Pseudocochliobolus
Pseudofusarium
Pseudogymnoascus
Pseudohalonectria
Pseudohiatula
Pseudomicrodochium
Pseudonectria
Pseudopezicula
Pseudospiropes
Psilocybe
Pteridiosperma
Pteridiospora
Pterula
Ptychogaster
Puciola
Pulcherricium
Punctularia
Pycnoporellus
Pycnoporus
Pycnosporium
Pyramidospora
Pyrenopeziza
Pyrenophora
Pyrenula
Pyronema
Pythiopsis
Pythium

Radiomyces
Radulodon
Radulomyces
Raffaelea
Ramalina
Ramaria
Ramaricium
Ramichloridium
Ramularia
Ramulispora
Remispora
Renispora
Resinicium
Resupinatus
Rhexothecium
Rhinocladiella
Rhinotrichum
Rhizomucor
Rhizophylyctis
Rhizophydium
Rhizopogon
Rhizosphaera
Rhodoseptoria
Rhodosporidium
Rhodosticta
Rhodotorula
Rhodotus
Rhynchosporium
Rhyparobius
Riessia
Rigidoporus
Robillarda
Rogersiomyces
Rollandina
Rosulomyces
Rutstroemia

Saccharomyces
Saccharomycodes
Saccharomycopsis
Sagenoma
Saitoa
Saksenaea
Saprolegnia
Sapromyces
Sarcinomyces
Sarcinosporon
Sarcogyne
Sarcoscypha
Sarcotrochila
Sarea
Sarocladium
Sartorya
Scedosporium
Schizoblastosporion
Schizochytrium
Schizophyllum
Schizoplasmodiopsis
Schizosaccharomyces
Schizothecium
Schwanniomyces
Scirrhia
Scleroderma
Scleroderris
Scleromitrula
Sclerophoma
Sclerotinia
Sclerotium
Scolecobasidium
Scoleconectria
Scopulariopsis
Scorias
Scorpiosporium
Scytalidium
Scytinostroma
Sebacina
Seimatosporium
Seiridium
Selenophoma
Septofusidium
Septogloeum
Septomyxa
Septonema
Septoria
Septotinia
Serpula
Sesquicillium
Setosphaeria
Shanorella
Sibirina
Sigmoidea
Sirobasidium
Sirococcus
Sirodesmium
Sistotrema
Skeletocutis
Smittium
Sordaria
Sorosporium
Spadicoides
Sparassis
Spegazzinia
Speiropsis
Sphaceloma
Sphaerobolus
Sphaeronema
Sphaeropsis
Sphaerospora
Sphaerosporella
Sphaerostilbe
Spicaria
Spicellum
Spilocaea
Spiroidium
Spiromastix
Spiromyces
Spirosphaera
Spizellomyces
Spondylocladium
Spongipellis
Sporidiobolus
Sporobolomyces
Sporodiniella
Sporopachydermia
Sporormia
Sporormiella
Sporoschisma
Sporothrix
Sporotrichum
Squamuloderma
Stachybotryna
Stachylidium
Stagonospora
Staheliella
Staphylotrichum
Staurophoma
Steccherinum
Steganosporium
Stemonitis
Stemphylium
Stephanoascus
Stephanoma
Stephanosporium
Stephensia
Stereocaulon
Stereum
Sterigmatomyces
Sterigmatosporidium
Stigmina
Stilbella
Stilbum
Strattonia
Striatosphaeria
Stromatinia
Stropharia
Stuartella
Stypella
Subulispora
Suillus
Swampomyces
Sympodiella
Sympodiomyces
Sympodiophora
Syncephalastrum
Syncephalis
Synnematium
Synpenicillium
Syringospora
Syzygites

Talaromyces
Taphrina
Teichospora
Teratosperma
Termitomyces
Tetrachaetum
Tetracladium
Tetracoccosporium
Tetraploa
Thallomicrosporon
Thamnidium
Thamnostylum
Thanatephorus
Thecotheus
Thelebolus
Thelephora
Thermoascus
Thermomucor
Thermomyces
Thermophymatospora
Thielavia
Thielaviopsis
Thozetella
Thraustochytrium
Thraustotheca
Thyronectria
Thysanophora
Tieghemiomyces
Tilachlidium
Tilletia
Tilletiaria
Tilletiopsis
Tinctoporellus
Titaeospora
Torpedospora
Torula
Torulaspora
Torulopsis
Toxotrichum
Trametes
Trechispora
Trematosphaeria
Tremella
Triadelphia
Triangularia
Tricellula
Trichaptum
Trichocladium
Trichodelitschia
Tricholoma
Trichometasphaeria
Trichophaea
Trichoscyphella
Trichosporon
Trichosporonoides
Trichurus
Tricladium
Tridentaria
Trigonopsis
Triparticalcar
Tripospermum
Triposporina
Tripterospora
Triscelophorus
Tritirachium
Trochophora
Troposporella
Truncatella
Truncocolumella
Tryblidiella
Tubakia
Tuber
Tubercularia
Tuberculina
Tubeufia
Tubulicrinis
Tylopilus
Tympanosporium
Typhula
Tyromyces

Ulocladium
Ulocoryphus
Umbelopsis
Umbilicaria
Uncinocarpus
Urnula
Usnea
Ustilaginoidea
Ustilago
Utharomyces

Valdensia
Valsa
Valsaria
Valseutypella
Vanbeverwijkia
Vanterpoolia
Varicosporina
Varicosporium
Venturia
Veronae
Verticicladiella
Verticicladium
Virgaria
Volucrispora
Volutella
Volutina
Volvariella

Wallemia
Wallrothiella
Waltomyces
Warcupia
Wardomyces
Westerdykella
Whetzelinia
Wickerhamia
Wickerhamiella
Wiesneriomyces
Wilcoxina
Wingea
Wojinowicia

Xanthoria
Xanthothecium
Xenasmatella
Xenomeris
Xenosporium
Xylaria
Xylobolus
Xylocoremium
Xylogone
Xylomyces
Xynophila

Yarrowia
Yeasts

Zalerion
Zelleromyces
Zoophagus
Zoophthora
Zopfiella
Zychaea
Zygoascus
Zygodesmus
Zygopleurage
Zygorhynchus
Zygosaccharomyces
Zythia

Dated: February 23, 1989.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89-4532 Filed 2-23-89; 12:53 pm]

BILLING CODE 3510-DT-M

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15 CFR Parts 779 and 799

[Docket No. 90123-9023]

Revisions to the Commodity Control List Based on COCOM Review: Metal-Working Machinery, etc.

AGENCY: Bureau of Export Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends a number of Export Control Commodity Numbers on the CCL in the following commodity groups: Group 0 (Metal-Working Machinery), Group 1 (Chemical and Petroleum Equipment), Group 2, (Electrical and Power-Generating Equipment), Group 3 (General Industrial Equipment), Group 4 (Transportation Equipment), Group 5 (Electronics and Precision Instruments), and Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials). This rule also amends Supplement No. 3 (Computer Software) to Part 779 of the Export Administration Regulations.

These revisions have resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries. This rule raises the levels of goods that can be shipped to the PRC under a number of advisory notes, and adds new PRC advisory notes. It also decontrols, world-wide, certain items that had been included in advisory notes for the Soviet Bloc. With the concurrence of the Department of Defense, the Department of Commerce has determined that this rule is consistent with the U.S. national security provisions of the Export Administration Act of 1979, as amended.

EFFECTIVE DATE: This rule is effective February 28, 1989.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature on chemical and petroleum equipment, call George Kuzmycz, Office of Technology and Policy Analysis, Telephone: (202) 377–5696.

For questions of a technical nature on general industrial equipment, call Larry Hall, Office of Technology and Policy Analysis, Telephone: (202) 377–8550.

For questions of a technical nature on transportation equipment, call Bruce Webb, Office of Technology and Policy Analysis, Telephone: (202) 377–3806.

For questions of a technical nature on semiconductor manufacturing equipment, call Robert Anstead, Office of Technology and Policy Analysis, Telephone: (202) 377–1641.

For questions of a technical nature on communications equipment, call Milton Baltas, Office of Technology and Policy Analysis, Telephone: (202) 377–0730.

For questions of a technical nature on computer systems or software, call Raj Dheer, Computer Systems Technology Center, Telephone: (202) 377–0708.

For questions of a technical nature on chemicals, metalloids, petroleum products and related materials, call Jeff Tripp, Office of Technology and Policy Analysis, Telephone: (202) 377–1309.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010, 0694–0013, and 0694–0024. The reporting burden for these collections of information is estimated to be: for 0694–0005 and 0694–0010, 45 minutes per response; for 0694–0013, 2 hours per response; and for 0694–0024, 30 minutes per response. These times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections. Send comments regarding the burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—ATTN: Paperwork Reduction Project (0694–0005, 0694–0010, 0694–0013, and 0694–0024).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 779 and 799

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, Parts 779 and 799 of the Export Administration Regulations (15 CFR Parts 768–799) are amended as follows:

1. The authority citation for 15 CFR Parts 779 and 799 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*) as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 779—[AMENDED]

2. Supplement No. 3 to Part 779, "Computer Software", is amended by adding Advisory Notes 1 and 2 (formerly reserved) and redesignating them as Notes 1 and 2 and by removing and reserving Advisory Notes 3 and 4, and by revising Advisory Note 5 as follows:

Supplement No. 3 to Part 779 Computer Software

* * * * *

Advisory Notes

Note 1: Paragraphs (a) and (b) of this Supplement No. 3 to Part 779 do not control "software" not exceeding 5,000 statements in "source language", excluding data, provided that:

(a) The "software" is neither designed nor modified for use as a module of a larger "software" module or system that in total exceeds this limit; *and*

(b) The "software" is not controlled by sub-paragraph (b)(5) of this Supplement.

Note 2: Paragraphs (a) and (b) of this Supplement No. 3 to Part 779 do not control "software" initially exported to a proscribed destination prior to January 1, 1984, provided that:

(a) The "software" is identical to and in the same language form (source or object) as initially exported, allowing minor updates for the correction of errors that do not modify the initially exported functions;

(b) The accompanying documentation does not exceed the level of the initial export; *and*

(c) The "software" is exported to the same proscribed destination as the initial export.

Advisory Note 3: Reserved.

Advisory Note 4: Reserved.

Advisory Note 5: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY, the People's Republic of China (PRC) and Afghanistan of "application software" contolled by sub-paragraph (a)(1) above, but not otherwise listed in this Supplement or ECCNs on the Commodity Control List identified by the code letter "A", provided that:

(a) The "application software" is designed for and limited to the following:

(1) The approved end-use of legally exported equipment or systems in conjunction with any computer that is part of a computer series produced within a controlled area and based on a design originating in a COCOM country; *or*

(2) The monitoring and control of industrial processes limited to the production of items not described by ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR 110 or by 10 CFR 810; and

(b) No restricted technical data is provided.

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

3. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group O (Metal-Working Machinery), ECCN 1091A is amended by revising sub-paragraph (a)(i), by removing (Advisory) Note 1, by revising (Advisory) Note 2 and redesignating it as "Note 1", by redesignating (Advisory) Note 3 as "(Advisory) Note 2", and by redesignating the Advisory Note for the People's Republic of China as "(Advisory) Note 3 for the People's Republic of China", as follows:

1091A Numerical control units, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed sub-assemblies, and specially designed "software". (See § 776.11 for special information to include on the validated license application and reexport request.)

* * * * *

List of Commodities Controlled by ECCN 1091A

(a) Units for numerically controlling simultaneously coordinated (contouring and continuous path) movements of machine-tools and dimensional inspection machines in two or more axes, *except* those having all of the following characteristics:

(i) No more than three contouring interpolating (any mathematical function including linear and circular) axes can be simultaneously coordinated. Units may have:

(1) One or more additional axes for which rate of movement is not coordinated, varied or modulated with that of another axis;

(2) One additional set of up to three contouring axes provided a separate feed rate number, standard or optional, does not control more than any three contouring axes; *or*

(3) Up to three contouring axes switchable out of any number of axes;

* * * * *

(d) * * *

* * * * *

Technical Notes: 1. * * *

* * * * *

Note 1: This ECCN 1091A does not control floor-type horizontal boring mills described in sub-paragraph (b)(i) above provided that all the following conditions are met:

(a) Maximum transverse (X-axis) travel equal to or less than 15,000 mm (600.0 in.);

(b) Maximum vertical (Y-axis) travel equal to or less than 5,000 mm (200.0 in.);

(c) Maximum Z-axis travel equal to or less than 3,000 mm (120.0 in.);

(d) Spindle-drive motor power equal to or less than 75 kW (100 hp);

(e) Meeting the requirements of sub-paragraphs (b)(i)(1) and (b)(i)(4) to (7) above.

(Advisory) Note 2: * * *

* * * * *

4. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), ECCN 1129A is amended by adding an Advisory Note for the People's Republic of China at the end of the entry, as follows:

1129A Vacuum pump systems and specially designed components, controls, and accessories therefor.

* * * * *

(Advisory) Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of cryopump systems designed to operate at temperatures of higher than −260°C measured at atmospheric pressure and intended for use in the manufacture of compact and video discs.

5. In Supplement No. 1 to § 799.1, (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 1203A is amended by redesignating the Advisory Note as "(Advisory) Note 1" and by adding an (Advisory) Note 2 for the People's Republic of China, as follows:

1203A Electric furnaces, specially designed components and controls therefor.

* * * * *

(Advisory) Note 1: * * *

(Advisory) Note 2 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of skull type vacuum arc furnaces with a capacity not exceeding 500 kg.

6. In Supplement No. 1 to § 799.1, (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1353A is amended by revising (Advisory) Note 3 for the People's Republic of China, as follows:

1353A Manufacturing and testing equipment for optical fiber, optical cable and other cables, as follows, and specifically designed components and "specially designed software" therefor.

* * * * *

(Advisory) Note 3 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following:

(a) Optical fiber or preform characterization equipment using semiconductor lasers with a wavelength of 1,370 nm or less;

(b) Equipment specially designed for the manufacture of silica-based optical preforms, fiber or cable.

7. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1354A is amended by revising the Advisory Note for the People's Republic of China, as follows:

1354A Equipment designed for the manufacture or testing of printed circuit boards and specially designed components and accessories therefor.

* * * * *

(Advisory) Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of equipment for the manufacture of printed circuit boards, as follows:

(a) Equipment specially designed for the removal of resists or printed circuit board materials by dry (e.g., plasma) methods;

(b) "Stored program controlled" multi-spindle drills with the following characteristics:

(1) Absolute positioning accuracy of ± 5 micrometers or worse; *and*

(2) X and Y positioning speeds of 0.210 m/sec. or slower for drilling or for routing;

(c) "Stored program controlled" routers that are not capable of three-dimensional contouring operations;

(d) Work-table positioning systems for digitizing and editing drilling positions from printed circuit art work for the generation of data or "programs" for "stored-program-controlled" printed circuit board drilling equipment;

(e) "Stored program controlled" electrical test equipment controlled for export by sub-paragraph (e), for the identification of open and short circuits on bare printed circuit boards.

8. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising (Advisory) Notes 1 and 2 for the People's Republic of China, as follows:

1355A Equipment for the manufacture or testing of electronic components and materials; and specially designed components, accessories and "specially designed software" therefore.

* * * * *

(Advisory) Note 1 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of equipment, as follows, for use in silicon semiconductor manufacturing:

(a) Equipment for the production of polycrystalline silicon;

(b) Crystal pullers, *except* those that:

(1) Are rechargeable without replacing the crucible; *or*

(2) Operate at pressures above 2.5×10^5 pascals (2.5 atmosphere absolute) and have any of the following features:

(i) Two or more temperature zones;

(ii) "Stored program controlled";

(iii) Anomaly shape control;

(iv) Produce ingots of more than 50.8 mm (2 inches) in diameter; *or*

(v) Produce ingots of more than 1 kg in mass;

Note: No process technology to be supplied.

(c) Diffusion furnaces, *except* those that use computer feedback control operated from an "associated" computer.

Note: "Associated" with equipment or systems means:

(a) Can feasibly be either:

(i) Removed from the equipment or systems; *or*

(ii) Used for other purposes; *and*

(b) Is not essential to the operation of such equipment or systems.

(d) Vacuum induction-heated zone refining equipment:

(e) Epitaxial reactors, *except* those that are:

(1) For molecular beam epitaxy; or

(2) Specially designed for organo-metallic deposition or liquid-phase epitaxy;

(f) Magnetically enhanced multiple wafer sputtering equipment;

(g) Ion implantation, ion-enhanced or photo-enhanced diffusion equipment, *except* those having any of the following characteristics:

(1) Patterning capability;

(2) Accelerating voltage for more than 200 keV; *or*

(3) Capable of high energy oxygen implant into a heated substrate;

(h) Dry etching equipment controlled for export by sub-paragraph (b)(1), as follows:

(1) "Batch types" not having:

(i) End point detection other than optical emission spectroscopy types; *or*

(ii) Cryogenic or turbomolecular pumps;

(2) "Single wafer types" not having:

(i) End point detection other than optical emission spectroscopy types;

(ii) Cryogenic or turbomolecular pumps; *or*

(iii) Load locks;

Notes: 1. "Batch types" refers to dry etching machines that are not specially designed for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, e.g., RF power, temperature, etch gas species, flow rates.

2. "Single wafer types" refers to dry etching machines that are specially designed for production precessing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, e.g., RF power or end point, can be independently determined for each individual wafer.

(i) Low-pressure chemical vapor deposition equipment, *except* equipment capable of metal deposition;

(j) [Reserved]

(k) Single-side lapping and polishing equipment for wafer surface finishing;

(l) Hard surface (e.g., chromium, silicon, iron oxide) coated substrates (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions greater than 12.5 cm $\times$ 12.5 cm;

(m) Mask fabrication equipment using photo-optical methods that was either commercially available before January 1, 1980, or has a performance no better than such equipment;

(n) Manually operated mask inspection equipment;

(o)(1) Photo-optical contact and proximity mask align and expose equipment defined in sub-paragraph (b)(2)(vi);

(2) Projection aligners, defined in sub-paragraph (b)(2)(vi), provided such equipment cannot produce pattern sizes finer than 3 micrometers;

(3) Wafer steppers, defined in sub-paragraph (b)(2)(viii), provided they have all of the following characteristics:

(i) Cannot produce pattern sizes finer than 3 micrometers;

(ii) An alignment accuracy no better than $\pm$ 0.25 micrometers (3 sigma); *and*

(iii) Machine-to-machine overlay no better than $\pm$ 0.3 micrometers;

(p) Contact image transfer equipment;

(q) Wafer and chip inspection equipment that was either commercially available before January 1, 1981, or has a performance no better than such equipment;

(r) Equipment for concurrent etching and doping profile analysis employing capacitance-voltage or current-voltage analysis techniques;

(s) "Stored program controlled" wire or die bonders;

(5) "Stored program controlled" wafer probing equipment that does not include associated test equipment or drive circuitry other than those identified in (u) or (v) below;

(u) Test equipment for:

(1) Television circuit testing;

(2) Operational amplifier testing;

(3) Voltage regulator testing;

(4) Analog-to-digital and digital-to-analog converter testing; *or*

(5) Discrete semiconductor testing at frequencies of 18 GHz or less;

(v) "Stored program controlled" equipment for the functional testing (truth table) of integrated circuits or integrated circuit assemblies capable of either:

(1) Generating a basic pattern rate of 10 MHz or less; *or*

(2) Generating a basic pattern rate of more than 10 MHz but no more than 20 MHz and limited to testing integrated circuits with 64 or fewer pins.

(Advisory) Note 2 for the People's Republic of China: Licenses will receive favorable consideration for export to satisfactory end-users in the People's Republic of China of equipment controlled for export by sub-paragraphs (b)(1) or (b)(2) that can produce patterns finer than 3 micrometers but not finer than 2 micrometers.

9. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1361A is amended by revising paragraph (a), by removing (Advisory) Note 1, and by redesignating (Advisory) Note 2 as "(Advisory) Note".

1361A Test facilities and equipment for the design or development of aircraft or gas turbine aero-engines, and specially designed components, and accessories therefor.

* * * * *

List of Wind Tunnels Controlled by ECCN 1361A

(a) Supersonic (Mach 1.4 to Mach 5), hypersonic (Mach 5 to Mach 15) and hypervelocity (above Mach 15) wind tunnels, *except:*

(i) Supersonic Mach 1.4 to Mach 5) wind tunnels not specially designed for, or fitted with means of, preheating the air; *or*

(ii) Wind tunnels specially designed for educational purposes and having a "test section size" (measured internally) of less than 25 cm (10 inches);

Technical Note: "Test section size" is understood to be the diameter of the circle, or the side of the square, or the longest side of the rectangle constituting possible shapes of the test section.

* * * * *

(Advisory) Note: (Not Eligible for General License G–COM) * * *

10. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1485A is amended by adding an (Advisory) Note for the People's Republic of China at the end of the entry, as follows:

1485A Compasses, gyroscopes (gyros), accelerometers and inertial equipment, and specially designed components therefor. (See also ECCN 1385A).

* * * * *

(Advisory) Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of equipment controlled for export under subparagraph (b), as follows: Reasonable quantities of integrated flight instrumentation systems spare parts, constituting up to a six-month supply of such parts at normal rates of consumption for aircraft previously exported to the People's Republic of China under the (Advisory) Note for the People's Republic of China to entry 1460A, provided that they are replacement parts for equipment previously installed.

11. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1501A is amended by revising Technical Note 1 that follows the Note at the end of paragraph (a)(4); by revising paragraph (b)(1); by revising Note 2 (formerly reserved) that follows paragraph (b)(1)(v); by removing Note 3 following Note 2; by removing (Advisory) Notes 1 and 2; and by

redesignating (Advisory) Note 3 as (Advisory) Note, as follows:

1501A Navigation, direction finding, radar and airborne communication equipment

* * * * *

List of Navigation, Direction Finding, Radar and Airborne Communication Equipment Controlled by ECCN 1501A

(a) * * *

(4) * * *

Note: * * *

Technical Note 1: The terms "civil aircraft" and "civil helicopter" are understood to include only those types of "civil aircraft" and "civil helicopters" that are listed by designation in published airworthiness certification lists by the civil aviation authorities to fly commercial civil internal and external routes or for legitimate civil, private or business use.

(b) Navigation and direction finding equipment, as follows, specially designed components therefor, and specialized testing, calibrating and training/simulating equipment therefor:

(1) Airborne navigation equipment and direction finding equipment, as follows:

(i) Designed to make use of Doppler frequency phenomena, *except* navigation equipment to be installed in "civil aircraft" and "civil helicopters", and which is normal standard equipment of a type installed in "civil aircraft" and "civil helicopters" in a Western country.

Note: Technical data for navigation equipment using Doppler frequency phenomena remains controlled for export.

(ii) Utilizing the constant velocity or the rectilinear propagation characteristics of electromagnetic waves having a frequency less than 4×10^{14} Hz (0.75 micrometer);

(iii) Radio altimeters, the following:

(a) Pulse modulated;

(b) Frequency modulated having a displayed electrical output accuracy better than ±0.914 m (±3 feet) over the range between 0 and 30.4 m (100 feet) or better than ±3% above 30.4 m (100 feet), *except* standard commercial airborne equipment needed to equip "civil aircraft" or "civil helicopters" or as normal standard equipment incorporated in "civil aircraft" or "civil helicopters" being exported for civil commercial use, provided such equipment is equivalent in all characteristics and performance to standard equipment of aircraft not subject to control for export, and which are frequency-modulated radio altimeters which have been in normal civil use for a period of more than one year.

Note: Technical data for these radio altimeters remains controlled for export.

(c) Frequency modulated which have been in normal civil use for less than one year.

Technical Note: The accuracy is related to that provided by the electrical output circuits of the altimeter at any altitude. The word accuracy also refers to the equipment's accuracy over time. This accuracy over time is defined for the instrument itself without reference either to a calibrated value or to a designated electrical value.

(iv) * * *

(v) * * *

Notes: 1. * * *

2. Direction finding equipment specially designed for search and rescue purposes and operating at a frequency of 121.5 Mhz or 243 MHz is not covered by this sub-paragraph (b). This exclusion also applies to personal locator beacons operating in this form that may also have an additional channel selectable for voice mode only.

* * * * *

12. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1502A is amended by redesignating Advisory Note 5 for the People's Republic of China as "(Advisory) Note 5 for the People's Republic of China" and by adding an (Advisory) Note 6 for the People's Republic of China at the end of the entry, as follows:

1502A Communication, detection or tracking equipment of a kind using ultra-violet radiation, infrared radiation or ultrasonic waves, and specially designed components therefor.

* * * * *

(Advisory) Note 5 for the People's Republic of China: * * *

(Advisory) Note 6 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of underwater ultrasonic communications equipment that does not:

(a) Use electronic beam steering;

(b) Incorporate any encryption technique; *or*

(c) Have a carrier frequency outside the range 20 to 60 kHz.

(For communications equipment employing fiber optics, see ECCN 1519A.)

13. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1510A is amended by adding a new Note 7 following Note 6, by redesignating (Advisory) Note 7 as (Advisory) Note 8, and by redesignating the Advisory Note for the People's Republic of China as (Advisory) Note 9 for the People's Republic of China, as follows:

1510A Marine or terrestrial acoustic or ultrasonic systems or equipment specially designed for positioning surface vessels or underwater vehicles, or for detecting or locating underwater or subterranean objects or features, and specially designed components of such systems or equipment, including but not limited to hydrophones, transducers, beacons, towed hydrophone arrays, beamformers and geophones (except moving coil or moving magnet electro-magnetic geophones), except those systems or equipment listed below.

* * * * *

Note 6: * * *

Note 7: Nothing in this Note shall be construed as permitting the export of technical data for the following equipment. This ECCN 1510A does not control towed acoustic hydrophone arrays having all of the following characteristics:

(a) Not specially designed for operation at greater than 100 meters depth or at tow speeds in excess of 8 knots;

(b) Not incorporating temperature or heading sensors;

(c) Having hydrophone groups uniformly spaced at not less than 25 meters and not more than 60 meters;

(d) Having an assembled diameter of 40 mm or greater and using metallic strength members only;

(e) Not having multiplexed hydrophone group signals;

(f) Not having a configuration for multiple or overlapping acoustic aperature operation;

(g) Not having characteristics better than those specified in sub-paragraphs (a)(2)(i) and (ii) above;

(h) Not having associated processing equipment that provides any of the following features:

(1) Electronically-steerable beamforming capabilities;

(2) Side-lobe suppression techniques such as shading coeffecients;

(3) On-line real-time processing or off-line batch pre-processing capabilities exceeding the limits specified in entries 1529A and 1565A.

(Advisory) Note 8: * * *

(Advisory) Note 9 for the People's Republic of China: * * *

14. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1520A is amended by removing the *"GFW eligibility"* paragraph and by revising (Advisory) Notes 1 and 2 and redesignating them as Notes 3 and 4 and by redesignating (Advisory) Note 3 for the People's Republic of China as (Advisory) Note for the People's Republic of China, as follows:

1520A Radio relay communication equipment, specially designed test equipment, and specially designed components and accessories therefor.

* * * * *

List of Equipment Controlled by ECCN 1520A

* * * * *

(b) * * *

Note 3: This ECCN 1520A does not control equipment permanently installed in a circuit operated by the civilian authorities of the importing country for civil television transmission or for general commercial traffic or technical data for the installation, maintenance, and operation therefor, provided that:

(a) The equipment is not designed for operation at a total bit rate exceeding 45 Mbit per second;

(b) The equipment does not employ quadrature-amplitude-modulation (QAM) techniques: *and*

(c) Associated or integrated multiplex equipment is considered separately under the provisions of ECCN 1519A.

Note 4: This ECCN 1520A does not control equipment for civil industrial use, e.g., remote supervision, control and metering of oil and gas pipelines, civil public utility services (e.g., electricity networks) including telephone channels for the operation of such networks and the engineering service circuits required for the maintenance of telecommunication links or technical data for the installation, maintenance, and operation therefor, provided:

(a) Microwave radio links employing analog transmission techniques have a capacity not exceeding 2,700 voice channels of 4 kHz each;

(b) Microwave radio links employing digital transmission techniques operate at a frequency not exceeding 19.7 GHz and are designed to operate at a total digital bit rate not exceeding 45 Mbits per second;

(c) The equipment does not employ quadrature-amplitude-modulation (QAM) techniques; *and*

(d) Associated or integrated multiplex equipment is considered separately under the provisions of ECCN 1519A.

(Advisory) Note for the People's Republic of China: * * *

15. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1522A is amended by revising Note 1 following Technical Note 4, by removing (Advisory) Notes 6 and 7, and by redesignating (Advisory) Note 8 for the People's Republic of China as (Advisory) Note 6 for the People's Republic of China, as follows:

1522A "Lasers" and "equipment containing lasers".

* * * * *

List of "Lasers" and "Equipment Containing Lasers" Controlled by ECCN 1522A

* * * * *

Technical Note 4: * * *

Note 1: Nothing in the following shall be construed as permitting the export of technical data for the following equipment, except for the minimum technology for their use (i.e., installation, operation and maintenance):

(a) Paragraph (a) of this ECCN 1522A does not control uncooled, unsegmented mirrors with glass or dielectric substrates for use as end reflectors for "laser" resonators. (For segmented mirrors, see ECCN 1556A.)

(b) This ECCN 1522A does not control equipment listed in paragraph (b) containing "lasers" described in sub-paragraphs (a)(vi)(1) and (a)(vii) provided that the "lasers" have a maximum pulsed output not exceeding 2 joules per pulse;

(c) This ECCN 1522A does not control Nd:YAG "lasers" used for pumping "tunable" pulsed dye "lasers" excluded from control under sub-paragraph (a)(ix), and having all of the following characteristics:

(1) An output wavelength of 1.064 micrometer;

(2) A pulsed output energy not exceeding 1.5 joule per pulse; *and*

(3) A maximum rated average single- or multi-mode output power not exceeding 25 W.

* * * * *

(Advisory) Note 6 for the People's Republic of China: * * *

16. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1526A is amended by adding an (Advisory) Note 5 for the People's Republic of China at the end of the entry, as follows:

1526A Optical fibers, optical cables and other cables and components and accessories.

* * * * *

(Advisory) Note 5 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of optical fibers controlled by sub-paragraph (d)(2), when exported for identifiable civil applications, having all of the following characteristics:

(a) Not fabricated to be nuclear radiation sensitive;

(b) A "beat length" of more than 50 cm (low birefringence); *and*

(c) Not optimized for operation at any wavelength exceeding 1,370 nm.

17. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1529A is amended by removing the *"GFW eligibility"* paragraph and by revising sub-paragraph (b)(4), by revising Note 1 following sub-paragraph (b)(4), by removing (Advisory) Note 2, and by redesignating (Advisory) Note 3 for the People's Republic of China as (Advisory) Note 2 for the People's Republic of China, as follows:

1529A Electronic equipment for testing, measuring (e.g., time interval measurement), calibrating or counting, or for microprocessor/microcomputer development.

* * * * *

List of Equipment Controlled by ECCN 1529A

* * * * *

(b) * * *

(4) Instruments having both of the following characteristics:

(i) "User-accessible programmability", *and*

(ii) A user-alterable "program" and data storage of more than 65,536 bit.

Note 1: This sub-paragraph (b)(4) does not control:

(a) Instruments, the "user-accessible programmability" of which is provided by, or with the legal agreement of, the original "manufacturer" and limited to:

(1) The replacement of fixed storage devices (e.g., ROMs) that do not change the controlled status of the instrument; *or*

(2) The selection of preprogrammed functions from a menu.

(b) Instruments that:

(1) Have been designed for non-strategic use and by nature of design, "software", "microprogram" control ("firmware"), specialized logic control (hardware) or performance are substantially restricted to the particular application for which they have been designed; *and*

(2) Are not covered by any other part of this ECCN 1529A and do not exceed the limits of Note 6 to ECCN 1565A.

Note: * * *

Note 2: * * *

18. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended by removing paragraph (d), by removing Notes 1 and 2 following sub-paragraph (d)(2), by redesignating paragraphs (e) through (i) as paragraphs (d) through (h) respectively, by removing (Advisory) Note 5, by redesignating (Advisory) Note 6 as (Advisory) Note 5, and by redesignating (Advisory) Note 7 for the People's Republic of China as (Advisory) Note 6 for the People's Republic of China.

19. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1537A is amended by revising (Advisory) Note 7 for the People's Republic of China, as follows:

1537A Microwave, including millimetric wave equipment, including parametric amplifiers capable of operating at frequencies over 1 GHz (other than microwave equipment controlled for export by ECCNs 1501A, 1517A, 1520A, or 1529A).

* * * * *

(Advisory) Note 7 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of:

(a) Amplifiers, controlled by paragraph (k), when designed for use with signal analyzers described in Note 3 to ECCN 1533A and designed for a maximum operating frequency not exceeding 2 GHz, provided that these amplifiers are not radiation hardened or "space-qualified";

(b) PIN modulators controlled by paragraph (1), designed for use at frequencies not exceeding 10.5 GHz.

Note: * * *

20. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1558A is amended by adding a new Note 2 following Note 1 and by revising (Advisory) Note 2 and redesignating it as (Advisory) Note 3, as follows:

1558A Electronic vacuum tubes (valves) and cathodes and other components specially designed for those tubes.

* * * * *

Note 1: * * *

Note 2: Nothing in the following shall be construed as permitting the export of technical data. Paragraphs (b) and (c) of this ECCN 1558A do not control magnetrons and klystrons specially designed for particle accelerators for medical radiation therapy, having all of the following characteristics:

(a) Capable of operation only at a frequency of 3,000 MHz ±15 MHz or at a frequency of 2,856 MHz ±15 MHz;

(b) Not capable of being tuned mechanically or electronically outside the above bands;

(c) Mechanically tuned within the above bands; *and*

(d) Having a peak output power not exceeding 10 MW and having an average output power not exceeding 15 kW.

(Advisory) Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of the following:

(a) Tubes controlled by paragraphs (a), (b), or (c) of this ECCN, required as replacement parts for specific civilian equipment not exceeding the capability of that which could be exported under other Commodity Control List ECCNs designated by the code letter "A", provided that these parts do not upgrade the initial performance of that equipment;

(b) Pulsed amplifier klystrons and fixed frequency and mechanically tunable pulsed magnetrons controlled by paragraphs (b) or (c) of this ECCN, intended for civil radar equipment previously exported, provided that they do not upgrade the initial performance of that equipment.

21. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1564A is amended by revising (Advisory) Note 6 for the People's Republic of China, as follows:

1564A "Assemblies" of electronic components, "modules", printed circuit boards with mounted components, "substrates" and integrated circuits, including packages therefor.

* * * * *

(Advisory) Note 6 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "assemblies", printed circuit boards and integrated circuits not specially designed to military standards for radiation hardening or temperature, as follows:

(a) "Substrates" for printed circuit boards, *except* those exceeding the limit of sub-paragraph (a)(2);

(b) Patterned "substrates" for printed circuit boards that exceed the limits of sub-paragraph (a)(1)(E), when specially designed for use in civil applications listed in sub-paragraphs (d)(2)(D)(f)(2), (d)(2)(D)(g)(3), or (d)(2)(D)(h)(2);

(c) Silicon-based devices exceeding the limits of:

(1) Sub-paragraphs (d)(2)(D)(a), (b), or (c), *except* those with more than 28 terminals;

(2) Sub-paragraphs (d)(2)(D)(g) or (h);

(3) Sub-paragraphs (d)(2)(D)(k), (l), (m)(4) and (5), (n), (r), (s), or (u); *or*

(4) Sub-paragraphs (d)(2)(D)(f) or (q);

(d) Silicon based 8-bit or less "microcomputer microcircuits" exceeding the limits of sub-paragraphs (d)(2)(D)(e)(1) to (4), (6), and (7);

(e) Silicon based "microprocessor microcircuits" with an operand length of 16 bit or less and an arithmetic logic unit (ALU) not wider than 32 bit and exceeding the limits of sub-paragraphs (d)(2)(D)(i)(1) to (6), *except:*

(1) Those with a total processing data rate exceeding 28 million bits per second;

(2) Bit-slice "microprocessor microcircuits";

(f) Silicon based memory devices, as follows:

(1) MOS DRAMs with no more than 256 Kbit;

(2) MOS SRAMs with no more than 64 Kbit;

(3) Mask PROMs with no more than 512 Kbit;

(4) UV-EPROMs (except keyed access EPROMS) with no more than 256 Kbit;

(5) EAROMS with no more than 64 Kbit;

(6) EEROMS with no more than 64 Kbit;

Note: 1 Kbit=1,024 bit.

(g) Operational amplifiers exceeding the limits of sub-paragraph (d)(2)(D)(k)(4) that do not have a slew rate exceeding 100 volt per microsecond;

(h) Analog-to-digital and digital-to-analog converters exceeding the limits of sub-paragraph (d)(2)(D)(m)(1) to (3), *except:*

(1) Analog-to-digital converters with less than a 500 ns conversion time *and* a maximum resolution of 12 bit;

(2) Digital-to-analog converters with less than 500 ns settling time for voltage output and a maximum resolution of 12 bit;

(3) Digital-to-analog converters with less than 25 ns settling time for current output and a maximum resolution of 12 bit;

(i) Silicon based 8-bit or less user-programmable single chip "microcomputer microcircuits" controlled by sub-paragraph (d);

(j) "Optical integrated circuits":

(1) Controlled by sub-paragraph (d);

(2) With no more than 2,048 elements; *and*

(3) Not exceeding the limits of paragraphs (a) and (b) of ECCN 1548A;

(k) Non-reprogrammable silicon based integrated circuits specially designed or programmed by the "manufacturer" for business or office use;

(l) Sample and hold integrated circuits exceeding the limits of sub-paragraph (d)(2)(D)(p) with an acquisition time of no less than 500 ns.

22. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by revising paragraph (c), by adding new Technical Notes 1 through 3 following paragraph (c), by removing and reserving Advisory Note 3, and by revising Advisory Note 20 (for the People's Republic of China), as follows:

1565A Electronic computers, "related equipment", equipment or systems containing electronic computers; and specially designed components and accessories therefor.

* * * * *

List of Electronic Computers and Related Equipment Controlled by ECCN 1565A

* * * * *

(c) "Analog computers" and "related equipment" therefor, other than those controlled by paragraph (a), *except:*

(1) Those which neither:

(i) Are capable of containing more than 20 summers, integrators, multipliers or function generators; *nor*

(ii) Have facilities for readily varying the interconnections of such components; *or*

(2) Those which are limited as follows:

(i) They use neither:

(A) Optical computation devices; *nor*

(B) Acoustic wave devices controlled by ECCN 1586A other than those exportable as an administrative exception pursuant to (Advisory) Note 1 to ECCN 1586A;

(ii) The rated errors for summers, inverters and integrators are not less than:

(A) Static: 0.01%;

(B) Total at 1 kHz: 0.15%;

(iii) The rated errors for multipliers are not less than:

(A) Static: 0.025%;

(B) Total at 1 kHz: 0.25%;

(iv) The rated errors for fixed function generators (log and sine/cosine) are not less than:

Static: 0.1%;

(v) No more than 350 operational amplifiers; *and*

(vi) No more than four integrator time scales switchable during one program.

Technical Notes: 1. The percentage for sub-paragraph (c)(2)(ii)(A) above applies to the actual output voltage; all the other percentages apply to full scale, that is from maximum negative to maximum positive reference voltages.

2. Total errors at 1 kHz for sub-paragraphs (c)(2)(ii)(B) and (c)(2)(iii)(B) above are to be measured with those resistors incorporated in the inverter, summer or integrator which provide the least error.

3. Total error measurements include all errors of the unit resulting from, for example, tolerances of resistors and capacitors, tolerances of input and output impedances of amplifiers, the effects of loading, the effects of phase shift or the generating of functions.

(d) * * *

* * * * *

Advisory Note 3: Reserved.

* * * * *

Advisory Note 20 (for the People's Republic of China): Licenses are likely to be approved for bulk shipments to satisfactory end-users in the People's Republic of China of personal computers and small business computer systems, controlled by paragraph (h) of this ECCN 1565A, that do not exceed any of the following parameters:

(a) "Total processing data rate"—136 million bits per second;

(b) "Virtual storage" capability—512 million bytes (4,096 million bits); *or*

(c) The other technical parameters of the system—the limits contained in Advisory Note 9(b) without taking into account Advisory Note 9(b)(4)(ii)(B).

Notes: 1. This Advisory Note 20 may not be used for graphic workstations exceeding the parameters of Advisory Note 9(a)(7).

2. Supermini "digital computers" with a "virtual storage" capability exceeding the level in paragraph (b) of this Advisory Note 20 will not be eligible for consideration under this Note. It is recognized, however, that other "digital computers" (e.g., main frames and microcomputers) may have a "virtual storage" capability exceeding this limit, and in such cases they may be considered under this Note.

23. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1567A is amended by revising Technical Note 2 that follows the *Special South Africa and Namibia Controls* paragraph, by adding definitions (in alphabetical order, as set forth below) to Note 8 that follows Advisory Note 7, by revising Advisory Note 10 (for the People's Republic of China), by revising Advisory Note 12 (for the People's Republic of China), by revising Advisory Note 14 (for the People's Republic of China), and by revising Advisory Notes 15, 16, and 17 (for the People's Republic of China), as follows:

1567A Stored program controlled communication switching equipment or systems, and specially designed components therefor for the use of these equipment or systems.

* * * * *

Special South Africa and Namibia Controls: * * *

Technical Notes:

1. * * *

2. "Digital computers" or "affiliated equipment" when:

(a) "Embedded" in stored program controlled communication switching equipment or systems are to be regarded as specially designed components therefor;

(b) "Incorporated" in stored program controlled communication switching equipment or systems are covered by this ECCN 1567A provided that they are the standard models customarily supplied by Western manufacturers of the stored program controlled communication switching equipment or systems; *or*

(c) "Associated" with stored program controlled communication switching equipment or systems are covered by ECCN 1565A or ECCN 1572A.

* * * * *

Advisory Note 7: * * *

Note 8: The following are definitions of terms used in this ECCN 1567A:

"affiliated equipment"—

Equipment, as follows: ◄

(a) Input/output (I/O) control units;

(b) Recording or reproducing equipment;

(c) Displays; or

(d) Other peripheral equipment.

"common channel signalling"—* * *

"communication channel"—* * *

"data device"—* * *

"datagram"—

Is a self-contained, independent entity of data carrying sufficient information to be routed from the source to the destination data terminal equipment without reliance on earlier exchanges between these source and destination data terminal equipments and the transporting network.

"data (message) switching"—* * *

"data signalling rate"—* * *

"digital computer"—* * *

"embedded" in equipment of systems—* * *

"fast select"—* * *

A facility applicable to virtual calls that allows a data terminal equipment to expand the possibility to transmit data in call set-up and clearing "packets" beyond the basic capabilities of a virtual call.

"local area network"—* * *

"PABX"—See "private automatic branch exchange".

"packet"—

A group of binary digits including data and call control signals that is switched as a composite whole. The data, call control signals and possibly error control information are arranged in a specified format.

"Packet-mode operation"—

The transmission of data by means of addressed "packets" whereby a transmission channel is occupied for the duration of the "packet" only. The channel is then available for use by "packets" being transferred between different data terminal equipments. In certain data communication networks the data may be formatted into a "packet" or divided and then formatted into a number of "packets" (either by the data terminal equipment or by equipment within the network) for transmission and multiplexing purposes.

"private automatic branch exchange (PABX)"—* * *

* * * * *

"trunk circuit"—* * *

"trunk exchange"—See "transit exchange".

"wide area network"— * * *

Advisory Note 9 (for the People's Republic of China): * * *

Advisory Note 10 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "stored-program-controlled telephone circuit switching" equipment or systems controlled by paragraph (b) provided that:

(a) The equipment or systems are designed for fixed civil use as "space-division digital exchanges" or "time-division digital exchanges" which fulfill the definition of "private automatic branch exchanges" ("PABXs");

(b) The equipment or systems:

(1) Are designed and used for fixed civil "stored program controlled telephone circuit switching" applications; *and*

(2) Will be operated in the importing country by a civil end-user who has furnished to the supplier a signed statement, certifying that the equipment or systems will be used for the specified end-use at a specified location only;

(c) *Reserved*;

(d) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565A(f);

(2) ECCN 1565A(h)(1)(i) (a) to (k) or (m); *or*

(3) ECCN 1565A(h)(1)(ii);

(e) The "PABXs" do not have any of the following features:

(1) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines, "trunk circuits" or switches; Note: This does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(3) Dynamic adaptive routing;

(4) *Reserved*;

(5) *Reserved*;

(6) Digital synchronization circuitry that uses equipment controlled by ECCN 1529A(a)(2);

(7) *Reserved*; *or*

(8) Centralized network control having all of the following characteristics:

(i) Is based on a network management protocol; *and*

(ii) Does the following:

(a) Receives data from the nodes: *and*

(b) Processes these data in order to:

(1) Control traffic; *and*

(2) Directionalize paths;

(f) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; *and*

(2) Do not exceed a maximum "data signalling rate" of 19,200 bit per second;
(g) *Reserved*;
(h) *Reserved*;
(i) *Reserved*;
(j) The "software" supplied:
(1) Is limited to:
(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*
(ii) Machine-executable form; *and*
(2) Does not include "software":
(i) Controlled by ECCNs 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); *or*
(ii) To permit user-modification of generic "software" or its associated documentation;
(k) *Reserved*;
(l) *Reserved*; and
(m) A license application to export any commodities covered by this Advisory Note includes a statement identifying:
(1) The equipment or system to be provided; *and*
(2) The intended application.

Advisory Note 11 (for the People's Republic of China): * * *

Advisory Note 12 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "stored program controlled circuit switching" equipment or systems, controlled by paragraph (b) of this ECCN 1567A, provided that:
(a) The equipment or systems are designed for fixed civil use as "stored program controlled telephone circuit switching" exchanges that fulfill the definitions of either "terminal exchange" or "transit exchange";
(b) *Reserved*;
(c) The equipment or systems:
(1) Are designed and used for fixed civil "stored program controlled telephone circuit switching" applications; *and*
(2) Will be operated in the importing country by a civil end-user who has furnished to the supplier a signed statement, certifying that the equipment or systems will be used for the specified end-use at a specified location only;
(d) *Reserved*;
(e) The equipment or systems cannot be adapted to mobile use or security use, as described in ECCN 1565A(f) (1) to (4), (g) or (h)(1)(ii) (a) and (b);
(f) *Reserved*;
(g) The equipment or systems do not have any of the following features:
(1) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;
Note: This limitation does not preclude single level call pre-emption (e.g., executive override).
(2) "Common channel signalling";
(3) Dynamic adaptive routing;
(4) *Reserved*;
(5) *Reserved*;
(6) Digital synchronization circuitry that uses equipment controlled by ECCN 1529A(a)(2);
(7) *Reserved*; *or*
(8) Centralized network control having all of the following characteristics:
(i) Is based on a network management protocol; *and*
(ii) Does all of the following:
(a) Receives data from the nodes; *and*
(b) Processes these data in order to:
(1) Control traffic; *and*
(2) Directionalize paths;
(h) "Communication channels" or "terminal devices" used for administrative and control purposes:
(1) Are fully dedicated to these purposes; *and*
(2) Do not exceed a maximum "data signalling rate" of 19,200 bit per second;
(i) *Reserved*;
(j) The "software" supplied:
(1) Is limited to: (i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and* (ii) Machine-executable form; *and*
(2) Does not include "software": (i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or* (ii) To permit user-modification of generic "software" or its associated documentation;
(k) *Reserved*;
(l) *Reserved*; *and*
(m) A license application to export any commodities covered by this Advisory Note identifies: (1) The equipment or system to be provided; (2) The intended application; (3) The operating authority; *and* (4) The intended installation location of the equipment or system.

Advisory Note 13: Reserved.

Advisory Note 14 (for the People's Republic of China):

Licenses are likely to be approved for exports to satisfactory end-users in the People's Republic of China of equipment or "software" for "common channel signalling", contrary to the provisions in Advisory Notes 10 or 12 (for the People's Republic of China), provided that:
(a) The "common channel signalling" is restricted to "quasi-associated" or "associated mode of operation" according to CCITT Red Book, Volume X, fascicle X.1;
(b) No functions, other than those described in the following recommendations in the Red Book of CCITT: Q701 to Q709, Q721 to Q725, Q791 and Q795, are included;
Note.—Only functions described in paragraph 2 of Q795 are to be included. These Q795 functions may not provide centralized network control functions as defined in Advisory Note 10(e)(8) or Advisory Note 12(g)(8).
(c) No form of Integrated Services Digital Network (ISDN) is provided;
(d) Equipment or "software" is restricted to those necessary for the operation within a city or, for "PABXs", within a radius of 100 km;
(e) No means are provided which will allow "common channel signalling" via analog transmission links;
(f) All the applicable conditions enumerated in paragraphs (a) to (e) of this Advisory Note are accomplished by: (1) Omission or physical removal of equipment or coding; (2) Over-writing with non-functioning statements; *or* (3) Reasonably non-reversible modifications.

Advisory Note 15 (for the People's Republic of China):

Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of repair facilities controlled by this ECCN 1567A for repair of stored program controlled communication switching equipment or systems, provided that:
(a) Any technical data to be transferred is strictly limited to "operation technical data" as described in § 779.4(b)—(Any technical data that does not meet the requirements of § 779.4(b) for shipment under General License GTDR must be the subject of a separate export license application);
(b) The repair facilities: (1) Are specially designed equipment for repair; (2) Are to be used to repair controlled equipment exported pursuant to an Advisory Note or equipment that is not controlled for export; (3) Are shipped in reasonable quantities necessary for the types and quantities of exported equipment being serviced; (4) Do not provide local production facilities; *and* (5) Do not provide for testing of individual electronic components.
(c) The repair does not upgrade the equipment or systems beyond the performance thresholds of Advisory Notes 10 or 12 (for the People's Republic of China);
(d) All the records of repair activity are kept by a representative of the Western supplier; *and*
(e) A license application to export any commodities covered by this Advisory Note includes a statement identifying: (1) The equipment to be provided; *and* (2) The users and their activities.

Note.—Nothing in this Advisory Note shall be construed as overriding controls in other ECCNs contained in the Commodity Control List.

Advisory Note 16 (for the People's Republic of China):

Licenses will receive favorable consideration for export to satisfactory end-users in the People's Republic of China of "data (message) switching" equipment or systems controlled by paragraph (a) of this ECCN 1567A, provided that:
(a) The equipment or systems are designed for fixed civil use and stored program controlled "packet-mode operation";
(b) The equipment or systems do not have any of the following features: (1) "Datagram" service; (2) "Fast select"; (3) Dynamic adaptive routing; (4) Precedence, priority override or multilevel call preemption; (5) Centralized network control having all of the following characteristics: (i) Is based on a network management protocol; *and* (ii) Does all the following: (a) Receives data from the nodes; *and* (b) Processes these data in order to: (1) Control traffic; *and* (2) Directionalize paths;
(c) The "software" supplied: (1) Is limited to: (i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of

the equipment or systems; *and* (ii) Machine-executable form; *and* (2) Does not include "software": (i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or (ii) To permit user-modification of generic "software" or its associated documentation;

(d) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is: (1) Exported on a temporary basis only; *and* (2) Kept under the control of the supplier;

(e) Systems for "packet-mode operation" are limited to five nodes;

(f) No "internetwork gateways" are provided other than for messages originating from or terminating in Western countries;

Note: Connections of private networks to international destinations must be via public "internetwork gateways".

(g) Each node in a system is limited to 64 ports;

(h) Node throughput does not exceed 153,600 octets per second;

Note: One octet in, at any port, plus one octet out, also at any port, equals a throughput of one octet. One octet is defined as eight bits residing in the user data field.

(i) All the applicable conditions enumerated in paragraphs (a) to (e) of this Advisory Note 16 are accomplished by: (1) Omission or physical removal of equipment or coding; (2) Over-writing with non-functioning statements; *or* (3) Reasonably non-reversible modifications.

Advisory Note 17 (for the People's Republic of China):

I. Licenses will receive favorable consideration for export to satisfactory end-users in the People's Republic of China of technical data for development, production, or use of stored program controlled communication switching equipment or systems, and of instrumentation, test equipment, components or specially designed "software" therefor for modification, production or use of equipment or systems, provided that:

(a) The characteristics of the equipment or systems are limited to those which make them eligible for consideration under Advisory Notes 10 or 12 (for the People's Republic of China);

(b) Technical data for general purpose computers is not eligible for consideration under this Advisory Note 17 (see Part 779);

(c) Technical data for testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no-go tests;

(d) Generic "software" is exported in machine executable form only;

(e) No technical data for the design or development of printed circuit boards or integrated circuits is supplied;

(f) Technical data and training for "software" are limited to the creation or maintenance of customer specific data bases and site parameters;

(g) Modification of the equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of Advisory Notes 10 or 12 (for the People's Republic of China);

(h) The contract includes explicit conditions to ensure that: (1) The technical data or equipment or systems are not reexported or exported, either directly or indirectly, to another proscribed destination without approval; (2) The supplier may appoint a representative in the People's Republic of China who could verify that the manufactured equipment was serving its intended use; (3) Any modification of the capabilities or functions of the equipment has been agreed to by both parties;

(i) The Western personnel have right of access to all the facilities directly involved in the modification and production of the equipment or systems.

Note.—Paragraphs (c) or (e) of this Advisory Note 17 do not preclude exports of technical data that would be possible according to the provisions of Part 779.

II. Favorable consideration may also be given for exports to satisfactory end-users in the People's Republic of China of the minimally required associated materials and components controlled by this ECCN 1567A or other ECCNs in the Commodity Control List designated by the code letter "A" and specially designed "software" for modification, production or testing of equipment or systems.

Note.—No export under this paragraph of Advisory Note 17 shall establish a precedent for export approval under other ECCNs in this Commodity Control List.

24. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1572A is amended by revising the two Notes following sub-paragraph (a)(i)(2); by revising sub-paragraph (d)(ii); by adding new sub-paragraphs (e), (f), (g), and (h); by revising Advisory Note 1; by removing Advisory Note 4; by redesignating Advisory Notes 5 and 6 as Advisory Notes 4 and 5; by redesignating Advisory Note 7 for the People's Republic of China as Advisory Note 6 for the People's Republic of China; and by redesignating Note 8 as Note 7, as follows:

1572A Recording or reproducing equipment, "recording media", and specially designed components and accessories therefor.

* * * * *

List of Types of Recording, and/or Reproducing Equipment, "Recording Media" and Specially Designed Components and Accessories Therefor Controlled by ECCN 1572A

* * * * *

(a) * * *

(i) * * *

(2) * * *

Note.—This sub-paragraph (a)(i)(2) does not apply to magnetic heads mounted on servo-mechanisms that include piezoelectric transducers and have a gap width less than 0.75 micrometer (29.5 microinches).

Note: Gap width is the dimension of the gap parallel to the relative movement between tape and head.

* * * * *

(d) (ii) Magnetic tape having all of the following characteristics:

(A) Specially designed for television recording and reproduction or for instrumentation;

(B) Being a standard commercial product; *and*

(C) Having either of the following sets of characteristics:

(*1*) (*i*) A tape width not exceeding 50.8 mm (2 inches); (*ii*) Not designed for use in satellite applications; (*iii*) Been in use in quantity for at least two years; (*iv*) A magnetic coating material consisting of doped or undoped gamma-ferric oxide or chromium dioxide; (*v*) A rated intrinsic coercivity not exceeding 64 kA/m (804 oersted); *and (vi)* A tape length not exceeding 1,096 m (3,600 feet); *or (2)* (*i*) A tape width not exceeding 25.4 mm (1 inch); (*ii*) A magnetic coating material consisting of chromium dioxide; (*iii*) A base material consisting only of polyester; *and (iv)* A rated intrinsic coercivity not exceeding 60 kA/m (750 oersted).

* * * * *

(e) Technical data for the development, production or use of recording or reproducing equipment described in this ECCN 1572A, *except:*

(i) Technical data that is unique to equipment not controlled by sub-paragraphs (a)(i)(l), (a)(i)(2), or (a)(ii) or paragraphs (b) or (c) of this ECCN 1572A;

Note: This sub-paragraph (e)(i) does not apply to technical data for the design or production of:

(a) Cylindrical structures used to record or reproduce video signals in a helical scan system recorder or reproducer, and

(b) Recorded alignment tapes used in the production of recording or reproducing equipment.

(ii) The minimum technical data necessary for the use of equipment that may be exported under the provisions of this ECCN 1572A.

(f) Technical data for continuous coating of magnetic tape described in this ECCN 1572A, as follows:

(i) Technical data for the formulation of coating material;

(ii) Technical data for the application of coating material to the backing;

(g) Technical data for the manufacture of flexible disk "recording media" described in this ECCN 1572A, as follows:

(i) Technical data for the formulation of coating material;

(ii) Technical data for the application of coating material to the flexible backing;

(h) Technical data for the development or production of rigid disk "recording media" described in this ECCN 1572A.

Advisory Note 1: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of the following:

(a) Analog magnetic tape recorders:

(1) Controlled by sub-paragraph (a)(iii)(H); *or*

(2) Equipped with tape-derived (off-tape) servo speed control and with a time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of no less than ±1.0 microsecond;

(b) Systems having all of the following characteristics:

(1) Designed for use in civil aircraft or helicopters to record flight data for safety or maintenance purposes;

(2) Been in normal civil use for more than one year;

(3) No more than 100 input channels; *and*

(4) A sum of the individual channel recording bandwidth not exceeding 500 Hz;

(c) Incremental recorders or reproducers having all of the following characteristics:

(1) Designed for discontinuous sampling or collection of data in an incremental manner;

(2) The maximum tape speed, at the maximum stepping rate, does not exceed 50.8 mm (2 inches) per second;

(3) Not ruggedized for military use;

(4) Not rated for continuous operation in ambient temperatures from below 233 K (−40 °C) to above 328 K (+55 °C);

(5) Not especially designed for underwater use; *and*

(6) Not including recording or reproducing heads designed for use in equipment with characteristics superior to those defined in paragraph (a)(1) or (a)(2) of this Advisory Note;

(d) Digital magnetic recorders having both of the following characteristics:

(1) Specially designed for seismic or geophysical applications; *and*

(2) Operating in the frequency range from 5 Hz to 800 Hz.

* * * * *

25. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1702A is amended by adding a Technical Note 5 immediately following Technical Note 4 and by adding an Advisory Note for the People's Republic of China to follow Technical Note 5, as follows:

1702A Hydraulic fluids that contain as the principal ingredient(s) petroleum (mineral) oils, synthetic hydrocarbon oils, non-fluorinated silicones or fluorocarbons as described in this entry.

* * * * *

Technical Note 5: The viscosity index is a term used to express the ratio of the viscosity values measured at 311 K (37.8 °C, 100 °F and 372 K (98.9 °C, 210 °F) in accordance with ASTM D 2270.

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of reasonable quantities of hydraulic fluids controlled by this ECCN 1702A, except hydraulic fluids containing:

(a) Super-dewaxed refined mineral oil;

(b) Non-fluorinated silicones (silica-hydrocarbons); *or*

(c) Synthetic hydrocarbons (poly-alpha hydrocarbons).

Note.—* * *

26. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1734A is amended by adding an Advisory Note for the People's Republic of China at the end of the entry, as follows:

1734A Low density, rigid, carbon-bonded, fibrous or non-fibrous carbon thermal insulating materials as described in this entry.

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of furnace insulation in the form of flat sheets that are less than 15.24 cm (6 inches) thick, provided that it is installed under the supervision of a responsible Western representative.

27. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1754A is amended by removing the Advisory Note at the end of the entry and by adding a Technical Note at the end of the entry, as follows:

1754A Fluorocarbon compounds, materials and manufactures as described in this entry.

* * * * *

Technical Note: This ECCN 1754A does not control the export of up to 19 liters (5 U.S. gallons) of polychlorotrifluoroethylene-based lubricating oils. Nothing in this Technical Note shall be construed as permitting the export of technical data.

28. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1755A is amended by revising paragraph (b) of the entry and by removing the (Advisory) Note at the end of the entry, as follows:

1755A Silicone fluids and greases as described in this entry.

* * * * *

List of Silicone Fluids and Greases Controlled by ECCN 1755A

Silicone fluids and greases, as follows:

(a) * * *

(b) Silicone and fluorinated silicone lubricating greases capable of operating at temperatures of 478 K (205 °C, 400 °F) or higher and having a drop point (method of test being ASTM D 2265) of 493 K (220 °C, 428 °F) or higher.

(For hydraulic fluids using these elements, see also ECCN 1702A.)

29. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1757A is amended by revising the Advisory Note for the People's Republic of China, as follows:

1757A Compounds and materials as described in this entry.

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of:

(a) Silicon, compounds and materials, as follows:

(1) Monocrystalline silicon, N-type, crystal orientation 1–1–1 with a resistivity not exceeding 100 ohm.cm;

(2) Monocrystalline silicon, P-type, crystal orientation 1–1–1 with a resistivity not exceeding 5 ohm.cm;

(3) Polycrystalline silicon;

(4) Compounds used in the synthesis of polycrystalline silicon;

(b) Positive resists with a spectral response not optimized for use below 365 nm and not controlled by sub-paragraphs (k)(3), (k)(4), or (k)(5) of this ECCN 1757A.

30. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1763A is amended by adding a Note 4 immediately following Note 3, by removing the Advisory Note at the end of the entry, and by adding an Advisory Note for the People's Republic of China at the end of the entry, as follows:

1763A Fibrous and filamentary materials that may be used in organic "matrix", metallic "matrix" or carbon "matrix" composite structures or laminates, and such composite structures and laminates.

* * * * *

Technical Notes:

* * * * *

Notes: 1. * * *

2. * * *

3. * * *

4. Nothing in this Note shall be construed as permitting the export of technical data. Paragraphs (a) and (b) of this ECCN 1763A do not control carbon fibers having both of the following characteristics:

(a) "Specific modulus" less than 11.43×10^6 m (4.5×10^8); *and*

(b) "Specific tensile strength" less than 10.16×10^4 m (4×10^6 in).

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of discontinuous ceramic fibers controlled by paragraph (b) of this ECCN 1763A, having a melting or sublimation point lower than 2,043 K (1,770 °C) (3,218 °F) in an inert environment.

Dated: February 17, 1989.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89-4153 Filed 2-27-89; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3245]

Montgomery Ward & Co., Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Chicago, IL, retailer from misrepresenting service contract coverage and products' need for maintenance, adjustment, or servicing. The order also prohibits respondent from making any claims about the durability of any product for which it sells service contracts, unless it has competent and reliable evidence that substantiates its claims.

DATE: Complaint and Order issued December 21, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Lawrence M. Hodapp, FTC/H-238, Washington, DC 20580, (202) 326-3105.

SUPPLEMENTARY INFORMATION: On Wednesday, August 17, 1988, there was published in the **Federal Register**, 53 FR 31019, a proposed consent agreement with analysis In the Matter of Montgomery Ward & Co., Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form or order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.170-30 Durability or permanence. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation; § 13.533-50 Maintain means of communication. Subpart—Misrepresenting Oneself And Goods: § 13.1590-20 Federal Trade Commission Act; § 13.1710 Qualities or properties; § 13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Service contracts, Trade practices.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 89-4560 Filed 2-27-89; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, Sixth Street and Pennsylvania Avenue NW., Washington, DC 20580.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385, and 388

[Docket No. RM87-17-000]

Natural Gas Data Collection System; Availability of Print Software for FERC Form No. 15

Issued February 21, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of availability of PC print software for FERC Form No. 15.

SUMMARY: Software to print FERC Form No. 15 data required to be filed on an electronic medium in accordance with Order No. 493-A (53 FR 30,027 (Aug. 10, 1988)) is now available on diskette. The diskette contains a compiled program file which can be run on an IBM-compatible PC with at least 512K RAM and DOS 3.0 (or later version).

DATE: The software is available as of February 21, 1989.

ADDRESS: Submit requests for copies of the software to: Public Reference Branch, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 1000, Washington, DC 20426, (202) 357-8118.

FOR FURTHER INFORMATION CONTACT: Craig Hill, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7010, Washington, DC 20426, (202) 357-9039.

SUPPLEMENTARY INFORMATION: The software to produce a hard copy printout of FERC Form No. 15, when filed in accordance with the record formats adopted by Order No. 493-A is now available. The record formats, previously used for optional magnetic tape filings, now apply to all respondents. Form No. 15 filings may be submitted on either magnetic tape, tape cartridge or diskette. The diskette available today contains a compiled program file which can be run on an IBM-compatible PC with at least 512K RAM and DOS 3.0 (or later version). The ANSI 1974 Standard COBOL source code, an "INFO" file on the use of the software, a test data file and a sample output file are also included on the diskette. The source code for mainframe systems was released on January 31, 1989.

The software is available from the Commission's Public Reference Branch through its photocopy contractor, La Dorn Systems Corporation, located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The sofware is available on a single 5.25" (1.2MB) double-sided, high density diskette.

Persons requesting this software, in person or by written request, should specify: "Docket Number RM87-17-000, February 21, 1989", Software Diskette E-1 (Form 15 Print Software)". The software is available without charge. However, the Commission's copy contractor has a copy fee of $5.00 per diskette.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4555 Filed 2-27-89; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 284

[Docket Nos. RM88-14-002 and RM88-15-001; Order No. 509-A]

Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on or Across Outer Continental Shelf; Order on Rehearing

Issued: February 21, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing of Order

No. 509.[1] Order No. 509 was a final rule implementing section 5 of the Outer Continental Shelf Lands Act (OCSLA).[2] The Commission received 23 requests for clarification or rehearing of Order No. 509. In response to these requests, the Commission is: (1) Extending the time period within which OCS pipelines must conduct open seasons for firm and interruptible transportation capacity;[3] (2) amending the definition of an OCS pipeline;[4] (3) adding a provision addressing the priority status of existing requests for firm service during and after the open season for firm transportation;[5] and (4) revising the rate provisions concerning the use of existing transportation rates by OCS pipelines.[6] Otherwise, the requests for rehearing are denied.

EFFECTIVE DATE: The final rule in Order No. 509 and the modifications made in this order becomes effective on February 17, 1989.

FOR FURTHER LEGAL INFORMATION CONTACT: Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order on rehearing will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

[1] "Interpretation of, and Regulations under, section 5 of the Outer Continental Shelf Lands Act Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf," Order No. 509, 53 FR 50,925 (Dec. 19, 1988), IIID FERC Stats. & Regs. ¶ 30,842 (Dec. 9, 1988)).

[2] 43 U.S.C. 1334 (1982). In issuing Order No. 509, the Commission also revised its interpretative rule on section 5 of the OCSLA, Order No. 491, 53 FR, 14,922 (Apr. 26, 1988), 43 FERC ¶ 61,006 (Apr. 1, 1999)).

[3] *See*, 18 CFR 284.304(a), (b) (1988).

[4] *See*, new 18 CFR 284.302(b) (1988).

[5] *See*, new 18 CFR 204.304(a)(4)(iv) (1988).

[6] *See*, new 18 CFR 284.305(d)(2) (1988).

Order on Rehearing

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

On December 9, 1988, the Federal Energy Regulatory Commission (Commission) issued Order No. 509,[1] which implemented section 5 of the Outer Continental Shelf Lands Act (OCSLA),[2] and revised the Commission's interpretative rule on section 5 of the OCSLA.[3]

The Commission received 21 requests for rehearing of Order No. 509 and one letter accepting a blanket certificate.[4] NRM Operating Company, L.P. and EnerMark, Inc. (NRM) filed a motion for clarification. Point Arguello Natural Gas Line Company filed an untimely rehearing request but subsequently requested leave to withdraw it. Texas Sea Rim Pipeline, Inc. filed a letter purporting to accept a blanket certificate. Stingray Pipeline Company filed a letter indicating an error in Appendix B of Order No. 509 regarding the shoreward terminus of Stingray's OCS facilities. The Commission grants Point Arguello's request for leave to withdraw its request for rehearing. The Commission has considered all of the other filings (including NRM's request, Stingray's letter and Texas Sea Rim's letter) in issuing this order.

[1] 53 FR 50,925 (Dec. 19, 1988), III FERC Stats. & Regs. ¶ 30,842 (Dec. 9, 1988).

[2] 43 U.S.C. 1334 (1982).

[3] Interpretation of section 5 of the Outer Continental Shelf Lands Act, Order No. 491, 53 FR 14,922 (Apr. 26, 1988), 43 FERC ¶ 61,006 (Apr. 1, 1988).

[4] Timely requests for rehearing were filed on January 9, 1989, by Amoco Production Company, Kerr-McGee Corporation and Marathon Oil Company; ANR Pipeline Company; Arco Oil and Gas Marathon Oil Company; ANR Pipeline Company; Arco Oil and Gas Company; Associated Gas Distributors; Black Marlin Pipeline Company; Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company; Enron Interstate Pipelines; FMI Hydrocarbons, Inc.; High Island Offshore System and U-T Offshore System; Indicated Producers; Pacific Interstate Offshore Company; Pacific Offshore Pipeline Company; Pennzoil Exploration & Production Company; Phillips Petroleum Company; Sea Robin Pipeline Company; Tarpon Gas Marketing Ltd. and Vesta Energy Company; Tennessee Gas Pipeline Company; Texas Eastern Transmission Corporation; and Trancontinental Gas Pipeline Corporation.

A. Need for the Rule

Texas Eastern Transmission Corporation (Texas Eastern) argues that the Commission failed to articulate a reasonable basis for adopting Order No. 509. Noting that "many of the interstate pipelines to whom the rule is addressed are already providing open and nondiscriminatory access under Order Nos. 436 and 500," [5] Texas Eastern argues that the rule is unnecessary. The Commission disagrees. The fact that "many" interstate pipelines already provide for open and nondiscriminatory access under Part 284 of the Commission's regulations does not resolve potential access problems on those OCS pipelines that do not provide such transportation service. For the reasons elaborated in Order No. 509, the Commission has determined that the OCSLA mandates that all pipelines that operate on the OCS do so on an open access basis.

Texas Eastern contends that the complaints the Commission received regarding access to transportation on the OCS were motivated by the Commission's policy against brokering of existing transportation rights on the OCS and that these complaints do not demonstrate a need to issue mandatory blanket transportation certificates to all OCS pipelines.[6] The Commission disagrees. As discussed in Order No. 509, the Commission has a duty to carry out its statutory responsibilities under the OCSLA. Capacity brokering is an alternative that the Commission is currently exploring.[7] An equally valid means of ensuring the most efficient use of capacity is to establish an open access program on the OCS by issuing blanket transportation certificates to all OCS pipelines.

The Part 284 blanket transportation certificates require all OCS pipelines to offer interruptible transportation, and to offer it on a nondiscriminatory basis. Therefore, instead of allowing the holder of the existing firm capacity rights to sell off, or "broker," its unused capacity, Order No. 509 compels all OCS pipelines to offer nondiscriminatory interruptible transportation to potential new shippers.

[5] Request of Texas Eastern at 3.

[6] *Id.* at 4.

[7] Brokering of Interstate Natural Gas Capacity, Docket No. RM88-13-000, 53 FR 15061 (Apr. 27, 1988), IV FERC Stats. & Regs. ¶ 32,460 (Apr. 4, 1988). The Commission's capacity brokering NOPR has revealed several complicated issues that are involved in establishing any capacity brokering program on a generic basis or generically in a rulemaking proceeding. The Commission has decided, on an experimental basis, to accept the capacity brokering proposal of United Gas Pipe Line Company, 46 FERC ¶ 61,060 (Jan. 24, 1989), Order Amending Blanket Certificate.

The rule promotes full utilization of the capacity of OCS pipelines without disrupting existing firm transportation arrangements.

B. Pro Rata Allocation of Capacity

Although nothing in Order No. 509 mandates pro rata allocation of capacity, several commenters requested rehearing based on the Commission's statement that it would consider pro rata allocation of capacity as an available remedy in potential future case-specific inquiries under section 5 of the OCSLA.[8] Associated Gas Distributors (AGD) asks the Commission to either clarify that it did not intend to find that it has the authority to require pro rata allocation of capacity or grant rehearing on the issue.[9] High Island Offshore System and U-T Offshore System (HIOS) seek assurance of the right to challenge any future attempt by the Commission, either on a case-specific or a generic basis, to impose prorationing on the OCS.[10] Texas Eastern contends that the Commission lacks legal authority under section 5 of the OCSLA to impose a generic pro rata allocation scheme on OCS pipelines.

Because the Commission did not adopt any requirement of pro rata allocation, Order No. 509 explicitly deferred consideration of issues of the Commission's legal authority to do so.[11] Thus, the Commission agrees with HIOS and AGD that these legal issues were not presented or resolved in Order No. 509, are not ripe on rehearing, and may be addressed on a clean slate in any future proceeding in which they may arise.[12]

Tennessee Gas Pipeline Company (Tennessee) interprets Order No. 509 as permitting OCS pipelines to include pro rata transportation schemes in their tariffs.[13] Tennessee declares that affording this discretion to OCS pipelines when the Commission itself has decided not to exercise it is inappropriate and invites service disruptions and abuse.[14] The short answer is that such tariff provisions are beyond the scope of this proceeding. If any OCS pipeline chooses to file a tariff containing pro rata provisions, such provisions can and will be considered on a case-specific basis in response to the filing, and any party that opposes those provisions will have ample opportunity to protest or intervene to express its views.

The Indicated Producers assert that Order No. 509 allows OCS pipelines to choose an allocation method that will deny access to non-owner shippers, and request that the Commission require OCS pipelines to transport gas for all shippers who request transportation service and, if necessary, to prorate capacity among shippers.[15] The Indicated Producers also believe that the provisions for voluntary reallocation of firm transportation capacity in Order No. 509 allow owner-shippers on the OCS (through a simple unwillingness to voluntarily relinquish capacity) to bar access to firm transportation for non-owner shippers.[16] These arguments, in essence, are arguments in favor of requiring pro rata allocation. For the same reasons it chose not to adopt a generic pro rata allocation scheme, as discussed in Order No. 509, the Commission denies the Indicated Producers' requests. Requiring OCS pipelines to provide blanket transportation service will promote use of OCS transportation capacity by assuring that potential shippers will have nondiscriminatory access to unused firm capacity, without disrupting existing transportation arrangements.

C. Scope of Order No. 509

Tarpon Gas Marketing, Ltd. and Vesta Energy Company (Tarpon) allege that the Commission ignored issues raised in Tarpon's comments on the NOPR.[17] Tarpon alleges, specifically, that Order No. 509 contains no discussion of Tarpon's suggestions: (1) To require OCS pipelines to apply for blanket certificates to govern their *onshore* operations; and (2) that the Commission adopt similar requirements for pipelines subject to the Mineral Leasing Act.[18] Both suggestions are more ambitious than what the Commission proposed in the NOPR, both are concerned with the onshore operations of interstate natural gas pipelines, and, for that reason, both fall beyond the scope of this rulemaking proceeding.[19] This rulemaking proceeding and Order No. 509 only concern the operations of interstate natural gas pipelines on the OCS.

ANR Pipeline Company (ANR), HIOS and Tennessee ask for rehearing based on the Commission's decision to implement section 5 of the OCSLA only with respect to jurisdictional interstate natural gas pipelines that hold a certificate under section 7 of the Natural Gas Act (NGA) [20] authorizing the construction and operation of facilities on the OCS. ANR contends that the Commission's decision not to apply Order No. 509 to gathering or producer-owned facilities on the OCS is unreasonable and discriminatory.[21] Tennessee contends that the Commission should require nondiscriminatory transportation by all OCS transporters if it does so for NGA jurisdictional pipelines.[22] HIOS submits that there is no just basis for declining to establish requirements for facilities owned and operated by producers that are comparable to the mandatory blanket certificate, open season, and related requirements imposed on OCS pipelines.[23]

It is within the Commission's discretion to decide how to implement section 5 of the OCSLA, and there is a reasonable basis for taking a case specific approach with respect to nonjurisdictional OCS pipelines. The most rational starting point for promulgating regulations to implement section 5 of the OCSLA is with interstate pipelines that are clearly within the Commission's jurisdiction under the NGA. Moreover, the Commission alreadly has an established open access program that can, with few modifications, be applied to such pipelines. The Commission recognizes, however, that the open access mandate of the OCSLA applies to all pipeline operations on the OCS, and will consider appropriate measures for remedying discriminatory access to other OCS facilities on a case by case basis.

Enron Interstate Pipelines (Enron) challenges the Commission's statement in Order No. 509 that "If the Commission receives complaints regarding gathering facilities it will, on a case-specific basis, use its ancillary authority, its authority under sections 4 and 5 of the NGA, and

[8] *See* Order No. 509, 53 FR at 50,927, III FERC Stats. & Regs. at 31,273.

[9] *See* AGD's rehearing request at 5.

[10] *See* HIOS's rehearing request at 5.

[11] *See* Order No. 509, 53 FR at p. 50,927, III FERC Stats. & Regs. at 31,279.

[12] The statement in Order No. 509 regarding pro rata allocation on a case-specific basis reflects the Commission's belief (as well as the belief of several other commenters on the NOPR) that under section 5(e) of the OCSLA the Commission has the authority to determine, in consultation with the Secretary of Energy, the proportionate amounts to be transported, after a full hearing with case-specific findings and after taking into account, *inter alia*, conservation and waste.

[13] *See* Tennessee's rehearing request at 3, citing to Order No. 509, 53 FR at 50,927, III FERC Stats. & Regs. at 31,276-277.

[14] Tennessee's request for rehearing at 3.

[15] *See* the Indicated Producers' request for rehearing at 7-8.

[16] *Id.* at 9.

[17] *See* Tarpon's rehearing request at 1.

[18] 30 U.S.C. 181, *et seq.* (1982).

[19] The Commission cannot mandate blanket transportation service onshore simply because pipelines also have operations on the OCS.

[20] 15 U.S.C. 717f (1982).

[21] *See* ANR's rehearing request at 12.

[22] *See* Tennessee's rehearing request at 19-21.

[23] *See* HIOS's rehearing request at 6.

its authority under section 5 of the OCSLA, as appropriate under the circumstances presented" (citations omitted). Enron contends that the Commission lacks jurisdiction under sections 4 and 5 of the NGA to take such action.[24] The short answer is that the Commission's section 4 and 5 authority with respect to gathering facilities on the OCS is beyond the scope of this proceeding, and is not ripe for consideration on rehearing of Order No. 509. Enron may challenge an assertion of such authority if and when the Commission exercises it, in any proceeding in which the issue arises.

D. Authority to Issue Blanket Certificates

Texas Eastern, HIOS, ANR and Sea Robin argue that the Commission lacks legal authority under the NGA to issue mandatory blanket transportation certificates to OCS pipelines.[25] Texas Eastern, for example, contends that the OCSLA does not empower the Commission to issue any type of transportation authorization. The argument of Texas Eastern and others runs as follows: (1) Section 7(c) of the NGA requires that before a natural gas company may engage in the transportation of natural gas in interstate commerce, there must be in force a certificate of public convenience and necessity issued by the Commission; (2) section 7(e) of the NGA provides that the applicant must demonstrate that it is willing and able to undertake the proposed transportation and that such transportation is required by the present or future public convenience and necessity; and, therefore, (3) if the applicant is unwilling to accept the certificate, the willing and able standard has not been met and the certificate cannot be issued.

The Commission disagrees with these commenters; their argument ignores the presence of section 5 of the OCSLA and its mandate that OCS pipelines must provide open and nondiscriminatory access to both owner and nonowner shippers. Order No. 509 only applies to those interstate natural gas pipelines that hold a certificate under section 7 of the NGA authorizing the construction and operation of facilities on the OCS. The willingness of OCS pipelines to provide transportation service on or across the OCS was established when they accepted their existing certificates and commenced service thereunder. The blanket certificates issued by Order No. 509 simply impose conditions of service that are mandated by section 5 of the OCSLA. Congress established a condition of open and nondiscriminatory access for the transportation of oil and natural gas on or across the OCS. OCS pipelines are not compelled to operate on the OCS, but if they choose to do so they must be willing to provide open and nondiscriminatory access to transporation services. Compliance with section 5 of the OCSLA is required of pipelines operating on the OCS; it is not a matter as to which they have discretion.

E. The Rate Determinations

Several commenters argue that the rate provisions of Order No. 509 are unlawful and unclear.[26] Columbia states that in order for the Commission to properly exercise its authority under sections 5 of the NGA it must: (1) Find the existing rates of a pipeline to be unjust and unreasonable; (2) find the rates that it seeks to impose on a pipeline are just and reasonable; and (3) support each finding by substantial evidence. Columbia also states that section 5 of the NGA places the burden of proof on the Commission with respect to these findings. Columbia and others argue that the Commission did not properly find that the existing rates for transactions under individual section 7 certificates are unjust and unreasonable. Moreover, because Order No. 509 provides an opportunity fo pipelines to refile their current rates for individually certificated transportation if the pipeline can demonstrate that such rates are not unjust, unreasonable, or unduly discriminatory,[27] Columbia and Tennessee argue that the Commission has improperly shifted the burden of proof to the pipelines to prove that their existing rates are just and reasonable.[28] Finally, Tennessee and Columbia both dispute the validity of the Commission's reasons for finding that an OCS pipeline's current rates are unjust and unreasonable if they do not conform to the requirements of §§ 284.7, 284.8(d) and 284.9(d) of the Commission's regulations.

Columbia argues that the fact that blanket certificates may be necessary to satisfy the open access requirements of the OCSLA has nothing to do with rate determinations. Columbia also argues that the rate design and nondiscrimination requirements in §§ 284.7, 284.8(d) and 284.9(d) simply apply, as the Commission recognized, in the context of transportation performed under the blanket certificates and not in the context of individually certificated transportation. Tennessee alleges that nothing in Order No. 509 changes the nature of an OCS pipeline's services in terms of the physical flow and the facilities utilized—the fundamental characteristics that determine rate design.

Sea Robin argues that the Commission has failed to justify its generic treatment of the existing rates of OCS pipelines. Sea Robin notes the Commission relied on the notice and comment procedures of its rulemaking to satisfy the NGA section 5 hearing requirement.[29] Sea Robin agrees that the Commission can rely on notice and comment rulemaking procedures as a means to satisfy section 5 of the NGA, but distinguishes the Commission's reliance on *Wisconsin Gas* by noting that the Commission was attempting, in that instance, to redress the anticompetitive effects of a generic practice (*i.e.*, the use of minimum commodity bills). Sea Robin asserts that the approach of *Wisconsin Gas* is not appropriate to Order No. 509, where the rates found to be unlawful in the rulemaking were not the product of a generic practice but were the product of circumstances peculiar to each OCS pipeline and where the rates were approved by the Commission on a case by case basis. Sea Robin argues that the notice and comment procedures which overrule such rates are not sufficient when the levels of such rates have not been shown to be a problem of a generalized nature. Sea Robin therefore contends that the Commission must grant rehearing of Order No. 509 to provide that existing rates will be reviewed in individual proceedings under section 5 of the NGA.

As elaborated in Order No. 509, the Commission based its finding on: (1) Its determination that Part 284, Subpart G blanket certificates are required to satisfy the open access requirement of the OCSLA; (2) its determination in

[24] *See* Enron's request for rehearing at 5.

[25] *See* ANR's rehearing request at 10; HIOS's rehearing request at 7; Sea Robin's rehearing request at 15; and Texas Eastern's rehearing request at 5.

[26] *See* ANR's rehearing request at 2; Columbia's rehearing request at 2; Sea Robins's rehearing request at 4–13; Tennessee's rehearing request at 11–19; and Indicated Producers' rehearing request at 25.

[27] *See* 18 CFR 284.305(d)(2) (1988).

[28] Tennessee also contends that Order No. 509 does not provide procedures for parties (other than the OCS pipeline) to support the retention of existing rates if the OCS pipeline elects not to refile and justify them. The short answer is that interested persons will have ample opportunity to protest and intervene, and express their views, with respect to the OCS pipelines' filings regardless of what the OCS pipelines choose to file, whether it be new rates or (as described below) a statement explaining their existing rates.

[29] Order No. 509, 53 FR at 50,927, III FERC Stats. & Regs. at 31,278 (citing *Wisconsin Gas Co.* v. *FERC*, 770 F.2d 1144 (DC Cir. 1985), *cert. denied*, 106 S.Ct. 1969 (1986)).

Order Nos. 436 and 500 that rates inconsistent with §§ 284.7, 284.8(d) and 284.9(d) are unjust and unreasonable in the context of transportation performed under blanket certificates; [30] and (3) its determination that it would be unduly discriminatory to subject existing shippers on OCS pipelines to a rate different than the rate charged to new shippers on the same pipeline.[31] In other words, through the rulemaking process the Commission undertook the burden of establishing pursuant to NGA section 5 that the current rates are unduly discriminatory.

As we understand the requests for rehearing, no one is challenging the requirement to file Part 284 rates for use in performing transportation under the blanket certificate. The sole challenge is to the requirement that Part 284 rates be utilized in lieu of existing rates with respect to transportation performed pursuant to existing individual certificates.

For the reasons discussed in Order No. 509, we continue to believe that the existing rates are unjust, unreasonable and unduly discriminatory, because they can result in situations wherein two shippers would be paying different rates for the same service. We believe the discrimination is particularly glaring if part, but not all, of an existing shipper's firm capacity is voluntarily reallocated—the new shipper would be paying Part 284 rates while the old shipper would be paying the existing rates. Nevertheless, based on reconsideration of this issue, we have concluded that the most appropriate procedure would be to permit the continued use of the existing rates for transportation under existing certificates until such time as OCS pipelines have had an opportunity to present their views on a case specific basis. Accordingly, we have revised the rule.

OCS pipelines who wish to utilize their current rates after April 1, 1989 for transportation performed pursuant to existing certificates must file, no later than March 1, 1989, a statement to that effect which explains why the pipeline believes that continued use of those rates for that purpose would not be unjust, unreasonable or discriminatory in light of the activities authorized by the blanket certificate issued in Order No. 509, and in light of the Part 284 rates on file to implement the blanket certificate. Interested parties may comment on these filings. Based on the pipeline's statement of explanation and the comments thereon, the Commission will determine the appropriate action to be taken.

Thus, the NOPR, Order No. 509, and this order have commenced the NGA section 5 process by stating why the Commission believes the current rates are unduly discriminatory. OCS pipelines now have an opportunity to respond. If they respond, the issue will be considered on a case specific basis, with the Commission bearing the burden of demonstrating that the current rates are unjust, unreasonable or discriminatory. The current rates will remain in effect until such time as they may be superseded by rates that the Commission permits or orders to become effective. In other words, OCS pipelines may file superseding rates pursuant to section 4 of the NGA, or the Commission may impose Part 284 rates as superseding rates pursuant to section 5 of the NGA. In the latter event, such rates could be imposed for that purpose only after the Commission has considered the case specific explanation filed by the OCS pipeline, and pursuant to a procedure whereby the Commission has the burden of proof under section 5 of the NGA.

To implement this change, § 284.305 (a) and (d)(2) have been revised as follows:

Section 284.305 Transportation rates.

(a) Except to the extent authorized by paragraph (d)(2), the transportation rate for transportation of gas on the OCS by an OCS pipeline must be the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7, and to either § 284.8(d) for firm service or to § 284.9(d) for interruptible service.

* * * * *

(d)(2) An OCS pipeline may continue to use its current rates to perform transportation pursuant to certificates other than Part 284 blanket transportation certificates. An OCS pipeline that elects to use its current rates for that transportation after April 1, 1989, must file, no later than March 1, 1989, a notification to that effect plus a statement explaining why it believes that continued use of those rates would not be unjust, unreasonable, or unduly discriminatory in light of activities it performs under the blanket certificate issued by § 284.303(a) and the rates filed to implement that certificate.

Section 284.305(f) has been deleted as surplusage; in light of the changes made in subsections (a) and (d), set forth above, the current rates will remain in effect until such time as they may be superseded.

Sea Robin also argues that even if the Commission retains the rate findings of Order No. 509, those generic findings cannot be applied to Sea Robin. Sea Robin notes that in *Sea Robin Pipeline Co.* v. *FERC*,[32] the court considered whether the rate charged by Sea Robin under its Rate Schedule X-5 for the transportation of OCS gas was just and reasonable. The court determined that the Commission failed to demonstrate that the rate was unjust and unreasonable and remanded the issue to the Commission. The remanded issue is now set for hearing before an administrative law judge in Docket No. RP88-181-000.[33] Sea Robin claims that because the lawfulness of Sea Robin's existing X-5 rate is the subject of a Commission hearing which will consider the specific facts underlying Sea Robin's rates, its transportation rates should not be subject to Order No. 509.

Order No. 509 was issued two years after the court decision referenced by Sea Robin, and is premised on considerations that were not in the record before the court. If Sea Robin wishes to continue its use of Rate Schedule X-5, it should file a notification and explanation pursuant to § 284.305(d)(2), as revised herein. If and when the Commission receives such a filing, it will consider the propriety of consolidating it with the proceeding in Docket No. RP88-181.

Columbia and Tennessee ask the Commission to clarify that Order No. 509 allows OCS pipelines to selectively discount offshore transportation rates.[34] Columbia indicates that since OCS pipelines must file rates in compliance with § 284.7 (which provides for maximum and minimum rates), they should have the same ability to discount offshore transportation rates as do open access transporters onshore. Columbia is concerned that the Commission's statement in Order No. 509 that "it is unduly discriminatory to subject existing shippers on OCS pipelines to a different transportation rate than the rate charged to new shippers on the same pipeline" [35] might be read to eliminate the rate flexibility provisions of § 284.7(d). The Commission's intent in Order No. 509 was to mirror the onshore open access as closely as possible. The Commission, therefore, confirms that Order No. 509 does not preclude OCS pipelines from selectively discounting Part 284 offshore transportation rates.

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[30] Sections 284.8 and 284.9 also contain the requirements of nondiscriminatory access. *See* 18 CFR 284.8(b), 284.9(b) (1988).

[31] Order No. 509, 53 FR at 50,930, III FERC Stats. & Regs. at 31,278.

[32] 795 F.2d 182 (DC) Cir. 1986).

[33] Sea Robin Pipeline Co., 43 FERC ¶ 61,569 (1988), *Order on reh'g*, 44 FERC ¶ 61,356 (1988).

[34] *See* Columbia's rehearing request at 8 and Tennessee's rehearing request at 16.

[35] Order No. 509, 53 FR at 50,930, III FERC Stats. & Regs. at 31,278.

Tennessee requests that the Commission authorize selective discounting of its rates even if the OCS transportation service is rendered under an individual section 7 certificate. The request is denied, consistent with well established Commission policy. Discounting is permitted in blanket transportation service because the discount is merely one element in a comprehensive regulatory scheme under Part 284 that includes numerous safeguards to ensure that the transportation is performed in a nondiscriminatory manner. Transportation performed under individual certificates lacks these safeguards.[36]

Tennessee asks the Commission to clarify that OCS pipelines have no refund exposure due to the continued use of existing rates. In light of our revision of the rule, discussed above, Tennessee's request for clarification is moot; we have deleted the requirement to "refile" the current rates.[37]

F. Definition of an OCS Pipeline and Appendix B

The Commission listed the OCS pipelines to whom blanket certificates are issued by Order No. 509 in Appendix B to the order. Several commenters noted a number of inadvertent discrepancies between the definition of an OCS pipeline and the list of OCS pipelines in Appendix B. These commenters request that the Commission either clarify or revise its definition of an OCS pipeline, or revise Appendix B to add or delete particular pipelines, so that the list will conform to the definition.[38]

Section 284.302(b) of the regulations, as adopted in Order No. 509, defined an OCS pipeline as

An interstate natural gas pipeline that holds a certificate under section 7 of the NGA authorizing the construction and operation of facilities on the OCS, and includes all of the OCS pipeline's facilities that fall within the scope of the Commission's jurisdiction under section 7 of the NGA to the full extent that such facilities are used or necessary to transport natural gas from the OCS to the first point of interconnection on the shoreward side of the OCS where it delivers natural gas to either:

(1) A natural gas conditioning or processing facility, or

(2) Another pipeline, or

(3) A distributor or end user of natural gas.[39]

Black Marlin suggests that the scope of the blanket certificate could change from time to time whenever a particular OCS pipeline constructs a new first point of interconnection on the shoreward side of the OCS. Black Marlin requests that the Commission clarify Order No. 509 to indicate that Appendix B of the rule was provided for illustrative purposes and was not meant to establish or otherwise identify the first point of interconnection on the shoreward side of the OCS for OCS pipelines.

Texas Eastern and Transco state that there are a number of interstate pipeline facilities on the OCS through which transportation services are performed that were not included in Appendix B. Transco states that it owns substantial pipelines in the OCS that have been certificated under section 7 of the NGA, and is a partner in other, jointly owned OCS facilities, that are not included in Appendix B, and that this is the case with other pipelines as well. Transco suggests that blanket certificates are issued to these facilities even though they are not listed in Appendix B, and requests clarification.

Appendix B was intended as a listing of all OCS pipelines and their shoreward termini as of the date of issuance of Order No. 509. We recognize that OCS pipelines' shoreward termini may change subsequent to that date. In such event, the definition in § 284.302(b), as amended below, will govern. Appendix B will not be published in the regulations, and does not purport to be a permanent roster of OCS pipelines. It has, however, served an extremely useful role in the rulemaking process by focussing attention on the formulation and application of the definition in § 284.302(b). In light of the comments received, we have made a modest refinement in the definition. We will also address herein the application of the definition, as revised, to the facts posed by several of the commenters in their requests for rehearing.

Transco is correct that the definition of an OCS pipeline in § 284.302(b) is controlling. Every pipeline operating on the OCS that falls within that definition is issued a Part 284, Subpart G blanket transportation certificate and must comply with Order No. 509. Offshore pipelines that meet the definition of an OCS pipeline in § 284.302(b) (as amended herein), but who were not listed in Appendix B of Order No. 509, fall within the scope of the regulations adopted in Order No. 509.[40]

Black Marlin notes that its shoreward terminus is not correctly stated in Appendix B.[41] Appendix B identifies the shoreward terminus of Black Marlin as the "onshore terminus at the Union Carbide plant, Texas City, Texas." Black Marlin states that the correct terminus is its existing interconnection with the Houston Pipe Line Company located at Black Marlin's onshore separation facility, *i.e.*, a point upstream of the Union Carbide Texas City Plant. We adopt Black Marlin's correction.

Stingray Pipeline Company points out that its shoreward terminus is incorrectly identified in Appendix B as "West Cameron 148 Offshore Louisiana." [42] Stingray states that the correct terminus is its compressor station in Holly Beach, Louisiana, where it delivers gas to Natural Gas Pipeline Company of America. The Commission adopts that correction as well.

Arco asks the Commission to modify the definition. First, Arco explains that an OCS pipeline often delivers gas to a gas processing plant that has only a single downstream exit. Arco suggests that the point of interconnection be moved downstream to the point at which that pipeline interconnects with another pipeline. Arco indicates that the point of interconnection downstream of the plant may be a few hundred feet or a few miles. In other cases, there may be more than one pipeline taking delivery of residue gas at the plant tailgate; Arco suggests that in those instances the plant inlet may be a reasonable point for the OCS pipeline to terminate.

Secondly, Arco suggests that the downstream interconnection would be more meaningful if the onshore

[36] *See e.g.*, Consolidated Gas Transmission Corporation, 36 FERC ¶ 61,273 at 61,670 (1986), *aff'd on rehearing*, 39 FERC ¶ 61,112 at 61,422–23 (1987), *aff'd sub nom.* Columbia Gas Transmission Corp. v. FERC, 848 F.2d 250 (DC Cir. 1988). Tennessee also requests that the filing of a cost and revenue study under new § 284.305(c) not be required for OCS pipelines that file selectively discounted rates for individually certificated services. Inasmuch as selectively discounted rates are not permitted for such service, Tennessee's request is moot.

[37] In any event, with respect to newly filed rates, refund exposure would attach from the date that such rates become effective, but only to the extent that such rates are increased.

[38] See Texas Eastern's rehearing request at 9; Black Marlin's rehearing request at 2; Transco's rehearing request at 1; FMI's rehearing request at 2; Amoco's rehearing request at 13; Arco's rehearing request at 5; Indicated Producers' rehearing request at 15; NRM's request for clarification or waiver; Texas Sea Rim's letter of January 12, 1989; and Stingray Pipeline Company's letter of January 31, 1989.

[39] 18 CFR 284.302(b) (1988).

[40] *See also* Texas Eastern's rehearing request at 10, where it states that it has "interstate pipeline facilities on OCS lands that were constructed primarily to connect system supplies but through which Texas Eastern also provides open access transportation services to the extent that capacity is available." Such facilities, if they fall within the definition of an OCS pipeline in § 284.302(b), are subject to Order No. 509 despite the fact that they were not listed in Appendix B.

[41] *See* Black Marlin's rehearing request at 3, n.1.

[42] See January 31, 1989 letter to the Secretary from Stingray.

interconnection is with another open access pipeline; otherwise, the shipper of the gas may be unable to secure transportation of the gas to its intended destination, thus defeating the purpose of the rule. Finally, Arco states that if the pipeline physically terminates at an end-use facility, then the inlet to that facility would be a reasonable point for the OCS pipeline to terminate. But if the end-use facility is taking delivery of only part of the gas the OCS pipeline is transporting, and isn't (or is physically incapable of) taking delivery of all of the gas, Arco believes the inlet point of the end-use facility has "no meaning" as the termination point for the OCS pipeline because the remaining gas has no place to go except to continue in the pipeline to another point of consumption or to an interconnection with another pipeline.

Arco's solution to the three problems it perceives is to modify the definition of an OCS pipeline to extend to the "first point of interconnection on the shoreward side of the OCS with another pipeline operating under the Commission's open access transportation program or which has transportation capacity available." [43]

Similar to Arco, the Indicated Producers request that the definition be changed to include all transmission facilities downstream from any point on the OCS to the first onshore point where alternate transportation is genuinely available. The Indicated Producers contend that this point should be where the OCS shippers have access to Part 284 open access transportation facilities that have a total capacity equal to or greater than the capacity of the OCS pipeline (after taking into account the design capacity of all Part 284 open access transportation facilities having receipt points on the OCS pipeline).[44]

The Indicated Producers assert that the Commission was persuaded to change the definition in the final rule by comments stating that the proposed definition could result in an unwarranted extension of pro rata transportation into the onshore facilities of an OCS pipeline. Since the pro rata requirement has been removed, the Indicated Producers believe the objection is no longer relevant. The Indicated producers maintain that the Commission's goal to "expand open access to the OCS" will only take on meaning if there is a true integration of transportation accessibility from the OCS to onshore open access facilities.[45]

The Indicated Producers also allege that the current definition of an OCS pipeline may provide an unintended windfall to certain pipelines or industrial plants and will provide opportunities to OCS pipelines (or their affiliated pipelines) to manipulate their systems to the detriment of those who benefit from open access.

Arco and the Indicated Producers have raised important considerations in determining where an OCS pipeline should terminate. However, their proposed definitions—to the extent that they would define the interconnection on the shoreward side of the OCS with either another Part 284 open access pipeline or another pipeline that has capacity available—are overly broad and exceed the Commission's legal authority under the OCSLA.

As discussed below, the legal predicate for the Commission's requirement that all OCS pipelines provide open access transportation pursuant to Part 284 blanket transportation certificates is the mandate of the OCSLA. That mandate speaks in terms of transportation of OCS gas "on or across" the OCS.[46]

Under certain circumstances (*e.g.*, an essentially onshore interstate pipeline whose seaward terminus extends on to the OCS, and during periods of peak operation of that pipeline in a winter heating season), the definition proposed by Arco and the Indicated Producers could extend the requirements of Order No. 509 many hundreds of miles inland, deep into the interior of the continental United States. Indeed, the scope of the rule's coverage might expand and contract quite dramatically (like mercury rising and falling in a thermometer) as the availability of onshore capacity loosens and tightens; alternatively, the scope of the rule's coverage would have to extend to some predetermined "worst case scenario" boundary line beyond which capacity would never be unavailable.

We believe that any such extension of the scope of coverage of the rule would significantly exceed our underlying statutory authority under the OCSLA. Based on the differences in statutory authority, the Commission has determined that the offshore open access program (Order No. 509) is mandatory and that the onshore open access program (Order Nos. 436 and 500) is voluntary. Consequently, the Commission does not believe it can, or should, mandate onshore open access carriage under the guise of the OCSLA's offshore mandate. Thus, the Commission has chosen the first point of interconnection off the OCS with some other entity that receives gas from the OCS pipeline as the terminus of the OCS open access program.

To the extent that the interconnection of an open access OCS pipeline with a non-open access onshore pipeline poses problems of capacity transition from one pipeline to the other, those problems are not unique to the OCS; they are the same problems that arise at the interconnection of two onshore pipelines when one is open access and the other is not. We read the OCSLA to mandate transportation of OCS gas *to* the onshore pipeline system, not *through* the onshore pipeline system. We do not read the OCSLA as mandating transportation access for OCS gas *through* onshore facilities in excess of, and in preference to, the transportation access that gas produced onshore has to that onshore system.

The second problem posed by Arco, as described above—the possibility that the first shoreward interconnection (particularly if it is an end-user) may be physically incapable of receiving the full capacity of the OCS pipeline—does cause us some concern. We do not, however, perceive any viable method of formulating the definition to address that problem without falling into the above described legal quagmire of trying to define the shoreward terminus of an OCS pipeline in terms of the capacity of the various shoreward entities with which it may from time to time interconnect, as that capacity itself changes seasonally or over time.

We agree with Arco that if the first onshore interconnection of an OCS pipeline is with a gas conditioning or processing plant, and if that plant has only a single tailgate exit by which the gas can leave the plant, the purpose of Order No. 509 would be totally frustrated if the plant blocked passage of the gas through its tailgate facilities to the downstream interconnection. On reflection, however, it occurs to us that this potential problem is extremely hypothetical in that the plant itself would be frustrating its own operations and economic purpose if it did anything with that gas other than passing it through its sole tailgate facilities to its sole interconnection with some entity capable of receiving it. Therefore, on the record currently before us, we perceive no purpose to be served by asserting jurisdiction over such plants to the extent that they may be nonjurisdictional, or by requiring such plants to file tariffs and conduct open seasons, etc. If such a plant ceases operation, it would, of course, cease being the terminus of the OCS pipeline. In the extremely unlikely event that a single exit plant at the terminus of an OCS pipeline remains in operation, but in such a manner as to discriminatorily fail to redeliver its customers' gas, we will consider an appropriate remedy on a case by case basis.

FMI Hydrocarbons, Inc. (FMI) asks that the Commission revise the definition of an OCS pipeline to include gas that is transported from an onshore location seaward on to the OCS for consumption on the OCS. FMI, a wholly-

[43] See Arco's request for rehearing at 7.

[44] See Indicated Producers' request for rehearing at 17.

[45] *Id. at 18.*

[46] 43 U.S.C. 1334(f)(1) (1982).

owned subsidiary of Freeport McMoran, Inc., arranges for supplies of natural gas to be used to operate sulphur mines on the OCS. In connection with the operation of these sulphur mines, natural gas is transported by Freeport Interstate Pipeline Company (Freeport Interstate) seaward into the Gulf of Mexico and across the OCS. FMI also indicates that it may in the future seek to use offshore facilities to transport OCS gas to OCS sulphur mines, *i.e.*, transportation entirely on the OCS.

The Commission agrees with and grants FMI's request to amend the definition of an OCS pipeline. Section 5(f)(1)(A) of the OCSLA is concerned with the "transportation by pipeline on or across the Outer Continental Shelf of oil or gas." [47] The Commission interprets the words "on or across" the OCS to include the seaward movement of gas from either an onshore location or an offshore location to any point on the OCS. Consequently, the Commission modifies the definition of an OCS pipeline in § 284.302(b) of its regulations as follows:

"OCS pipeline" means an interstate natural gas pipeline that holds a certificate under section 7 of the NGA authorizing the construction and operation of facilities on the OCS, and includes all of the OCS pipeline's facilities that fall within the scope of the Commission's jurisdiction under section 7 of the NGA to the full extent that such facilities are used or necessary to transport natural gas on or across the OCS between:

(1) Any locations on the OCS (if the pipeline does not have an interconnection off the OCS), or

(2) The OCS and the first point of interconnection on the shoreward side of the OCS where the pipeline delivers or receives natural gas to or from either:

(i) A natural gas conditioning or processing facility, or

(ii) Another pipeline, or

(iii) A distributor or end user of natural gas.[48]

Texas Sea Rim Pipeline, Inc. was listed by the Commission in Appendix B to Order No. 509 as one of the OCS pipelines issued blanket certificates by Order No. 509. On January 12, 1989, Texas Sea Rim sent the Commission a letter stating that, although Order No. 509 did not provide for acceptance or rejection of the certificates, Texas Sea Rim "accepts the blanket certificate." However, Texas Sea Rim's letter goes on to explain that its facilities are located entirely in state waters off the coast of Texas and do not cross the Federal OCS. Thus, Texas Sea Rim falls outside the definition of an OCS pipeline in § 284.302(b). If Texas Sea Rim is not an OCS pipeline, it is not subject to, or bound by, Order No. 509. As discussed above, the definition is controlling; Appendix B was not. Therefore, the Commission finds that the issuance of a blanket certificate to Texas Sea Rim in Appendix B of Order No. 509 was void *ab initio*. Of course, Texas Sea Rim is still a certificated interstate pipeline, can avail itself of Part 284, and has applied for a blanket certificate; [49] this order is without prejudice to that application.

NRM Operating Company, L.P. and EnerMark, Inc. (NRM) ask the Commission to confirm that it is not presently subject to Order No. 509 and that it therefore need not comply with §§ 284.304–305 by March 1, 1989. In the alternative, NRM requests a temporary waiver of §§ 284.304–305. On December 22, 1988, in Docket No. CP88–428–000, the Commission issued a declaratory order and a temporary certificate in connection with certain OCS facilities owned and operated by NRM and others.[50] The Commission ruled that NRM's facility was subject to the jurisdiction of the Commission under the NGA as a facility used to transport natural gas in interstate commerce. NRM asserts that its delivery line is a gathering facility exempt from the Commission's NGA jurisdiction and has sought rehearing of the December 22, 1988 order. NRM's request for clarification or, alternatively, waiver of Order No. 509 is based on the fact that the Commission could reverse its jurisdictional determination in that order. NRM seeks clarification only that, at the present time, it is not subject to the various notice and filing requirements in §§ 284.304–305. Alternatively, NRM requests waiver of the regulations, pending final action by the Commission on the merits of the December 22, 1988 order. NRM's request for waiver and clarification that it is not subject to Order No. 509 is being considered in Docket No. CP88–428, in which an order on rehearing is being issued contemporaneously.

G. Open Season for Firm Transportation

Enron seeks clarification of several aspects of the requirement for OCS pipelines to hold an open season for firm transportation. First, Enron asks whether an open season must be conducted for firm transportation if no firm transportation capacity is available. The OCS pipeline must conduct the open season to the extent of polling all of its existing firm shippers to ascertain whether any of them want to relinquish any or all of their firm capacity.[51] If in response to that process no firm shipper indicates a desire to relinquish capacity, and if the OCS pipeline itself does not have any firm capacity available for transportation services, then there will be no firm capacity to reallocate in the open season and the open season process is at an end; there is no need to invite potential shippers to request firm capacity that doesn't exist.

Next, Enron asks the Commission to clarify that existing requests for firm service on OCS pipelines that already have a Part 284 blanket transportation certificate have priority over new requests made during and after the open season.[52] Enron states that some of its OCS pipelines have all their firm capacity fully allocated and that they have received valid requests for additional firm service which they cannot fulfill. Enron states that Order No. 509 does not address the priority status of these existing requests during and after the open season.

Normally, the existing previously made requests for firm capacity will have the same priority during the open season as any other request made during the open season's window period of 10 to 30 days; that is the essence of an open season—everyone has an equal opportunity to request capacity. If the requests exceed availability, the OCS pipeline must allocate capacity on a pro rata basis, taking into account the capacity available at the particular receipt and delivery points specified by both the firm shippers relinquishing capacity and the shippers requesting firm capacity.[53] Thereafter, requests for firm capacity will be treated pursuant to the pipeline's tariffs.[54]

However, we recognize that some OCS pipelines already hold Part 284 blanket transportation certificates, and have tariffs on file that conform to the requirements of Part 284. If such OCS pipelines have compiled a list of potential shippers who want firm capacity, and if such a list was compiled in a nondiscriminatory manner pursuant to the conditions of an order issuing a Part 284 certificate or pursuant to the provisions of a tariff filed to implement Part 284 requirements, the pipeline should accord priority to those potential shippers at the open season. In other

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[47] 43 U.S.C. 1334(f)(1) (1982).

[48] FMI expressed concern that Freeport Interstate was listed in Appendix B and wanted the blanket certificate, but did not fit the definition in § 284.302(b). As revised, the definition now includes Freeport Interstate.

[49] Docket No. CP88–454–000.

[50] NRM Operating Company, L.P., *et al.*, 45 FERC ¶ 61,494 (1988).

[51] *See* 18 CFR 284.304(a) (1988).

[52] *See* Enron's rehearing request at 8.

[53] *See* 18 CFR 284.304(a)(4) (1988).

[54] *See* 18 CFR 284.305(e) (1988).

words, we do not wish to disrupt the orderly operation of a nondiscriminatory allocation mechanism that an open access OCS pipeline has already implemented pursuant to Part 284. Accordingly, we are adding a new paragraph (iv) to § 284.304(a)(4):

(iv) If an OCS pipeline already has a list of potential shippers who want firm capacity, and if that list was compiled in a nondiscriminatory manner pursuant to the conditions of an order issuing a Part 284 blanket certificate or pursuant to the provisions of a tariff filed to implement Part 284 requirements, it shall accord priority to those potential firm shippers at the open season.

Third, Enron seeks rehearing or clarification that after the open season an existing firm shipper cannot circumvent a pipeline's waiting list for firm capacity by assignment of the released capacity to a third party. Enron asserts that Order No. 509 does not address the situation after an open season where an OCS pipeline (1) has all of its capacity fully allocated, (2) has remaining unfulfilled requests for firm service, and (3) has an existing shipper who desires to relinquish service. Enron argues that it would be inequitable to permit the existing shipper who wants to relinquish capacity to circumvent the process by assigning capacity to a third party. Enron suggests that the existing shipper first should be required to relinquish capacity to those parties who are first in line for service. Enron suggests that only when there are no existing requests or not enough requests to account for the total capacity to be released should an existing shipper be permitted to reassign its capacity to a party of its choosing.

The Commission agrees with Enron that an existing shipper should not be able to circumvent an OCS pipeline's priority queue or waiting list by assignment of released capacity to a third party, as long as such a priority queue or waiting list has been established by the pipeline through nondiscriminatory processes consistent with the requirements of Part 284. Order No. 509 contemplates that a potential firm shipper may take the initiative to find an existing firm shipper who wishes to relinquish capacity. However, the reallocation of that capacity must be made by the pipeline itself, and cannot be made by the shippers; a direct shipper-to-shipper transfer of capacity would constitute unauthorized capacity brokering.[55] Moreover, the reallocation must be consistent with the pipeline's tariff provisions implementing § 284.305(e), which requires OCS pipelines to set forth in their tariffs the mechanism they will use to reallocate firm transportation capacity under § 284.304(c). Thus, Enron has the ability to provide itself with the clarification it seeks.

Finally, Enron states that if an OCS pipeline has firm uncommitted capacity, the pipeline should be able to allocate that uncommitted capacity to a shipper requesting such service prior to relinquishment and allocation of committed capacity. The Commission agrees with Enron and believes that this procedure is already established in § 284.304 (a)(4)(ii) and (c)(2).

H. Open Season for Interruptible Transportation

Texas Eastern and Tennessee accuse the Commission of allowing interruptible capacity to be allocated, rather than scheduled, on the basis of price.[56] Consistent with the Commission's intent to mirror the onshore open access program, it stated that after the open season has been conducted an OCS pipeline may allocate interruptible capacity using any nondiscriminatory means that is acceptable for onshore blanket certificate transportation. In making that allocation, the Commission required OCS pipelines to give priority to currently authorized interruptible transportation so as to avoid disrupting on-going certificated service. This priority is contingent upon the rates that the existing shippers pay being no lower than the rates paid or to be paid by other interruptible shippers.

Tennessee and Texas Eastern claim that Order No. 509 allows capacity to be allocated on the basis of price. Tennessee asserts that Order No. 509 confuses capacity allocation with the scheduling of service and that this is inconsistent with the existing Commission policy on open access service. Tennessee declares that the Commission has uniformly required open access pipelines to allocate interruptible capacity on a first-income, first-served basis, with priority accorded to shippers who request service first. Tennessee then explains that once a shipper establishes his place in the priority queue on a first-come, first-served basis, it

Retains that priority for the term of his contract. However, within this first come, first served system of *allocating* capacity, the Commission has allowed pipelines to *schedule* transportation based on price, recognizing that the Commission's regulations permit pipelines to discount their transportation rates to any level between stated maximum and minimum rates. Thus, for example, if Shipper A has priority over Shipper B under the first come, first served rule, Shipper B could nevertheless "bump" Shipper A if Shipper A were unwilling to pay the price offered by Shipper B—*i.e.*, Shipper B's gas would be scheduled ahead of Shipper A's. However, Shipper A *could regain his priority* and have his gas scheduled ahead of Shipper B's by agreeing to match or beat Shipper B's price.

The new rules appear to require an existing interruptible shipper (Shipper A in the above example) to make an *up front* commitment to match the highest rate offered by any other shipper to retain his priority of service.

This is inconsistent with the Commission's current practice—which allows price-based bumping for scheduling purposes but allows the high-priority shipper to retain his slot in the queue—and would effectively require the existing shipper to lock himself into paying the maximum rate at all times. This could result in the dedication of most OCS capacity to large shippers with the greatest financial resources and substantially curtail transaction-specific competition for interruptible capacity. (citations omitted) [57]

Texas Eastern states similar concerns and argues that the Commission has failed to articulate a valid reason for adopting a different rule with respect to OCS pipelines.

Tennessee and Texas Eastern are misreading the rule. It operates the same way offshore as it operates onshore. Using Tennessee's example, Shipper A has priority if it matches Shipper B's price.[58]

I. Voluntary Reallocation of Firm Capacity

ANR, Transco, AGD, and Pennzoil seek clarification or rehearing on the voluntary reallocation of firm capacity provisions in § 284.304(c).[59] ANR urges the Commission to clarify that the replacement shipper must agree to assume the obligation of the transportation agreement of the original shipper, including the remaining term of the agreement. ANR argues that if this clarification isn't made, an unwarranted form of transportation contract demand reduction will occur through the reallocation of firm capacity to new shippers at significantly shorter terms

[55] Cf. United Gas Pipeline Company, 46 FERC ¶ 61,060 (Jan. 24, 1989), Order Amending Blanket Certificate.

[56] *See* Texas Eastern's rehearing request at 11; and Tennessee's rehearing request at 8.

[57] Tennessee's request for rehearing at 9–10.

[58] Lest there be any doubt, we stress that the "bump" procedure pertains only with respect to interruptible transportation; a firm shipper cannot lose its firm capacity unless it voluntarily relinquishes it.

[59] *See* ANR's request for rehearing at 14; Transco's request for rehearing at 2; AGD's request for rehearing at 3; and Pennzoil's request for rehearing at 2; *see also* 18 CFR 284.304(c) (1988).

than the terms applicable to the existing shippers.

Pennzoil also seeks clarification regarding the term of service for relinquished capacity. However, in contrast to ANR, Pennzoil believes that the replacement shipper should be able to seek a term for firm transportation capacity that is shorter than the contract term of the shipper relinquishing the capacity. Pennzoil postulates an example where an existing shipper wants to relinquish 50 percent of its firm transportation capacity for the remaining period of its contract with an OCS pipeline, *e.g.*, ten years. If the potential replacement shipper wants the capacity for only one year, Pennzoil interprets Order No. 509 as requiring the OCS pipeline to relinquish 50 percent of its capacity to the replacement shipper for one year. For the remaining term of the contract, *i.e.*, nine years, the capacity would remain committed to the existing shipper. Pennzoil bases its interpretation on the assertion that the pipeline should not be given the discretion to impose a term on the transportation agreement that the new shipper seeks because the pipeline could use this discretion to discriminate against a potential shipper.

The Commission grants ANR's request for clarification and denies Pennzoil's. The Commission's intent in Order No. 509 was to have the voluntary reallocation structured in such a way that the OCS pipeline was indifferent to the "substitution" of the two shippers.[60] Consequently, the replacement shipper must be willing to assume all of the obligations of the original shipper. In response to Pennzoil, we reiterate and stress what we said in Order No. 509. The reallocation of firm capacity is total and permanent. The relinquishing shipper does not retain any residual rights to it. The relinquishing shipper gives up the capacity for its full term, and the new firm shipper accepts that capacity for its full term (unless the OCS pipeline itself voluntarily chooses to permit a shorter term and itself retains or reallocates the remainder). A request for firm capacity for less than the full term of that capacity is not a valid request, and need not be honored. The capacity reallocation provisions under the rule are, in that respect, quite different and distinct from "capacity brokering."

J. Abandonment

Transco seeks clarification of whether the abandonment authority in § 284.304(c)(3) pertains to the entire preexisting transportation agreement or only to that portion of the arrangement which occurs offshore and up to the first point of interconnection as defined in § 284.302(b). Transco believes that the relinquishment, abandonment and reallocation procedures should apply to the preexisting transportation arrangement. Transco asserts that if that is not the case, the abandonment authority would be meaningless because (1) most transportation arrangements provide for the delivery of gas past the first point of interconnection onshore, and (2) separate abandonment applications will be required for that portion of the arrangement beyond the first point of interconnection off the OCS. In support of its request, Transco contends that the Commission has the authority to extend the automatic abandonment provisions of Order No. 509 to the onshore portions of transportation arrangements under section 7(b) of the NGA, and that the NGA does not distinguish between onshore and offshore facilities.

While Transco raises valid considerations, the Commission declines to adopt Transco's suggestion at this time. First, as noted in several different contexts in this order, the Commission is reluctant to have any part of Order No. 509 or the OCSLA govern the transportation of natural gas in interstate commerce onshore. Second, not all OCS pipelines are in Transco's position; some OCS pipelines that have onshore facilities are not open access pipelines under Part 284; it would be particularly inappropriate to grant abandonment authority that extends to the onshore operation of non-open access pipelines. Third, most OCS pipelines have offshore or close to shore termination points such that the abandonment authority in § 284.304(c)(3) is adequate to promote voluntary reallocation of firm capacity. The Commission agrees with Transco that separate abandonment applications may be necessary in certain cases to complete the voluntary reallocation of firm capacity; the Commission will endeavor to process such applications expeditiously.

AGD argues that the Commission's grant of blanket abandonment authorization for previously certificated firm service is legally invalid because the Commission has failed to make the requisite finding under section 7(b) of the NGA that the abandonment is consistent with the public convenience and necessity. AGD asserts that section 7(b) "clearly requires that abandonment be premised upon a 'finding *by the Commission*,' after due hearing." AGD argues that there can be no such finding on the record before the Commission and that the question of whether the abandonment of transportation services would serve the present or future public convenience and necessity is an "extraordinarily fact-specific question" that merits careful scrutiny.[61] AGD argues that there is an utter absence of record support from which the Commission could make such a determination now.

As discussed in Order No. 509, the hearing requirement in the NGA can, under appropriate circumstances, be satisfied through the notice and comment procedures of a rulemaking.[62] Both the NOPR and Order No. 509 discussed the importance of making the most efficient use of the capacity of OCS pipelines. Both the NOPR and Order No. 509 stressed the importance of making unwanted, unneeded and unused capacity available to shippers who need it, want it, and will use it. Based on these considerations, elaborated in the NOPR, the comments received in response to the NOPR, and Order No. 509, the Commission finds, pursuant to section 7(b) of the NGA, that the abandonment of firm transportation service that a shipper does not want is consistent with the public convenience and necessity. We make this finding on a generic basis, because we perceive no potential factual circumstances that could be demonstrated at a case specific evidentiary hearing that could justify denial of abandonment of firm transportation service under circumstances in which the shipper entitled to the service and the pipeline providing the service both want the service to be abandoned.

K. CD Conversion Requirements

Columbia requests clarification of the § 284.10 contract demand conversion rights on a pipeline which holds Part 284 blanket certificates that cover both onshore and offshore facilities.[63] Each shipper has a single set of conversion rights under the combined blanket certificate authority of the pipeline, and those rights apply on the entire pipeline as a unified entity. If such a pipeline received its initial Part 284 blanket certificate prior to the issuance of Order No. 509, that certificate governs the conversion rights on the pipeline system in its entirety, and Order No. 509 does

[60] Order No. 509, 53 FR at 50,929, n. 26, III FERC Stats. & Regs. at 31,276, n. 26.

[61] AGD's rehearing request at 4.

[62] Order No. 509, 53 FR at 50,930, III FERC Stats. & Regs. at 31,278.

[63] The Commission addressed Columbia's request in Order No. 509, 53 FR at 50,936, n. 67, III FERC Stats. & Regs. at 31,288, n. 67.

not .n any way alter, increase or decrease those rights.

L. Casinghead Gas; Order No. 500 Crediting Mechanism

Several producers requested rehearing on grounds that the Commission should (1) provide a transportation capacity priority for casinghead gas produced on the OCS and (2) provide that the Order No. 500 take-or-pay crediting mechanism should not apply to OCS gas.[64]

Amoco alleges that the Commission failed to address the possibility of waste of valuable natural resources because of a failure to provide a priority for casinghead gas,[65] and that the Commission disregarded the fact that shut-in casinghead gas equates to shut-in OCS oil and that this oil is vital to our national security. Amoco accuses the Commission of mistakenly equating offshore casinghead gas with onshore casinghead gas, in derogation of the requirement in section 5(e) of the OCSLA to consider conservation and the prevention of waste. Finally, Amoco suggests that the case specific approach promised by the Commission in Order No. 509 is inadequate because it fails to fully appreciate the different problems facing offshore production.[66]

The Commission disagrees with Amoco that a case by case approach is either inadequate or inappropriate. In light of section 5(e) of the OCSLA, the Commission, after considering all the comments, determined that a case specific approach was warranted given the requirements of: (1) A hearing with due notice to the interested parties; (2) consultation with the Secretary of Energy; and (3) consideration of conservation and the prevention of waste. The Commission notes that other producers agree with this approach.[67]

These rehearing requests do not raise any issues that were not considered by the Commission in Order No. 509, and, for the reasons stated in that order, the Commission denies rehearing.[68] Nothing in Order No. 509 alters in any way the treatment of casinghead gas or the take-or-pay crediting mechanism as that treatment was determined in Order No. 500. Order No. 500 is an interim rule that is currently pending before the Commission. The issues raised by the producers in this docket are pending in the Order No. 500 docket, and will be addressed in a subsequent order in that docket.

M. Offshore California Pipelines.

Pacific Interstate Offshore Company (PIOC) and Pacific Offshore Pipeline Company (POPCO) request exemption or waiver from, or rehearing of, Order No. 509. POPCO and PIOC are both offshore California pipelines, each eight miles long. Both have a single source of gas and a single customer to whom all of its gas is delivered, Southern California Gas Company. There are no other potential supplies in their vicinity, and they do not interconnect with any lateral lines, trunklines or multiple producing fields.[69]

POPCO and PIOC argue that Order No. 509 addresses problems and conditions applicable to the Gulf of Mexico but not to California, and that as a practical matter they are part of the intrastate California market. They contend that the costs associated with complying with Order No. 509 will be substantial,[70] and that if no party has or will use such transportation existing customers or shareholders will pay the costs of the tariff filings for no apparent reason or benefit.

POPCO is a project-financed pipeline that provides service under a cost-of-service tariff. POPCO requests that the Commission exempt it from Order No. 509 under section 5(f)(2) of the OCSLA,[71] asserting that it qualifies for exemption as a pipeline that feeds into a facility where gas is first processed.

The Commission denies the requests for waiver and exemption. Both pipelines own and operate facilities on the OCS, transport gas in interstate commerce, and are subject to the Commission's jurisdiction under both the NGA and the OCSLA. Under the facts presented by both PIOC and POPCO, their sole customer will not suffer any disruption in service as a result of complying with Order No. 509. While both pipelines will have to incur certain regulatory expenses to comply with Order No. 509, those expenditures don't justify the relief sought. If the facts and circumstances change in the future, such that gas supplies in the vicinity of POPCO and PIOC become available to other shippers, the blanket certificates will assure that potential shippers have nondiscriminatory access to capacity. PICO and POPCO may, if they wish, file a statement explaining why their current rates are not unjust, unreasonable or unduly discriminatory. If no service is performed under the blanket certificate, the tariff provisions filed to implement it will not cause any alteration in the economic relationship of the parties other than the one-time expense of preparing and filing them.

N. Effective Dates

Sea Robin seeks clarification regarding when the blanket certificates issued in Order No. 509 take effect if the OCS pipeline already has rates on file that conform to Part 284.[72] Sea Robin believes the effective date of the certificates is April 1, 1989. The rule adopted in Order No. 509 becomes effective on February 17, 1989. Pursuant to § 284.303, on or after that date the certificate is in effect as soon as the OCS pipeline has in effect rates that comply with § 284.305. The latest date at which that can occur[73] is Appril 1, 1989, but it could well occur earlier for particular pipelines.

In this regard, Transco seeks clarification regarding which OCS pipelines must file tariffs to implement their blanket certificates. Transco notes that will the preamble to Order No. 509 states that every OCS pipeline will have to file tariffs to implement the blanket certificates issued by the final rule, the regulations only require those OCS pipelines that don't have transportation rate schedules on file that conform to Part 284 to file conforming rates schedules.[74] Transco seeks clarification that OCS pipelines that are already open access (both onshore and offshore)

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[64] *See* the rehearing request of Amocoa at 3, 15; rehearing request of Indicated Producers at 21; and supplemental rehearing request of Phillips Petroleum Company at 1.

[65] Amoco's rehearing request at 3.

[66] Amoco's rehearing request at 6. Amoco cites the threat of hurricanes and other severe weather conditions as compounding the logistical challenge on the OCS of moving men and equipment from site to site.

[67] *See, e.g.,* ARCO's request for rehearing at 4–5: Other factors such as onshore bottlenecks, casinghead gas production, transportation needed to sustain the capital commitments for future gas production in deeper waters, and reservoir damage situations must be taken into account. ARCO is not urging priorities for a particular class of service or type of production. However, we do recognize that these and other factors should be considered in case specific proceedings for transportation opportunities in the OCS so that service may be provided without discrimination and that the Commission's goals under Order No. 500 may be achieved.

[68] *See*, Order No. 509, 53 FR at 50,936, III FERC Stats. & Regs. at 31, 289–290.

[69] *See* PIOC at 8; POPCO at 8.

[70] POPOC and PIOC each estimate the cost of preparing and filing the tariff at $100,000.

[71] Section 5 (f)(2) of the OCSLA states that "the Federal Energy Regulatory Commission may, by order or regulation, exempt from any or all of the requirements of paragraph (1) [the open access provision] of this subsection any pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed." 43 U.S.C. 1334(f)(2) (1982).

[72] Sea Robin's rehearing request at 6.

[73] Note that § 284.303 provides for the certificate to go into effect if rates filed pursuant to § 284.305(b) are suspended.

[74] *See* 18 CFR 284.305(b) (1988).

do not need to file tariffs under the regulations.

OCS pipelines who currently have Part 284 rates in effect will probably need to file certain additions or amendments to their tariffs, and should carefully review the regulations adopted in Order No. 509 on that subject, particularly § 284.305. See, for instance, § 284.305(e), which requires tariff provisions setting forth the method by which firm transportation capacity will be reallocated under §284.304(c) in the event that two or more shippers seek to obtain the firm capacity that one or more shippers offer to relinquish.

ANR, Tennessee, AGD, Enron and the Indicated Producers, request that the Commission postpone the effectiveness of Order No. 509.[75] ANR, AGD and Tennessee suggest that the Commission postpone the effective date of Order No. 509 until after it issues the order on rehearing. Those requests have been rendered moot by this order.

AGD asks that the Commission publish a new notice of proposed rulemaking that includes the elements set forth in Order No. 509. AGD's request is based on its belief that there were fundamental changes from the NOPR, and that there was an absence of a meaningful opportunity to comment on the salient features of Order No. 509 before its issuance. The Commission denies AGD's request. The "salient features" of Order No. 509 were contained in the proposed rule, *i.e.*, the imposition of Part 284, Subpart G blanket certificates on all OCS pipelines and rates that must be in conformance with Part 284.[76] The elimination of the proposed pro rata requirements in the final rule, and the substitution of the open season and voluntary reallocation provisions in lieu thereof, are both the product of the Commission's careful consideration of the comments that were filed in this proceeding, and were in response to those comments.

Enron asks that the commencement of the open season for firm capacity be postponed until June 1, 1989. Enron states that the March 1, 1989 deadline does not provide enough time to set up the administrative mechanisms necessary to conduct the open season in an efficient and orderly manner. Enron asserts that this is particularly true for those pipelines that did not previously operate on an open access basis offshore. Finally, Enron suggests that the March 1, 1989 deadline is also inadequate from a shipper's perspective because it leaves little time to line up necessary gas supplies and markets.

Enron's request is denied. Order No. 509 was issued on December 9, 1988. Enron has had ample opportunity to set up the relatively simple mechanisms necessary to conduct the open seasons; basically, those mechanisms consist of communicating with its customers and potential customers. The potential shippers also have had adequate opportunity to formulate their plans.

The Indicated Producers express concern that prospective shippers will not have sufficient information to request capacity in an open season unless the open season is delayed:

> Because of the timing of the exclusive open season, prospective firm shippers may be compelled to decide whether to request firm capacity on pipelines that do not have existing applicable tariffs without knowing how much that capacity will ultimately cost. Thus, it will be difficult for potential shippers and purchasers of OCS gas to evaluate sources of supply and alternate transportation routes.
>
> In addition, the total firm capacity available on OCS pipelines for the winter heating season beginning October 1989 will not be known until September of that year, at the conclusion of the offshore pipeline construction season. If uncommitted and voluntarily relinquished capacity is to be reallocated in an open season after the OCS pipelines begin operating under their blanket certificates, that reallocation should take place in September 1989, when the total firm capacity available to shippers is known.

The rule requires that the open seasons for firm and interruptible service be commenced no later than March 1, 1989, to be completed during March.[77] The rates must be filed by March 1, 1989, to be effective no later than April 1, 1989.[78] Thus, at the open seasons potential shippers may or may not know what rates are or will be effective, but they will clearly know what rates have been filed. Moreover, both the pipeline and the shippers will know what capacity currently exists and what capacity is planned for construction during the summer.

To be sure, potential shippers might (or might not) have somewhat more information with respect to a particular pipeline's rates and capacity if the open seasons are delayed until September of 1989, just as they might (or might not) have yet more information if the open seasons are delayed until December, or until 1990. But, on the other hand, delay in holding the open seasons may deprive other shippers of an opportunity to obtain capacity that they currently need and want. Information is relative, and no particular point in time is perfect for everyone. On balance, we believe that the potential harm inherent in delaying the reallocation of capacity for those who seek such reallocation outweighs the potential benefit to be gained by delaying the open seasons.

In this regard, the open seasons do not constitute a one-time cataclysmic reallocation of capacity that will be locked in concrete forever after. On the contrary, the open seasons are merely a starting point for pipelines and shippers to gain information on who needs and wants capacity, and on what capacity is available. Thereafter, mechanisms will be in place for orderly, voluntary, nondiscriminatory reallocations of capacity as individual shippers' circumstances change over time.[79] We prefer to start that process now rather than later.

However, we agree that a one month extension for the open seasons would provide potential shippers an opportunity to better formulate their plans after the rates have been filed and before the open seasons take place. Accordingly, we are amending § 284.304 (a) and (b) to change the commencement dates for the open seasons from March 1, 1989 to April 1, 1989.

We do not adopt the Independent Producers' suggestion of prescribing periodic open seasons for firm transportation.[80] Section 284.304(c) provides a mechanism for reallocating firm capacity as soon as such capacity becomes available, and it also provides a mechanism by which potential shippers can take the initiative of ascertaining whether it is available. We believe this flexible approach would be more responsive to changing market conditions than holding open seasons at rigidly fixed intervals.

O. Section 603 of the OCSLA.

Section 603 of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA) required the Commission to issue a statement of policy to carry out the purpose of the section, which was to:

> Encourage expanded participation by local distribution companies in acquisition of leases and development of natural gas resources on the Outer Continental Shelf by facilitating the transportation in interstate commerce of natural gas, which is produced from a lease located on the Outer Continental Shelf and owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company.[81]

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[75] *See* ANR's rehearing request at 13; Tennessee's rehearing request at 21; AGD's rehearing request at 11; and Enron's rehearing request at 10.

[76] *See* NOPR, IV FERC Stats & Regs. ¶ 32,459 at 32,203–206.

[77] 18 CFR 284.304(a), 284.304(b) (1988).

[78] 18 CFR 284.305(b) (1988).

[79] *See, e.g.*, 18 CFR 284.304(c) (1988).

[80] Indicated Producers' request for rehearing at 11–14.

[81] 43 U.S.C. 1862 (1982).

The Commission issued a statement of policy in 1980 (Order No. 92).[82]

AGD asks the Commission to clarify that Order No. 509 does not undermine section 603 of the OCSLA or the Commission's regulations promulgated in Order No. 92.[83] AGD argues that because Congress directed the Commission to issue a policy statement, it must have intended to limit the nondiscrimination provisions of the OCSLA including section 5(f)(1)(A). AGD further asserts that whatever regulations the Commission may implement to enforce the nondiscrimination provisions of the OCSLA, they must defer to section 603 of the OCSLA and Order No. 92.

The Commission does not agree. First, as stated in the final rule, the goals of section 603 and Order No. 92 are furthered by the requirements of Order No. 509. The blanket certificates issued by Order No. 509 will provide local distribution companies (LDCs) significant opportunities to obtain transportation of their gas.

Second, the main thrust of the Commission's implementation of section 603 of the OCSLA is contained in § 284.243 of the Commission's regulations, which provides as follows:

Section 284.243 Statement of policy.

Interstate pipelines. Any interstate pipeline, or eligible distributor acting on behalf of an interstate pipeline, may file an application under § 284.244 for covered transportation under either section 7(c) of the Natural Gas Act or section 311(a)(1) of the Natural Gas Policy Act (NGPA). The Commission will consider such applications on a priority basis.[84]

However, Order No. 509 eliminates the requirement for OCS pipelines to file "applications" for authorization to provide transportation service for LDC's on the OCS; they have the authorization under the blanket certificates and are obligated by those certificates to provide nondiscriminatory transportation of OCS gas for all shippers, including LDC's. Also, Order No. 509 eliminates the requirement that gas be produced from OCS leases in whole or in part by the LDC and used for system supply.

Finally, as a general matter, statements of policy usually do not have the force and effect of law, while agency regulations do. Therefore, even if Order No. 509 and the regulations thereunder did not further the purpose of section 603 (which they do), the Commission would not agree with AGD that the regulations promulgated in Order No. 509 "must defer to" the regulations promulgated in Order No. 92.

For the reasons discussed above, all requests for rehearing that are not specifically granted are denied.

[82] Statement of Policy on Distribution Access to Outer Continental Shelf Gas, Order No. 92, 45 FR 49,247 (July 24, 1980); FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,173 (July 15, 1980).

[83] AGD's rehearing request at 8.

[84] 18 CFR 284.243 (1988).

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18 Code of Federal Regulations as set forth below.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

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

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

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331–1356 (1982) as amended; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 284.302, paragraph (b) is revised to read as follows:

§ 284.302 Definitions.

* * * * *

(b) "OCS pipeline" means an interstate natural gas pipeline that holds a certificate under section 7 of the NGA authorizing the construction and operation of facilities on the OCS, and includes all of the OCS pipeline's facilities that fall within the scope of the Commission's jurisdiction under section 7 of the NGA to the full extent that such facilities are used or necessary to transport natural gas on or across the OCS between:

(1) Any locations on the OCS (if the pipeline does not have an interconnection off the OCS), or

(2) The OCS and the first point of interconnection on the shoreward side of the OCS where the pipeline delivers or receives natural gas to or from either:

(i) A natural gas conditioning or processing facility, or

(ii) Another pipeline, or

(iii) A distributor or end user of natural gas.

3. In § 284.304, paragraphs (a) in the introductory text and (b)(1), the words "March 1, 1989" are removed and the words "April 1, 1989" are inserted in their place and paragraph (a)(4) is revised to read as follows:

§ 284.304 Allocation of firm and interruptible capacity on the OCS.

(a) *Open season for firm transportation.* * * *

(4)(i) Except as provided in paragraph (a)(4)(iv) below, if the requests for firm capacity exceed the firm capacity that is available, the OCS pipeline must allocate to each requesting shipper a pro rata share of the available firm capacity.

(ii) If the available firm capacity exceeds the requests for such capacity, and if the available firm capacity includes capacity that one or more existing shippers wants to relinquish, each shipper relinquishing capacity must be allowed to satisfy the requests for firm capacity on a pro rata basis. To the extent that the OCS pipeline itself has uncommitted firm capacity available, it may assign that uncommitted capacity to the new shipper(s) before reallocating the capacity of existing shippers.

(iii) In reallocating firm capacity under paragraphs (a)(4)(i) or (a)(4)(ii), the OCS pipeline must take into account the capacity available at the particular receipt and delivery points specified by both shippers requesting firm capacity and the shippers voluntarily relinquishing firm capacity.

(iv) If an OCS pipeline already has a list of potential shippers who want firm capacity, and if that list was compiled in a nondiscriminatory manner pursuant to the conditions of an order issuing a Part 284 blanket certificate or pursuant to the provisions of a tariff filed to implement Part 284 requirements, the pipeline shall accord priority to those potential firm shippers at the open season.

* * * * *

4. In § 284.305, paragraph (f) is removed and paragraphs (a) and (d)(2) are revised to read as follows:

§ 284.305 Transportation rates.

(a) Except to the extent authorized by paragraph (d)(2), the transportation rate for transportaton of gas on the OCS by an OCS pipeline must be the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7, and to either § 284.8(d) for firm service or to § 284.9(d) for interruptible service.

* * * * *

(d) * * *

(2) An OCS pipeline may continue to use its current rates to perform

transportation pursuant to certificates other than Part 284 blanket transportation certificates. An OCS pipeline that elects to use its current rates for that transportation after April 1, 1989, must file, no later than March 1, 1989, a notification to that effect plus a statement explaining why it believes that continued use of those rates would not be unjust, unreasonable, or unduly discriminatory in light of activities it performs under the blanket certificate issued by § 284.303(a) and the rates filed to implement that certificate.

* * * * *

TRABANDT, Commissioner, *concurring:*

I concur in this Order on Rehearing with several reservations. I invite the attention of interested parties to my Concurring Opinion issued with Order No. 509, the Final Rule in these dockets (45 FERC ¶ 61,406). Each of my reservations is discussed in more detail in the earlier opinion.

First, I would have preferred strongly to grant rehearing as sought by the Indicated Producers and others on the issues of (1) a priority for casinghead gas, (2) application of the Order No. 500 take-or-pay crediting mechanism, and (3) the definition of an OCS pipeline to include assured access to nondiscriminatory transportation ashore. The rehearing petitions added additional, persuasive argumentation to the concerns expressed in my earlier opinion in support of granting rehearing. Consequently, the Commission should have more adequately responded to those issues.

Second, I would have deferred the initiation of the open seasons for capacity allocation from April 1, 1989, for at least one month, if not longer, as sought by the Indicated Producers. I am pleased that the Commission agreed to a one month delay. But, I still do not believe that potential shippers will have adequate information about rates on which to base their nominations. It is difficult to conclude that the rate cases for all OCS pipelines, particularly those filing to continue existing rates under the new procedures in this order, will be completed by April, when shippers must make their nominations. There also does not appear to be any demonstrable disadvantage to a further, modest delay to better ensure a more orderly process, while still having the new system in place and operational by the winter heating season of 1989–1990.

Third, I would have preferred to expressly grant the requests for rehearing of Texas Eastern and Tennessee with regard to the open season for interruptible transportation (slip opinion at 37–39). Tennessee and Texas Eastern did not "misread" Order No. 509, as the order concludes. As my earlier concurring opinion demonstrated beyond any reasonable doubt (pages 8 and 9 of the opinion), the priority to be afforded existing shippers was subordinated in Order No. 509 to a requirement in the regulations (sec. 284.304(b)) that such shippers pay transportation rates" no lower than the rates paid or to be paid by other interruptible shippers." Footnote 24 of that order makes the intended result quite clear. The "clarification" here at page 39 is intended to resolve the matter, as I was assured by the staff at the February 15, 1989, Commission meeting, but without directly granting rehearing. I strongly support the result of that clarification, and it should now be abundantly clear that existing shippers have an unsubordinated and unconditional right to a priority. Consequently, despite the relative technicality as to whether Tennessee and Texas Eastern misread Order No. 509 and, thereby, clarification or rehearing is most appropriate, the regulatory result is unambiguously clear—existing shippers must be given priority in the open season for interruptible transportation.

Finally, I questioned seriously the rationale and justification supporting Order No. 509 and its mandatory imposition of Order No. 436 blanket certificates on all jurisdictional OCS pipelines for the reasons discussed in my earlier opinion. I also expressed deep concern about the potential for disruption in OCS pipeline transportation services under the implementation procedures of the Final Rule. The rehearing petitions and the adjustments in the instant order have addressed those questions and concerns to some extent. On balance, therefore, I am prepared to support this Order on Rehearing despite some lingering questions and concerns about those issues, as well as the aforementioned reservations. In all likelihood, a reviewing U.S. Circuit Court of Appeals ultimately will determine the legality of the mandatory imposition of the blanket certificates and the form of the certificates. In the meantime, hopefully, mandatory open access transportation services will be implemented across all jurisdictional OCS pipelines this spring with no interruption of existing services and minimum disruption of OCS production activities in the months ahead.

For these reasons, I concur.

Charles A. Trabandt,

Commissioner.

[FR Doc. 89–4557 Filed 2–27–88; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Biologics Evaluation and Research and Center for Drug Evaluation and Research, et al.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to functions performed by the Center for Biologics Evaluation and Research (CBER), the Center for Drug Evaluation and Research (CDER), the Center for Devices and Radiological Health (CDRH), and regional offices. This amendment updates the titles of the delegates to conform to new organizational structures. The amendment also updates the delegation regarding approval of new drug applications and their supplements and removes the obsolete delegation regarding bioequivalency requirements.

EFFECTIVE DATE: February 28, 1989.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. 301-443-4976.

SUPPLEMENTARY INFORMATION: The Center for Drugs and Biologics was reorganized into CBER and CDER. The center level structure was approved by the Secretary of Health and Human Services and published in the Federal Register of October 15, 1987 (52 FR 38275). The office level structure was approved by the Assistant Secretary for Health and published March 18, 1988 (53 FR 8978). When the functional statements for CBER and CDER were published on October 15, 1987 and March 18, 1988, a continuing delegation of authority was included in the reorganization to permit CBER and CDER officials to continue normal operations until the centers' substructures were finalized. Most of the authorities delegated to the center officials are amended in this document to reflect new titles and organizational placement under the new organizations.

This document revises the delegations of authority contained in 21 CFR Part 5 relating to the functions assigned to CBER and CDER. The affected sections are the following:

Section 5.22 *Certification of true copies and use of Department seal* (21 CFR 5.22); § 5.23 *Disclosure of official records* (21 CFR 5.23); § 5.25 *Research, investigation, and testing programs and health information and health promotion programs* (21 CFR 5.25); § 5.26 *Service fellowships* (21 CFR 5.26); § 5.30 *Hearings* (21 CFR 5.30); § 5.31 *Petitions under Part 10* (21 CFR 5.31); § 5.37 *Issuance of reports of minor violations* (21 CFR 5.37); § 5.44 *Export of unapproved drugs* (21 CFR 5.44); § 5.45 *Imports and exports* (21 CFR 5.45); § 5.47 *Detention of adulterated or misbranded medical devices* (21 CFR 5.47); § 5.49 *Authorization to use alternative evidence for determination of the effectiveness of medical devices* (21 CFR 5.49); § 5.50 *Notification to petitioners of determinations made on*