public comments relating to the registration of persons who solicit customers on behalf of CTAs and CPOs, the Commission nonetheless received comments urging it to adopt such rules.[2]

The Commission subsequently proposed revisions to certain of its regulations relating to the operations and activities of CPOs and CTAs.[3] As part of that rulemaking, the Commission noted that:

> The expansion of commodity interest account management has brought an increased use of non-clerical employees and agents of CPOs and CTAs to solicit pool participants, operate pools, obtain clients, formulate commodity advice, etc. These persons can have a direct and important effect upon the prospective and actual customers of CPOs and CTAs. Therefore, the Commission is considering adopting rules that would implement and facilitate the registration of non-clerical employees and agents of CPOs and CTAs. Interested persons are requested to submit comments which will assist in the formulation of such rules.[4]

The Commission received fourteen comments in response to that portion of its proposal, most of which favored specific rules for the registration of the persons who solicit customers on behalf of CTAs or CPOs. The Commission has carefully considered all of the comments received in response to that proposal and, as is discussed more fully below, is proposing a rule which, with certain exceptions, would specify the terms by which any individual who solicits customers on behalf of CTAs or CPOs must register with the Commission as a commodity trading advisor.[5]

#### *B. Need for Regulation*

The Commission is well aware of the dramatic increase in the number of persons registered as CPOs and CTAs and of the concomitant increase in the number of customers and the amount of funds under management by CPOs and CTAs. The Commission is further aware, however, that "[w]ith this rapid growth, * * * there has been an increase in abusive activity in commodity interest account management" [6] and in the use, by CPOs and CTAs, of employees and agents to solicit pool participants and managed account clients.[7] Because these employees and agents often have a direct and substantial effect upon the customers of CTAs and CPOs and, indirectly, upon the commodity markets themselves, it is essential that they be fit to engage in commodity-related activities. Inasmuch as the registration process is the primary means by which the Commission can bar unfit persons from the commodity industry, the Commission believes that it has become necessary to establish specific procedures for the registration of non-clerical employees and agents of CPOs and CTAs. These procedures, if adopted, will permit the Commission to review the fitness of applicants for registration in this specific capacity and would simultaneously preclude those individuals who are demonstrably unfit for registration from functioning in a manner comparable to that of other persons (*e.g.*, associated persons) who are subject to the Commission's scrutiny during the course of the registration process.

The Commission is, of course, aware of the need to avoid unnecessary burdens upon the commodity futures industry and, as is discussed below, has structured its proposal to minimize any such burdens. At the same time, the Commission is mindful of its obligations to enforce the requirements and effectuate the purposes of the Commodity Exchange Act ("Act").

The Commission has previously had occasion to review the scope of the statutory requirement of CTA registration. In *Damiani* v. *Futures Investment Company, Inc.*, the Commission observed that the 1974 amendments to the Act were intended to bring within the coverage of the Act and

[1] 45 FR 16356.

[2] 45 FR 80485, 80488 (December 5, 1980).

[3] 45 FR 51600 (August 4, 1980).

[4] *Id.* at 51601.

[5] The Commission considers its August 4, 1980 proposal, as well as the comments received thereon, to be a part of the present rulemaking proceeding.

[6] 45 FR 51600, 51600 (August 4, 1980).

[7] *Id.* at 51601