substitute for HCFC–22 in noninsulating foam blowing. EPA further advised that 1,1-difluoroethane creates no occupational exposure concerns, is not an ozone depleter nor a significant global warming substance, and is an effective substitute in this application.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before January 10, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3010 is amended in the table by alphabetically adding a new entry under the headings "List of substances" and "Limitations" to read as follows:

§ 178.3010 Adjuvant substances used in the manufacture of foamed plastics.

* * * * *

List of substances	Limitations
* * *	* *
1,1-Difluoroethane (CAS Reg. No. 75–37–6).	For use as a blowing agent in polystyrene.
* * *	* *

Dated: December 3, 1993.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–30190 Filed 12–9–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 93–14]

RIN 2125–AD23

Design Standards for Highways; Interim Selected Metric Values for Geometric Design

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FHWA is adopting, as its interim policy for the geometric design of projects on the National Highway System (NHS), a 1993 American Association of State Highway and Transportation Officials' (AASHTO) publication entitled "Interim Selected Metric Values for Geometric Design, An Addendum to A Policy on Geometric Design of Highways and Streets, 1990." The FHWA requests comments on this action.

The FHWA's Metric Conversion Policy, published in the **Federal Register** on June 11, 1992, provides that newly authorized Federal-aid construction contracts must be only in metric units by September 30, 1996. Because of the long lead times required for highway construction projects, planning for 1996 projects is already underway. It is the intent of this rulemaking to assure the States and other FHWA partners that the metric conversions used to formulate their plans will match the FHWA's conversions.

DATES: This regulation is effective January 10, 1994. Comments must be received on or before March 10, 1994. The incorporation by reference of a certain publication listed in the regulation is approved by the Director of the Federal Register as of January 10, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 93–14, Federal Highway Administration, room 4232, HCC–10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. The current design standards and interim metric values are on file at the Office of the Federal Register in Washington, DC, and are available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR part 7, appendix D. Copies of the current AASHTO publications are also available for purchase from the American Association of State Highway and Transportation Officials, suite 225, 444 North Capitol Street NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Seppo I. Sillan, Geometric and Roadside Design Branch, Federal-Aid and Design Division, Office of Engineering (202) 366–0312, or Mr. Wilbert Baccus, Office of the Chief Counsel (202) 366–0780, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: The standards, policies, and standard specifications that have been approved by the FHWA for application on all Federal-aid highway projects are incorporated by reference in 23 CFR part 625.

The American Association of State Highway and Transportation Officials (AASHTO) is an organization which represents the 52 State highway and transportation agencies (including the District of Columbia and Puerto Rico). Its members consist of the duly constituted heads and other chief officials of those 52 agencies. The Secretary of the United States Department of Transportation (DOT) is an ex officio member, and DOT officials participate in various AASHTO activities as non-voting representatives. Among other functions, the AASHTO develops and issues standards, specifications, policies, guides, and related materials for use by the States for highway projects. Many of the standards, policies, and standard specifications approved by the FHWA and incorporated in 23 CFR part 625 were developed and issued by the AASHTO. Revisions made to such documents by the AASHTO are independently reviewed and adopted by the FHWA before they are applied to projects on the NHS.

The FHWA initiated a phased five year plan to convert its activities and business operations to the metric system of weights and measures as required by the Metric Conversion Act of 1975 (Pub. L. 94–168, 89 Stat. 1007) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 Stat. 1107, 1451) (Metric Act). Section 3 of this Act set a deadline date of September 30, 1992, for each Federal government agency to begin using the International System of Units (SI) in procurements, grants, and other business-related activities, except to the extent that such use is impractical or would likely cause significant inefficiencies or loss of markets to United States firms.

In order to comply with the Metric Act, the FHWA developed a list of required deadlines for converting to the metric system which was published on June 11, 1992, at 57 FR 24843. This notice established that all newly authorized Federal-aid contracts must use only metric units by September 30, 1996. In order to comply with the above deadline, and because it often takes several years between the time when designs are initiated and when projects are authorized, States must begin in the near future to design projects using the metric system. Accordingly, the AASHTO developed and published "Interim Selected Metric Values for Geometric Design," listing the conversion values for nationwide uniformity. Through this rulemaking the FHWA is proposing to adopt the metric conversion geometric values established by the AASHTO in the publication entitled "Interim Selected Metric Values for Geometric Design." Included are metric values for use in design speed, running speed, lane width, shoulder width, vertical clearance, certain clear zones, curb heights, definition of high speed/low speed highways, criteria for establishing stopping and passing sight distance, the way horizontal curvature is calculated, and in the definition of long bridges.

Review Procedure

Based on an analysis of public comments received, the FHWA will reexamine its determination that the AASHTO publication adopted by this rule is acceptable as the basis for the design of highways on the NHS.

Rulemaking Analysis and Notices

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, allows agencies engaged in rulemaking to dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). For the reasons set forth below, the FHWA has determined that prior notice to the public on this action is unnecessary and contrary to the public interest.

The FHWA has determined that prior notice to the public is unnecessary because the AASHTO interim metric values document being adopted in this rulemaking mirrors, to the extent possible, the English measurements contained in the AASHTO publication, "A Policy on Geometric Design of Highways and Streets, 1990" (PGDHS), adopted by the FHWA in a final rule published on April 29, 1993 (58 FR 25939). If the exact equivalents of the design standards had been used, the metric measurements would have had to be carried out to as many as six decimal places. Otherwise, the design standards themselves would have had to be significantly raised or lowered in order to accommodate "round" metric measurements. Instead, in drafting its metric document, the AASHTO "rounded off" the English measurements contained in the PGDHS in order to allow easier conversions to metric measurements.

We expect these particular metric values to be used on an interim basis only. It is anticipated that the AASHTO's revised PGDHS, with geometric design values converted to the metric system, will be published in 1994 or 1995. If adopted by the FHWA, this future AASHTO publication would constitute the FHWA's policy on the geometric design for federally-assisted construction projects.

The FHWA has also determined that publication of a notice of proposed rulemaking would be contrary to the public interest. As noted earlier, the FHWA has initiated a phased five year plan to convert its activities and business operations to the metric system of weights and measures as required by the Metric Act. Section 3 of this Act set a deadline date of September 30, 1992, for each Federal government agency to begin using the International System of Units (SI) in procurements, grants, and other business-related activities, except to the extent that such use is impractical or would likely cause significant inefficiencies or loss of markets to United States firms. The FHWA's Metric Conversion Policy, intended to meet this requirement, was published in the **Federal Register** on June 11, 1992 (57 FR 24843). The policy provides that newly authorized Federal Lands Highway and Federal-aid construction contracts must be in metric units only by September 30, 1996. Because of the long lead times required for highway construction projects, planning for 1996 projects is already underway. To this end, the States and other FHWA partners need to know now that the metric conversions used to formulate their plans will match the FHWA's conversions.

Moreover, prior notice and opportunity for comment are not required under the Department of Transportation's Regulatory Policies and Procedures because it is not anticipated that such action will result in the receipt of useful information. The FHWA has determined that the AASHTO interim metric values come as close as possible to retaining the English measurements already adopted by the FHWA pursuant to notice and comment rulemaking, and express adoption of these metric values now provides necessary certainty and continuity for States and other FHWA partners, including highway construction contractors.

Nevertheless, public comment is solicited on this action. Comments received will be carefully considered in evaluating whether any change to this action is needed.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a "significant regulatory action" within the meaning of Executive Order 12866 or "significant" within the meaning of Department of Transportation Regulatory Policies and Procedures. As stated previously, the FHWA has determined that the interim metric values selected by the AASHTO document are functionally equivalent to English system measurements previously adopted by notice and comment rulemaking. It is anticipated that the economic impact of the rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. As stated above, the FHWA made this determination based on the fact that the interim metric values selected are functionally equivalent to the English system values they replace.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

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

Regulation Identification Number

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

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FHWA amends chapter I of title 23, Code of Federal Regulations, part 625 as set forth below.

Issued on: November 22, 1993.

Rodney E. Slater,

Federal Highway Administrator.

The FHWA amends 23 CFR part 625 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

§ 625.4 [Amended]

2. In § 625.4, paragraph (a) is amended by redesignating paragraphs (a)(3) through (a)(11) as paragraphs (a)(4) through (a)(12), respectively, and by adding a new paragraph (a)(3) to read as follows:

§ 625.4 Standards, policies, and standard specifications.

* * * * *

(a) * * *

(3) Interim Selected Metric Values for Geometric Design, AASHTO, 1993. [3]

* * * * *

[FR Doc. 93–29261 Filed 12–9–93; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8499]

RIN 1545–AG63

Differential Earnings Rate and Recomputed Differential Earnings Rate of a Mutual Life Insurance Company

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the differential earnings rate and the recomputed differential earnings rate, which are used in determining the deduction for policyholder dividends of a mutual life insurance company. The final regulations provide that these rates cannot be negative. The applicable law was enacted as part of the Tax Reform Act of 1984. The final regulations provide guidance to mutual life insurance companies.

DATES: These regulations are effective on December 10, 1993.

For dates of applicability, see § 1.809–9(c) of these regulations.

FOR FURTHER INFORMATION CONTACT: Katherine Ann Hossofsky, (202) 622–3477 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) to provide guidance relating to the differential earnings rate and the recomputed differential earnings rate under section 809 of the Internal Revenue Code (Code). The final regulations reflect the addition of section 809 to the Code by section 211(a) of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 733).

Proposed regulations under section 809 (FI–159–84) were published in the **Federal Register** on August 19, 1992 (57 FR 37495). Written comments were received from the public, and a public hearing was held on December 7, 1992.

After consideration of all of the comments, the regulations proposed by FI–159–84 are adopted without substantive change by this Treasury decision.

Statutory Formula for Reducing Policyholder Dividends

Section 809(a) of the Code provides that, in the case of any mutual life insurance company, the amount of the deduction allowable under section 808 for policyholder dividends is reduced (but not below zero) by the differential earnings amount. The differential earnings amount is the portion of policyholder dividends deemed to be a distribution of a mutual company's profits to policyholders in their capacity as owners of the company. See H.R. Rep. No. 432 (Part 2), 98th Cong., 2d Sess., 1422 (1984). In effect, otherwise deductible policyholder dividends equal in amount to the differential earnings amount are not deductible. Any excess of the differential earnings amount over the policyholder dividends deduction allowable under section 808 is taken into account as an adjustment to reserves under subsections (a) and (b) of section 807.

A mutual life insurance company's differential earnings amount for any taxable year is an amount equal to the product of the company's average equity base for the year multiplied by the differential earnings rate for the year.

The differential earnings rate is the excess of: (a) The imputed earnings rate for the taxable year over (b) the average mutual earnings rate for the second calendar year preceding the calendar year in which the taxable year begins. The imputed earnings rate for any taxable year is an amount which bears the same ratio to 16.5 percent as the current stock earnings rate for the taxable year bears to the base period stock earnings rate.

To correct for the difference between the average mutual earnings rate for the calendar year in which the taxable year begins and the average mutual earnings rate for the second preceding calendar year, section 809(f) provides a mechanism under which the differential earnings amount for the taxable year is recomputed in the following taxable year. This amount is known as the recomputed differential earnings amount. The recomputed differential earnings amount for any taxable year is calculated in the same manner as the differential earnings amount for the taxable year, except that the average mutual earnings rate for the calendar year in which the taxable year begins is substituted for the average mutual earnings rate for the second calendar year preceding the calendar year in which the taxable year begins. The revised rate is known as the recomputed differential earnings rate. If the recomputed differential earnings amount for any taxable year exceeds the differential earnings amount for the taxable year, the excess is included in life insurance gross income for the succeeding taxable year. Conversely, if the differential earnings amount exceeds the recomputed differential earnings amount, the excess is allowed as a life insurance deduction for the succeeding taxable year.

Explanation of Provision

The IRS publishes both the tentative and final differential earnings rate and recomputed differential earnings rate. These rates are used by mutual life insurance companies in calculating their federal income tax liability. Announcement 88–47, 1988–12 I.R.B. 56, stated that the tentative recomputed differential earnings rate for 1986 was −1.700. However, both the differential earnings rate and the recomputed differential earnings rate are determined based on "the excess of" the imputed earnings rate over the average mutual earnings rate. Whenever the average mutual earnings rate is greater than the imputed earnings rate, there is no "excess of" the imputed rate over the average mutual earnings rate. By referring to the excess of the imputed earnings rate over the average mutual earnings rate, the statutory formula does not permit the differential earnings rate to be negative. Accordingly, the Internal Revenue Service subsequently issued Notice 88–106, 1988–2 C.B. 444, which stated that regulations under section 809 would provide that the differential earnings rate may not be a negative rate. See also Rev. Rul. 88–80, 1988–2 C.B. 129; Rev. Rul. 89–106, 1989–2 C.B. 108; Rev. Rul. 91–52, 1991–2 C.B. 331; and Rev. Rul. 92–78, 1992–2 C.B. 143.

Congress added section 809 to limit the deductibility of dividends paid by mutual life insurance companies to their policyholders in recognition of the fact that these dividends are, to some extent, distributions of the companies' earnings to the policyholders as owners. Section 809(a) states that the deduction allowed under section 808 "shall be reduced (but not below zero) by the differential earnings amount." The use of the term reduce reflects Congress's intention that the purpose of section 809 is to limit an otherwise deductible amount, not to create a new deduction. A negative differential earnings rate or a negative recomputed differential earnings rate would allow mutual life insurance companies to deduct an amount in excess of dividends paid to policyholders. This would be contrary to the intent of section 809.

The proposed regulations provided that neither the differential earnings rate under section 809(c) nor the recomputed differential earnings rate that is used in computing the recomputed differential earnings amount under section 809(f)(3) may be less than zero.

Two comments were received concerning the proposed regulations.

The first commentator states that the adoption of the proposed regulations in final form is necessary to preserve the integrity of section 809. The comment contends that section 809 is simply the mechanism to determine the amount of the reduction to a mutual life insurance company's policyholder dividend deductions to reflect distributions to policyholders in their role as owners of the company. The differential earnings rate is based on Congress' belief that "the average pre-tax return on equity of mutual companies falls below that for a comparable group of stock companies" and that "this difference is attributable to distribution by mutual companies of earnings to their owners." See H.R. Rep. 432 (Part 2), 98th Cong., 2nd Sess. 1422 (1984). Thus, the commentator concludes that the only difference in stock and mutual earnings rates that Congress intended to utilize is the positive difference by which the stock companies' (or imputed) earnings rate exceeds the mutual companies' earnings rate.

The first commentator further states that section 809(f)(2) does not support recognition of a negative recomputed differential earnings rate to permit a deduction for policyholder dividends in excess of the dividends actually paid or accrued during the taxable year to which the recomputed rate relates. Rather, the deduction provided by section 809(f)(2) merely compensates the taxpayer for what more current data indicate to have been an excessive disallowance in an earlier year.

Finally, the first commentator states that section 809 should not be interpreted merely to limit over an extended period of time mutual life insurance companies' deductions for policyholder dividends. The comment points out that sections 808(c) and 809 expressly require computation of a deduction limit separately for each taxable year.

The second commentator states that there is no need for any regulations to be issued regarding negative differential earnings rates and that the proposed regulations represent an erroneous interpretation of section 809. Specifically, the comment points out that the Internal Revenue Service on five occasions has expressed its view that neither the differential rate nor the recomputed differential earnings rate may be negative. See Notice 88–106, Rev. Rul. 88–80, Rev. Rul. 89–106, Rev. Rul. 91–52, Rev. Rul. 92–78. In addition, the comment contends that adoption of the proposed regulations would result in inappropriate and excessive taxation of mutual life insurance companies.

In American Mutual Life Insurance Company v. *United States*, Civil No. 4–92–70347 (S.D. Iowa, November 2, 1993), the court held that the taxpayer could deduct an amount equal to the excess of the differential earnings amount for the 1986 taxable year over the negative recomputed differential earnings amount for 1986. In its opinion, the court stated that the parties agreed that the statutory formula produced a 1986 recomputed differential earnings rate of −1.695. The court also noted that in its briefs in the case, and at oral argument, the government had conceded that the statutory formula produced a negative 1986 recomputed differential earnings rate. Thus, the issue of whether the statutory formula can produce a negative rate was not before the court.

The final regulations clarify that the statute provides that the differential earnings rate and the recomputed differential earnings rate cannot be negative.

Effective Date

Notice 88–106 set forth guidance that would be contained in forthcoming regulations. The notice stated that regulations would be issued that would provide that neither the differential earnings rate nor the recomputed differential earnings rate may be negative. Rev. Rul. 88–80 stated that the final recomputed differential earnings rate for 1986 was zero even though the calculated rate was negative, and indicated that when the regulations were issued they may be effective prior to the date of issuance. As the final regulations involve the application of the guidance provided in Rev. Rul. 88–80, concerning the 1987 taxable year, the final regulations provide an effective date of taxable years beginning after December 31, 1986.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these final regulations is Katherine Ann Hossofsky of the Office of the Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.809–9 is added to read as follows:

§ 1.809–9 Computation of the differential earnings rate and the recomputed differential earnings rate.

(a) *In general.* Neither the differential earnings rate under section 809(c) nor the recomputed differential earnings rate that is used in computing the recomputed differential earnings amount under section 809(f)(3) may be less than zero.

(b) *Definitions*—(1) *Recomputed differential earnings amount.* The recomputed differential earnings amount, with respect to any taxable year, is the amount equal to the product of—

(i) The life insurance company's average equity base for the taxable year; multiplied by

(ii) The recomputed differential earnings rate for that taxable year.

(2) *Recomputed differential earnings rate.* The recomputed differential earnings rate for any taxable year equals the excess of—

(i) The imputed earnings rate for the taxable year; over

(ii) The average mutual earning rate for the calendar year in which the taxable year begins.

(c) *Effective date.* The regulations are effective for all taxable years beginning after December 31, 1986.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: November 8, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–30279 Filed 12–7–93; 4:03 pm]

BILLING CODE 4830-01-U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 207, 208, 210, 216, 218, 219, 220, 228, 229, and 243

RIN 1010–AB89

Administrative Amendments of Regulations Governing Royalty Oil Surety Requirement, Information Collection Requirements, and Addresses

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is making administrative amendments to its Royalty Management Program (RMP) regulations governing:

- Royalty oil surety requirement;
- Information collection requirements; and
- References to addresses for mailing or delivering requests, forms, and/or payments to MMS.

These amendments will clarify and improve the accuracy of MMS' regulations.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, Mail Stop 3901, P.O. Box 25165, Denver, Colorado 80225–0165, telephone (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal author of this final rulemaking is Marvin D. Shaver of the Rules and Procedures Staff, MMS, RMP.

I. Amendment of Royalty Oil Surety Requirement

The MMS is making amendments to its regulations at 30 CFR Part 208 "Sale of Federal Royalty Oil" to establish a wider range of surety instruments that will be accepted by MMS from eligible purchasers of Federal royalty oil. Paragraph § 208.11(d) requires that sureties be either surety bonds or irrevocable letters of credit from financial institutions acceptable to MMS. Under the amended rule, MMS will accept "MMS-specified surety instruments," which include:

- An MMS-specified bond,
- An MMS-specified irrevocable letter of credit, or
- A financial institution book-entry certificate of deposit.

The amendments to part 208 provide requirements with respect to the MMS-specified surety instruments. The amendments also replace the word "surety" from where it appears

§§ 208.7(h), 208.11, 208.12 (c) and (d), and 208.13(b) with the words "surety instrument" to provide consistency with the term used in other MMS regulations.

The amendments are consistent with MMS' acceptance under 30 CFR part 243 of a wider range of surety instruments to secure unpaid amounts owed the Government pending administrative appeals of decisions or orders issued by MMS. The MMS-specified surety instruments for appeal purposes were codified in 30 CFR 243.2(b) by a Notice of Final Rulemaking published in the **Federal Register** on September 30, 1992 (57 FR 44991). The title of that Notice was "Revision of Regulation Governing Suspension of Decisions and Orders Pending Appeal."

The MMS is also amending §§ 208.3, 208.12, 208.13, 210.10, and 243.4 to remove references to Form MMS-4071 "Semiannual Report of Royalty-In-Kind Oil Entitlements" because the information provided on that report is now obtained by MMS from a different source. Section 208.2 is amended to change a cross-reference to another regulation.

II. Amendment of Information Collection Requirements

This rulemaking amends MMS regulations at 30 CFR parts 210 and 216 governing information collection requirements:

- To revise the estimated time to complete seven existing reporting forms;
- To correct the title of one existing reporting form;
- To remove references to four existing reporting forms that are no longer required; and
- To add one new reporting form.

These amendments are discussed below.

(a) *Revise estimated time to complete reporting forms.*

The MMS published a Notice of Final Rulemaking in the **Federal Register** on September 14, 1992 (57 FR 41862), which codified statements on estimated public reporting burden for the collection of information. Those statements included estimates of the time that it would take payors or operators on Federal or Indian leases to prepare and complete required reporting forms. As a result of more recent studies, MMS determined that the estimated time to complete seven of the forms should be revised. This final rule amends the estimated times codified at § 210.10(c) to complete the seven forms, which are MMS-2014, MMS-3160, MMS-4054, MMS-4055, MMS-4058, MMS-4059, and MMS-4110.

(b) *Correct title of reporting form.*

On November 5, 1992, MMS published a Notice of Final Rulemaking in the **Federal Register** (57 FR 52719), which amended its regulations to remove references to Form MMS-4014. (Report of Sales and Royalty Remittance—Solid Minerals). This amendment resulted from MMS' revision of its Form MMS—2014 (Report of Sales and Royalty Remittance-Oil and Gas) to provide for the reporting of sales and royalty information on all types of mineral leases including solid mineral leases. As stated in the Notice, the revised Form MMS-2014 was retitled "Report of Sales and Royalty Remittance." The reference to "Oil and Gas" was removed from the title.

The November 5, 1992, Notice revised the title of the Form MMS-2014 referenced in various sections of MMS' regulations. However, MMS inadvertently failed to correct the title of Form MMS-2014 in the table contained in § 210.10 "Information collection" and to remove a reference to Form MMS-4014 in § 243.4(6) of its regulations. This rulemaking amends the table in § 210.10 to reflect the new title of Form MMS-2014 and § 243.4(6) to remove a reference to Form MMS-4014.

(c) *Removal of four reporting forms.*

The MMS is amending §§ 210.10 (a) and (c), and removing §§ 216.52, 216.57, and 216.61, to remove references to four reporting forms for information collection that are no longer required for the following reasons:

- Forms "MMS-4052—Well Information Form" and "MMS-4061—API Well Number Change Report" because well reference data is now submitted to MMS on magnetic tape.
- Form "MMS-4057—Fractionation Plant Operations Report" and "MMS-4071—Semiannual Report of Royalty-In Kind Oil Entitlements" because the information provided on these reports is now obtained by MMS from different sources.

(d) *Addition of one reporting form.*

The MMS is also amending § 210.10 to add a new reporting form for information collection. This form, titled "Stripper Royalty Rate Reduction Notification" (Form MMS-4377), must be submitted by operators of stripper oil properties who have been granted a reduced royalty rate by the Bureau of Land Management under 43 CFR 3103.4-1 for each 12-month qualifying period. This form has been approved by the Office of Management and Budget and assigned Clearance Number 1010-0090.

III. Amendment of MMS Addresses

The September 14, 1992, rulemaking referenced in paragraph (a) above (57 FR 41862) also included amendments to references in MMS' regulations for addresses to be used for mailing or delivering requests, forms, and/or payments to MMS. Subsequent to the September Notice, MMS reorganized. This rulemaking removes references to MMS organizations and Mail Stops that no longer exist under the new organizational structure. The addresses changed by this rule amendment are contained in §§ 207.1, 210.10, 210.53, 210.204, 210.355, 216.15, 216.16, 216.40, 216.50, 218.51, 219.102, 220.003, 228.10, and 229.123.

Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are administrative only and are not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final rule. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective upon publication in the **Federal Register**.

Executive Order 12866

This document has been reviewed under Executive Order 12866.

The Regulatory Flexibility Act

Because the changes are administrative only with no additional requirements or burden placed on small business entities, the Department of the Interior (Department) has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

Paperwork Reduction Act of 1980

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned Clearance Numbers 1010-0022, 0033, 0040, 0042, 0061, 0063, 0064, 0074, 0075, 0076, 0087, 0088, and 0090.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Parts 207 and 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 208

Continental shelf, Government contracts, Mineral royalties, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

30 CFR Parts 216, 228 and 229

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recording requirements.

30 CFR Part 219

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recording requirements.

30 CFR Part 220

Coal, Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recording requirements.

30 CFR Part 243

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources.

Dated: October 27, 1993.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 207, 208, 210, 216, 218, 219, 220, 228, 229, and 243 are amended as follows:

PART 207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS

1. The authority citation for part 207 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§ 207.1 [Amended]

2. Section 207.1 "Required recordkeeping" is amended by removing the Mail Stop (MS) "MS 2300" from where it appears in the address in paragraph (b).

PART 208—SALE OF FEDERAL ROYALTY OIL

1. The authority citation for part 208 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; *43 U.S.C. 1331 et seq.* and 43 U.S.C. 1801 *et seq.*

2. Section 208.2 "Definitions" is amended by removing the reference to "13 CFR 121.3–9(a)(1)" in paragraph (2) of the definition of "Eligible refiner" and adding "13 CFR part 121" in its place.

3. Section 208.3 "Information Collection" is revised to read as follows:

§ 208.3 Information collection.

The information collection requirements contained in this part have been approved by OMB under 44 U.S.C. 3501 *et seq.* The form, filing date, and approved OMB clearance number are identified in 30 CFR 210.10.

4. Paragraph (a) of § 208.6 is revised to read as follows:

§ 208.6 General application procedures.

(a) To apply for the purchase of royalty oil, an applicant must file a Form MMS–4070 with MMS in accordance with instructions provided in the "Notice of Availability of Royalty Oil" and in accordance with any instructions issued by MMS for completion of Form MMS–4070. The applicant will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the royalty oil for which it is applying, or other such proof of surety coverage, as deemed acceptable by MMS. The letter of intent must be submitted with a completed Form MMS–4070.

* * * * *

5. Paragraph (h) of § 208.7 "Determination of eligibility" is amended to add the word "instrument" after the word "surety" in the last sentence.

6. Section 208.11 is revised to read as follows:

§ 208.11 Surety requirements.

(a) The eligible purchaser, prior to execution of the contract, shall furnish an "MMS-specified surety instrument," in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges. The MMS may require the purchaser to increase the amount of the surety instrument when necessary to protect the Government's interest or may allow the purchaser to decrease the amount of the surety instrument where necessary to further the purposes of the Royalty-in-Kind Program.

(b) If a letter of credit is furnished as the surety instrument, it must be effective for a 9-month period beginning the first day the royalty oil contract is effective, with a clause providing for automatic renewal monthly for a new 9-month period. The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date. The MMS may grant the purchaser 45 days to obtain a new surety instrument. If no replacement surety instrument is provided, MMS will terminate the contract effective at least 6 months prior to the expiration date of the letter of credit. Notwithstanding the above provisions, the letter of credit also may contain a clause providing for automatic termination 6 months after the royalty oil contract terminates. If a certificate of deposit is furnished as the surety instrument, it must be effective for the life of the contract plus 6 months after the royalty oil contract terminates.

(c) For the purposes of this section, an "MMS-specified surety instrument" means either: an MMS-specified surety bond, an MMS-specified irrevocable letter of credit, or a financial institution book-entry certificate of deposit.

(d) The "MMS-specified surety instrument" shall be in a form specified by MMS instructions or approved by MMS. A bond must be issued by a qualified surety company that has been approved by the Department of the Treasury. An irrevocable letter of credit or a certificate of deposit must be from a financial institution acceptable to MMS. The MMS will use a bank rating service to determine whether a financial institution has an acceptable rating to provide a surety instrument deemed adequate to indemnify the Government from loss or damage.

(e) All surety instruments must be in a form acceptable to MMS and must include such other specific requirements as MMS may require adequately to protect the Government's interests.

7. Paragraph (a) of § 208.12 is amended by removing the reference to "§ 208.13(b)" in the last sentence and adding "208.13" in its place.

8. Paragraphs (c) and (d) of § 208.12 are revised to read as follows:

§ 208.12 Payment of requirements.

* * * * *

(c) If payment for royalty oil is not received by the due date specified in the contract, a notice of nonreceipt will be sent to the purchaser by certified mail. If payment is not received by MMS within 15 days from the date of such notice, MMS may cancel the contract and collect under the MMS-specified surety instrument. See § 208.11.

(d) If the purchaser disagrees with the amount of payment due, it must pay the amount due as computed by MMS, unless the purchaser appeals the amount and posts an MMS-specified surety instrument pursuant to the provisions of 30 CFR part 243. The MMS may, at its discretion, waive the appeal surety requirements if it determines that the contract surety instrument is sufficient protection for an amount under appeal.

9. Section 208.13 is revised to read as follows:

§ 208.13 Reporting requirements.

If MMS underbills a purchaser under a royalty oil contract because of a payor's underreporting or failure to report on Form MMS–2014 pursuant to 30 CFR 210.52, the payor will be liable for payment of such underbilled amounts plus interest if they are unrecoverable from the purchaser or the surety instrument related to the contract.

PART 210—FORMS AND REPORTS

1. The authority citation for part 210 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§§ 210.10, 210.53, 210.204, and 210.355 [Amended]

2. In the list below, for each section and paragraph indicated in the left column, remove the words and/or Mail Stop (MS) indicated in the right column from wherever they appear in that section and paragraph.

Section	Remove words/MS
210.10(b)(3)	"Production Accounting Division,"
210.10(b)(4)	"Royalty Valuation and Standards Division,"
210.10(b)(4)	"MS 3500,"
210.10(b)(5)	"Royalty Compliance Division,"
210.10(b)(5)	"MS 3600,"
210.10(b)(6)	"Revenue and Document Processing,"
210.10(d)	"MS 2300,"
210.53(a)	"Fiscal Accounting Division,"
210.53(a)	"MS 3200,"
210.53(a)	"Production Accounting Division,"
210.53(b)	"Lessee Contact Branch with respect to royalty reporting, or the MMS Reporter Contract Branch with respect to production reporting,"
210.204(a)	"Fiscal Accounting Division,"
210.204(a)	"MS 3200,"
210.204(a)	"Production Accounting Division,"
210.204(b)	"Lessee Contact Branch with respect to royalty reporting, or the MMS Reporter Contact Branch with respect to production reporting,"
210.355(a)	"Fiscal Accounting Division,"
210.355(b)	"Lessee Contact Branch."

3. In the list below, for each paragraph of § 210.10 "Information collection" indicated in the left column, remove the time in minutes or hours indicated in the middle column from wherever it appears in that paragraph, and add the time in minutes or hours indicated in the right column.

§ 210.10	Remove	Add
(c)(1)	9 minutes	7 minutes.
(c)(2)	30 minutes	15 minutes.
(c)(8)	1 hour	30 minutes.
(c)(9)	30 minutes	15 minutes.
(c)(12)	1 hour	15 minutes.
(c)(13)	1½ hours	1.25 hours.
(c)(19)	1 hour	2 hours.
(c)(19)	3 hours	5 hours.

4. Section 210.10 is amended by revising the title of Form MMS–2014 contained in the table in paragraph (a). Remove the title "MMS–2014—Report of Sales and Royalty Remittance—Oil and Gas" at the beginning of the table and replace with the title "MMS–2014—Report of Sales and Royalty Remittance."

5. The table in paragraph (a) of § 210.10 is amended by removing all references to form numbers MMS–4052, MMS–4057, MMS–4061, and MMS–4071 from where they appear in the table and add a new form number, name, filing date and OMB number in numerical sequence at the end of the table to read as follows:

§ 210.10 Information collection.

(a) * * *

Form No., name and filing date	OMB No.
* * * *	*
MMS–4377—Stripper Royalty Rate Reduction Notification—Due for each 12-month qualifying period that a reduced royalty rate is granted by the Bureau of Land Management	1010–0090
* * * *	*

6. Paragraph (b)(1) of § 210.10 is revised to read as follows:

§ 210.10 Information collection.

(a) * * *

(b)(1) Requests for Forms MMS–2014 or MMS–4070 should be addressed to the Minerals Management Service, Royalty Management Program, P.O. Box 5760, Denver, Colorado 80217–5760. The completed Form MMS–2014 should be mailed to the Minerals Management Service, Royalty Management Program, P.O. Box 5810, Denver, Colorado 80217–5810. The address to which a completed Form MMS–4070 should be mailed will be identified in a **Federal Register** Notice of Availability of Royalty Oil. (See 30 CFR 208.5.)

* * * * *

7. Section 210.10 is amended by removing paragraphs (c)(6), (c)(11), (c)(15), and (c)(17) and redesignating paragraphs (c)(7) through (10) as paragraphs (c)(6) through (9) redesignating paragraphs (c)(12) through (14) as (c)(10) through (12), redesignating paragraph (c)(16) as (c)(13), and redesignating paragraphs (c)(18) through (23) as (c)(14) through (19) respectively. Also, a new paragraph (c)(20) is added to read as follows:

§ 210.10 Information collection.

* * * * *

(c)(20) *MMS–4377*—This form must be submitted by operators of stripper oil properties to notify MMS of reduced royalty rates granted by the Bureau of Land Management under 43 CFR 3103.4–1 for each 12-month qualifying period. Reporting burden is estimated to require an average of 30 minutes per form to supply the operator name, lease and agreement numbers, calculated and current royalty rate, and the period covered. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0090.

* * * * *

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§§ 216.15, 216.16, 216.40, 216.50, 216.52, 216.53, 216.54, 216.55, 216.56, 216.57, 216.58, and 216.61 [Amended]

2. In the list below, for each section and paragraph indicated in the left column, remove the words indicated in the right column from wherever they appear in that section and paragraph:

Section	Remove words
216.15(a) ..	"Production Accounting Division,"
216.15(b) ..	"Reporter Contact Branch,"
216.16(a) ..	"Production Accounting Division,"
216.16(b) ..	"Room A–212, Revenue and Document Processing,"
216.40(c) ..	"Fractionation Plant Operations Report (Form MMS–4057),"
216.50(a) ..	"To the Chief, Production Accounting Division, Royalty Management Program, MMS."

3. Sections 216.52, 216.57, and 216.61, under Subpart B—Oil and Gas, General, are removed, and §§ 216.53, 216.54, 216.55, 216.56, and 216.58 are redesignated as §§ 216.52 through 216.56, respectively.

4. A new § 216.57 is added under Subpart B—Oil and Gas, General, to read as follows:

§ 216.57 Stripper royalty rate reduction notification.

In accordance with its regulations at 43 CFR 3103.4–1, titled "Waiver, suspension, or reduction of rental, royalty, or minimum royalty," the Bureau of Land Management (BLM) may grant reduced royalty rates to operators of low producing oil leases to encourage continued production. Operators who have been granted a reduced royalty rate(s) by BLM must submit a Stripper Royalty Rate Reduction Notification (Form MMS–4377) to MMS for each 12-month qualifying period that a reduced royalty rate(s) is granted.

5. Paragraphs (c)(1) and (c)(2) of § 216.50 are amended to change the reference in those paragraphs from "§ 216.54" to "§ 216.53."

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

§ 218.51 [Amended]

2. Section 218.51 "Method of payment" is amended by removing the words "Room A–212, Revenue and Document Processing," from where they appear in the address in paragraph (f)(2).

PART 219—DISTRIBUTION AND DISBURSEMENT OF ROYALTIES, RENTALS, AND BONUSES

1. The authority citation for part 219 continues to read as follows:

Authority: Section 104, Pub. L. 97–451, 96 Stat. 2451 (30 U.S.C. 1714).

§ 219.102 [Amended]

2. Section 219.102 "Method of payment" is amended by removing the words "Fiscal Accounting Division," and "MS 3200," from where they appear in that section.

PART 220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES

1. The authority citation for part 220 continues to read as follows:

Authority: Sec. 205, Pub. L. 95–372, 92 Stat. 643 (43 U.S.C. 1337).

§ 220.003 [Amended]

2. Section 220.003 "Information collection" is amended by removing the Mail Stop (MS) "MS 2300," from where it appears in the address in paragraph (b).

PART 228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES

1. The authority citation for part 228 continues to read as follows:

Authority: Section 202, Pub. L. 97–451, 96 Stat. 2457 (30 U.S.C. 1732).

§ 228.10 [Amended]

2. Section 228.10 "Information collection," is amended by removing the Mail Stop (MS) "MS 2300," from where it appears in the address in paragraph (b).

PART 229—DELEGATION TO STATES

1. The authority citation for part 229 is revised to read as follows:

Authority: Section 205, Pub. L. 97–451, 96 Stat. 2459 (30 U.S.C. 1735).

§ 229.123 [Amended]

2. Section 229.123 "Standards for audit activities" is amended by removing the words "the Royalty Compliance Division (RCD) of the" from the second sentence of paragraph (b)(2).

3. Paragraphs (b)(2) and (b)(3)(vii) of § 229.123 are amended by removing the abbreviation "RCD" from where it appears in those paragraphs. Add the abbreviation "MMS" in place of the abbreviation "RCD" that was removed.

PART 243—APPEALS—ROYALTY MANAGEMENT PROGRAM

1. The authority citation for part 243 continues to read as follows:

Authority: R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; sec. 32, 41 Stat. 450, 30 U.S.C. 189; sec. 5, 44 Stat. 1058, 30 U.S.C. 285; sec. 10, 61 Stat. 915, 20 U.S.C. 359; secs. 5, 6, 67 Stat. 464, 465, 43 U.S.C. 1334, 1335; sec. 24, 84 Stat. 1573, 30 U.S.C. 1023, 30 U.S.C. 1701 *et seq.*

§ 243.4 [Amended]

2. Paragraph (b)(2) of § 243.4, "Service of official correspondence," is removed, and paragraphs (b)(3) through (b)(9) are redesignated as new paragraphs (b)(2) through (b)(8), respectively.

3. In newly designated paragraph (b)(8) the reference to "paragraphs (b)(1) through (8)" is revised to read "paragraphs (b)(1) through (7)".

4. Newly designated paragraph (b)(5) is amended to read as follows:

§ 243.4 Serving of official correspondence.

* * * * *

(b)(5) The addressee of record for serving official correspondence relating to reporting on the "Report of Sales and Royalty Remittance" (Form MMS–2014) is the most recent position title, department name and address, or individual name and address specified, in writing, by the payor. The payor is responsible for notifying the Royalty Management Program, in writing, of any addressee changes.

* * * * *

[FR Doc. 93–30109 Filed 12–9–93; 8:45 am]
BILLING CODE 4310–MR–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 590

UNITA (Angola) Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Treasury Department is issuing the UNITA (Angola) Sanctions Regulations to implement the President's declaration of a national emergency and imposition of sanctions against the National Union for the Total Independence of Angola ("UNITA").

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Chief of Policy Planning and Program Management (tel: 202/622-2500), Steven I. Pinter, Chief of Licensing (tel: 202/622-2480), or William B. Hoffman, Chief Counsel, (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512-1387 or call 202/512-1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

On September 26, 1993, the President issued Executive Order 12865, declaring a national emergency with respect to Angola, and invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the United Nations Participation Act of 1945 (22 U.S.C. 287c). Consistent with United Nations Security Council Resolution 864, dated September 15, 1993, the order prohibits the sale or supply by United States persons or from the United States, or using U.S. registered vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles, equipment and spare parts, and petroleum and petroleum products to the territory of Angola other than through designated points of entry. It also prohibits such sale or supply to UNITA. U.S. persons are prohibited from activities which promote or are calculated to promote such sales or supplies, or from attempted violations, or from evasion or avoidance or transactions that have the purpose of evasion or avoidance, of the stated prohibitions. The order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the order.

In implementation of this order, the Treasury Department is issuing the UNITA (Angola) Sanctions Regulations (the "Regulations").

The Regulations prohibit the sale or supply by United States persons or from the United States, or using U.S. registered vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles, equipment and spare parts, and petroleum and petroleum products to UNITA or to the territory of Angola other than through designated points. U.S. persons are also prohibited from activities which promote or are calculated to promote such sales or supplies to UNITA or Angola, or from any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the executive order. Also prohibited are transactions by U.S. persons, or involving the use of U.S.-registered vessels or aircraft, relating to transportation to Angola or UNITA of goods the exportation of which is prohibited.

Transactions otherwise prohibited under this part may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures described in § 590.801 of subpart H.

Since the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply.

The Regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. For this reason, the collections of information contained in the Regulations are being submitted to the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project [1505-****], Washington, DC 20503, with copies to the Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220. Any such comments should be submitted not later than February 8, 1994. Notice of OMB action on these requests will be published in the **Federal Register**.

The collections of information in the Regulations are contained in subpart F, and §§ 590.703 and 590.801. This information is required by the Office of Foreign Assets Control for licensing, compliance, civil penalty and enforcement purposes. This information will be used to determine the eligibility of applicants for the benefits provided through specific licenses, to determine whether persons subject to the Regulations are in compliance with applicable requirements, and to determine whether and to what extent civil penalty or other enforcement action is appropriate. The likely respondents and recordkeepers are business organizations.

Estimated total annual reporting and/or recordkeeping burden: 100 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents and/or recordkeepers: 50.

Estimated annual frequency of responses: 1 - 3.

List of Subjects in 31 CFR Part 590

Administrative practice and procedure, Angola, Exports, Foreign trade, National Union for the Total Independence of Angola, Penalties, Reporting and recordkeeping requirements, Shipping, UNITA, Vessels.

For the reasons set forth in the preamble, 31 CFR part 590 is added to read as follows:

PART 590—UNITA (ANGOLA) SANCTIONS REGULATIONS

Subpart A—Relation of this Part to Other Laws and Regulations

Sec.
590.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

590.201 Prohibited sale or supply of arms, arms materiel, petroleum or petroleum products to UNITA or Angola.
590.202 Prohibited transportation-related transactions involving Angola or UNITA.
590.203 Evasions; attempts.

Subpart C—General Definitions

590.301 Effective date.
590.302 License.
590.303 General license.
590.304 Specific license.
590.305 Person.
590.306 Entity.
590.307 National Union for the Total Independence of Angola, or UNITA.
590.308 United States.
590.309 United States person; U.S. person.
590.310 UNSC Resolution 864.
590.311 Petroleum and Petroleum Products
590.312 Arms and Related Materiel

Subpart D—Interpretations

590.401 Reference to amended sections.
590.402 Effect of amendment.
590.403 Payments in connection with certain authorized transactions.
590.404 Transshipments through the United States prohibited.
590.405 Exports to third countries; transshipments.
590.406 Agency jurisdiction; licensing requirements.
590.407 Transactions incidental to a licensed transaction.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

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590.901 [Reserved].

Appendix A to part 590—Arms and Related Materiel.

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; 3 U.S.C. 301; E.O. 12865, 58 FR 51005 (September 29, 1993).

Subpart A—Relation of This Part to Other Laws and Regulations

§ 590.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 590.201 Prohibited sale or supply of arms, arms materiel, petroleum or petroleum products to UNITA or Angola.

Except as otherwise authorized pursuant to this part, the sale or supply by United States persons or from the United States, or any activity by United States persons or in the United States which promotes or is calculated to promote the sale or supply, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment and spare parts, and petroleum and petroleum products, are prohibited, regardless of origin, to:

(a) UNITA; or

(b) the territory of Angola, other than through points of entry designated by the Secretary of the Treasury in the following schedule:

(1) Airports:
(i) Luanda
(ii) Katumbela, Benguela Province
(2) Ports:
(i) Luanda
(ii) Lobito, Benguela Province
(iii) Namibe, Namibe Province
(3) Entry Points:
(i) Malongo, Cabinda
(ii) [Reserved].

§ 590.202 Prohibited transportation-related transactions involving Angola or UNITA.

Except as otherwise authorized, any transaction by a U.S. person, or involving the use of U.S. registered vessels or aircraft, relating to transportation to Angola or UNITA of goods the exportation of which is prohibited in § 590.201 is prohibited.

§ 590.203 Evasions; attempts.

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this subpart, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited.

Subpart C—General Definitions

§ 590.301 Effective date.

The term "effective date" refers to the effective date of the applicable prohibitions and directives contained in subpart B as follows:

(a) With respect to §§ 590.201, 590.202, and 590.203, 4:35 p.m. EDT, September 26, 1993.

(b) [Reserved].

§ 590.302 License.

Except as otherwise specified, the term "license" means any license or authorization contained in or issued pursuant to this part.

§ 590.303 General license.

The term "general license" means any license or authorization the terms of which are set forth in this subpart E.

§ 590.304 Specific license.

The term "specific license" means any license or authorization not set forth in subpart E but issued pursuant to this part in response to an application.

§ 590.305 Person.

The term "person" means an individual or entity.

§ 590.306 Entity.

The term "entity" includes a corporation, partnership, association, or other organization.

§ 590.307 National Union for the Total Independence of Angola, or UNITA.

The term "National Union for the Total Independence of Angola" or "UNITA" includes:

(a) Any entity, political subdivision, agency, or instrumentality of UNITA, including without limitation:

(1) the União Nacional para a Independencia Total de Angola (UNITA), known in English as the "National Union for the Total Independence of Angola;"

(2) the Forcas Armadas para a Liberacão de Angola (FALA), known in English as the "Armed Forces for the Liberation of Angola;" and

(3) the Free Angola Information Services, Inc.

(b) Any person or entity substantially owned or controlled by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any other person or entity determined by the Director of the Office of Foreign Assets Control to be included within this section.

§ 590.308 United States.

The term "United States" means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 590.309 United States person; U.S. person.

The term "United States person" or "U.S. person" means any United States citizen; permanent resident alien; juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; or any person in the United States, and vessels and aircraft of U.S. registration.

§ 590.310 UNSC Resolution 864.

The term "UNSC Resolution 864" means United Nations Security Council Resolution No. 864, adopted September 15, 1993, prohibiting certain transactions with respect to Angola.

§ 590.311 Petroleum and petroleum products.

The term "petroleum and petroleum products" means items listed in 15 CFR part 777, supplements 2 and 3, of the Export Administration Regulations.

§ 590.312 Arms and related materiel.

The term "arms and related materiel" means items listed in appendix A to this part, all items listed on the Commerce Control List ending with the number "18", 15 CFR 799.1, supplement 1, and any item controlled under the International Traffic in Arms Regulations, 22 CFR parts 120 through 130.

Subpart D—Interpretations

§ 590.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 590.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted from being done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 590.403 Payments in connection with certain authorized transactions.

Except as otherwise specified, payments are authorized in connection with transactions authorized in or pursuant to subpart E.

§ 590.404 Transshipments through the United States prohibited.

The prohibitions in § 590.201 apply to the importation into the United States for transshipment or transit of goods, the sale or supply of which to Angola or UNITA is prohibited by § 590.201.

§ 590.405 Exports to third countries; transshipments.

Exportation of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment and spare parts, and petroleum and petroleum products from the United States to third countries is prohibited if the exporter knows, or has reason to know, that the goods are intended for reexportation or transshipment to Angola (except to a point of entry designated by the Secretary in § 590.201) or to UNITA, including passage through, or storage in, intermediate destinations.

§ 590.406 Agency jurisdiction; licensing requirements.

(a) Nothing in this part shall be construed to supersede the requirements established under the Arms Export Control Act (22 U.S.C. 2751 *et seq.*) and the Export Administration Act (50 U.S.C. App. 2401 *et seq.*) to obtain licenses for the exportation from the United States or from a third country of any goods, data, or services subject to the export jurisdiction of the Department of State or the Department of Commerce.

(b) Exports to Angola through points of entry designated by the Secretary in the schedule in § 590.201 and not consigned to or destined for UNITA do not require a license from the Office of Foreign Assets Control, but may require licensing by the Department of State or Department of Commerce in accordance with the requirements of the Arms Export Control Act (22 U.S.C. 2751 *et seq.*) and the Export Administration Act (50 U.S.C. App. 2401 *et seq.*)

§ 590.407 Transactions incidental to a licensed transaction.

(a) Any transaction ordinarily incident to a transaction authorized by the Office of Foreign Assets Control and necessary to give effect thereto is also authorized, except to the extent subject to the export jurisdiction of the Department of State or Department of Commerce.

(b) *Example:* A license issued by the Office of Foreign Assets Control authorizing an exportation of arms to Angola also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, brokers, transfer agents, banks, etc.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 590.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 590.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

Subpart F—Reports

§ 590.601 Required records.

Except as otherwise provided, every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each transaction engaged in, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 5 years after the date of such transaction.

§ 590.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the person required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Director of the Office of Foreign Assets Control may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

Subpart G—Penalties

§ 590.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705), which provides that a civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under the International Emergency Economic Powers Act, and whoever willfully violates any license, order, or regulation issued under the International Emergency Economic Powers Act, shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. Section 206 of the International Emergency Economic Powers Act is applicable to violations of any provision of this part and to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act. The penalties provided in the International Emergency Economic Powers Act are subject to increase pursuant to 18 U.S.C. 3571 and Public Law 101–410, 101 Stat. 890 (28 U.S.C. 2461 note).

(b) Attention is directed to section 5 of the United Nations Participation Act (22 U.S.C. 287c(b)), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section shall, upon conviction, be fined not more than $10,000 or, if a natural person, be imprisoned for not more than 10 years, or both; and the officer, director or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a similar fine, imprisonment or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States. The penalties provided in the United Nations Participation Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

(d) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.

§ 590.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 590.703 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

§ 590.704 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

§ 590.705 Referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this subpart or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 590.801 Licensing.

(a) *General licenses.* General licenses may be issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in subpart B of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses.

(b) *Specific licenses*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in subpart B of this part which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information or discuss or argue the application may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition for the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

(7) *Address.* License applications, reports, and inquiries should be addressed to the appropriate division or individual within the Office of Foreign Assets Control, or to the Director, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220.

§ 590.802 Decisions.

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 590.803 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, whether general or specific, authorizations, instructions, orders, or forms issued hereunder may be amended, modified, or revoked at any time.

§ 590.804 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comment, and delay in effective date. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

§ 590.805 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12865 or any further Executive orders relating to the national emergency declared in Executive Order 12865 may be taken by the Director, Office of Foreign Assets Control.

§ 590.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Treasury Department issued pursuant to 5 U.S.C. 552 and published at 31 CFR part 1.

(b) Any form issued for use in connection with the UNITA (Angola) Transactions Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, or by calling 202/622–2480.

Subpart I—Paperwork Reduction Act

§ 590.901 [Reserved].

Appendix A to Part 590—Arms and Related Materiel

(1) Spindle assemblies, consisting of spindles and bearings as a minimal assembly,

except those assemblies with axial and radial axis motion measured along the spindle axis in one revolution of the spindle equal to or greater (coarser) than the following: (a) 0.0008 mm TIR (peak-to-peak) for lathes and turning machines; or (b) D x 2 x 10(-5) mm TIR (peak-to-peak) where D is the spindle diameter in millimeters for milling machines, boring mills, jig grinders, and machining centers (ECCNs 2B01 and 2B41);

(2) Equipment for the production of military explosives and solid propellants, as follows:

(a) Complete installations; and

(b) Specialized components (for example, dehydration presses; extrusion presses for the extrusion of small arms, cannon and rocket propellants; cutting machines for the sizing of extruded propellants; sweetie barrels (tumblers) 6 feet and over in diameter and having over 500 pounds product capacity; and continuous mixers for solid propellants) (ECCN 1B18);

(3) Specialized machinery, equipment, gear, and specially designed parts and accessories therefor, specially designed for the examination, manufacture, testing, and checking of the arms, appliances, machines, and implements of war (ECCN 2B18), ammunition hand-loading equipment for both cartridges and shotgun shells, and equipment specially designed for manufacturing shotgun shells (ECCN 2B85).

(4) Construction equipment built to military specifications, specially signed for airborne transport (ECCN No. 8A18);

(5) Vehicles specially designed for military purposes, as follows:

(a) Specially designed military vehicles, excluding vehicles listed in supplement 2 to 15 CFR part 770 (ECCN 9A18);

(b) Pneumatic tire casings (*excluding tractor and farm implement types*), of a kind specially constructed to be bulletproof or to run when deflated (ECCN 9A18);

(c) Engines for the propulsion of the vehicles enumerated above, specially designed or essentially modified for military use (ECCN 9A18); and

(d) Specially designed components and parts to the foregoing (ECCN 9A18);

(6) Pressure refuellers, pressure refuelling equipment, and equipment specially designed to facilitate operations in confined areas and ground equipment, not elsewhere specified, developed specially for aircraft and helicopters, and specially designed parts and accessories, n.e.s. (ECCN 9A18);

(7) Specifically designed components and parts for ammunition, *except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines* (ECCN 0A18);

(8) Nonmilitary shotguns, barrel length 18 inches or over; and nonmilitary arms, discharge type (for example, stun-guns, shock batons, etc.), *except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.* (ECCN 0A84);

(9) Shotgun shells, and parts (ECCN 0A86);

(10) Military parachutes (ECCN 9A18);

(11) Submarine and torpedo nets (ECCN 8A18);

(12) Bayonets and muzzle-loading (black powder) firearms (ECCN 0A18).

Dated: November 23, 1993

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 29, 1993

John P. Simpson

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 93-30159 Filed 12-7-93; 9:38 am]

BILLING CODE 4810-25-F

FEDERAL MARITIME COMMISSION

46 CFR Part 585

[Docket No. 93-20]

Regulations to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission issues a final rule amending 46 CFR part 585, "Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States." The rule updates the Commission's existing regulations and reflects amendments to section 19 of the Merchant Marine Act, 1920, which clarified certain Commission authorities, granted the Commission certain information-gathering powers, and extended the range of sanctions available to the Commission in proceedings under that statute.

EFFECTIVE DATE: January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 ("Section 19"), authorizes the Federal Maritime Commission ("Commission" or "FMC") to take regulatory action to correct unfavorable shipping conditions in U.S. foreign oceanborne commerce. Specifically, paragraph (1)(b) of Section 19 directs the Commission * * *

> * * * [t]o make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

Id. app. 876(1)(b). Section 19 was most recently amended by section 103 of Public Law No. 101-595, 104 Stat. 2979 ("Section 19 Amendments"), to clarify and expand the powers of the Commission to address unfavorable shipping conditions, particularly those which affect intermodal, shoreside and other ocean transportation activities, and to add certain information-gathering and discovery tools. 46 U.S.C. app. 876(5)-(12).

The Commission's regulations governing Section 19 proceedings are set forth at 46 CFR Part 585—Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States. The Commission published a notice of proposed rulemaking ("NPR") to update its rules essentially to reflect the Section 19 Amendments on October 7, 1993, 58 FR 52248. The proposed rule substantially incorporated the existing Part 585, with some editorial and conforming changes, added a number of new sections in order to implement new statutory authorities, and restructured the rules for a more logical presentation.

The proposed rule restructures part 585 into six subparts in order to accommodate the new sections of the rules and to make for a more orderly and logical presentation of the rules' provisions. General provisions that apply to the entire part 585 appear in subpart A. Subpart B implements information-gathering authorities. subpart C enumerates those conditions that will be found to be unfavorable to shipping. Subpart D contains provisions governing the filing of section 19 petitions. Subpart E sets forth the provisions that govern proceedings initiated by the Commission under section 19. Subpart F describes the corrective actions that may be taken as well as penalties that may be imposed. The NPR included a section-by-section discussion identifying the particular changes in the existing rules as well as the new provisions of part 585. Interested persons were invited to submit comments on the NPR.

Discussion

Only one comment was received in response to the NPR. Sea-Land Service, Inc. ("Sea-Land"), suggests a few minor editorial and clarifying changes, and urges the Commission to otherwise adopt the rule. The changes suggested in the Sea-Land comments have merit, and have therefore been incorporated in the final rule. These are discussed individually below.

Sea-Land points out that while the proposed rule at § 585.201(a) obviously meant to reflect language added by the section 19 Amendments at section 19(6)(a) of the Act, 46 U.S.C. 876(6)(a), the rule refers to "any * * * licensee," rather than to "any * * * lessee," as stated in the statute. Sea-Land also properly notes that § 585.601(h) of the proposed rule should refer to "subpart C" rather than "subpart B" as the subpart which describes conditions which will be found unfavorable. Finally, we accept Sea-Land's suggestion that the plural reference to "carriers'" in § 585.301 be changed to the singular, in order to clarify that a finding of conditions unfavorable to shipping may be based on restrictions affecting one carrier.[1]

The Chairman of the Federal Maritime Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3504) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 46 CFR Part 585

Administrative practice and procedure, Maritime carriers.

Therefore, Pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553), section 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 10002), and section 19 of the Merchant Marine Act, 1920 (46 U.S.C. app. 876), the Federal Maritime Commission hereby revises part 585 of title 46, Code of Federal Regulations, to read as follows:

PART 585—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

Subpart A—General Provisions

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585.101 Purpose.
585.102 Scope.
585.103 Definitions.
585.104 Confidentiality.
585.105 Consultation.

Subpart B—Production of Information

585.201 Information orders.
585.202 Type of information.
585.203 Failure to provide information.

Subpart C—Conditions Unfavorable To Shipping

585.301 Findings.

Subpart D—Petitions For Relief

585.401 Who may file.
585.402 Filing of petitions.
585.403 Contents of petitions.
585.404 Amendment or dismissal of petitions.

Subpart E—Proceeding

585.501 Participation of interested persons.
585.502 Discovery.
585.503 Subpoenas.
585.504 Witness fees.
585.505 Failure to supply information.
585.506 Enforcement of orders.
585.507 Postponement, discontinuance or suspension of action.
585.508 Publication, content and effective date of regulation.

Subpart F—Corrective Actions

585.601 Actions to correct unfavorable conditions.
585.602 Penalty.

Authority: 5 U.S.C. 553; sec. 19(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12); Reorganization Plan No. 7 of 1961, 75 Stat. 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

Subpart A—General Provisions

§ 585.101 Purpose.

It is the purpose of the regulations of this part to declare certain conditions resulting from governmental actions by foreign nations or from the competitive methods or practices of owners, operators, agents, or masters of vessels of a foreign country unfavorable to shipping in the foreign trade of the United States and to establish procedures by which persons who are or can reasonably expect to be adversely affected by such conditions may petition the Federal Maritime Commission for the issuance of regulations under the authority of section 19 of the Merchant Marine Act of 1920. It is the further purpose of the regulations of this part to afford notice of the general circumstances under which the authority granted to the Commission under section 19 may be invoked and the nature of the regulatory actions contemplated.

§ 585.102 Scope.

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in, competitive methods or practices which have created or could create such conditions.

§ 585.103 Definitions.

When used in this part:

(a) *Act* means the Merchant Marine Act, 1920, as amended by Public Law No. 101–595.

(b) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country, and includes any common carrier, tramp operator, bulk operator, shipper, shippers' association, importer, exporter, consignee, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States.

(c) *Voyage* means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade. Each inbound or outbound movement constitutes a separate voyage.

§ 585.104 Confidentiality.

Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this part.

§ 585.105 Consultation.

(a) *Consultation with other agencies.* The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies prior to taking any action under this part.

(b) *Request for resolution through diplomatic channels.* Upon the filing of a petition, or on its own motion when there are indications that conditions unfavorable to shipping in the foreign trade of the United States may exist, the Commission may notify the Secretary of State that such conditions apparently exist, and may request that the Secretary seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of such efforts at a specified time.

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[1] Proposed section 585.301 provides, *inter alia:*

For the purposes of this part, conditions created by foreign governmental action or competitive methods of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

* * * * *

(d) Restrict or burden carriers' intermodal movements or shore-based maritime activities, including terminal operations and cargo solicitation; forwarding and agency services; non-vessel-operating common carrier operations; or other activities and services integral to transportation;

Subpart B—Production of Information

§ 585.201 Information orders.

In furtherance of the purposes of this part—

(a) The Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

(b) The Commission may require a report or answers to questions to be made under oath;

(c) The Commission may prescribe the form and the time for response to a report or answers to questions.

§ 585.202 Type of information.

In order to aid in the determination of whether conditions unfavorable to shipping in the foreign trade of the United States exist, or in order to aid in the formulation of appropriate regulations subsequent to a finding that conditions unfavorable to shipping in the foreign trade of the United States exist, the Commission may, when it deems necessary or appropriate, and without further proceedings, order any:

(a) Owner, operator, or charterer in the affected trade to furnish any or all of the following information:

(1) Statistics for a representative period showing passengers or cargo carried to and from the United States in the affected trade on vessels owned, operated or chartered by it, by type, source, value, and direction;

(2) Information for a representative period on the activities of vessels owned, operated, or chartered, which shall include sailings to and from United States ports, costs incurred, taxes or other charges paid to authorities, and subsidies or other payments received from foreign authorities;

(3) Information for a specified future period on the prospective activities of vessels which it owns, operates or charters or plans to own, operate or charter, to and from United States ports, which shall include projected sailings, anticipated costs, taxes or other charges to be paid to authorities, and expected subsidies or other payments to be received from foreign authorities; and

(4) Such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(b) Shipper, shippers' association, ocean freight forwarder, or non-vessel-operating common carrier in the affected trade to furnish any or all of the following information:

(1) Information for a representative period showing shipments made, type of cargo, commodity, carrier and vessel on which shipment was made, including furnishing copies of bills of lading and other shipping documents;

(2) Information relating to the application for, grant of, or securing of waivers or other exemption from requirements imposed by foreign governments that cargo move on national-flag, conference, or non-conference vessels;

(3) Amount of brokerage, freight forwarder compensation or other charges collected or paid in connection with shipments in the affected trade; and

(4) such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(c) Any marine terminal operator to furnish any or all of the following information:

(1) Marine terminal facilities agreements, whether or not on file with the Commission, into which it has entered with any ocean carrier in the affected trade;

(2) Information for a representative period showing the difference between the rates agreed to for use of its facilities by any ocean carrier serving the affected trade pursuant to an agreement authorizing preferential treatment or lease terms and those rates which would otherwise have applied to such services or leases.

§ 585.203 Failure to provide information.

(a) A person who fails to file a report, answer, documentary material, or other information required under this subpart shall be liable to the United States Government for a civil penalty of not more than $5,000 for each day that the information is not provided.

(b) The Commission may, when there is a failure to produce any information ordered produced under § 585.201, make appropriate findings of fact and inferences, including the inference that conditions unfavorable to shipping in the foreign trade of the United States do exist.

Subpart C—Conditions Unfavorable to Shipping

§ 585.301 Findings.

For the purposes of this part, conditions created by foreign governmental action or competitive methods of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

(a) Impose upon vessels in the foreign trade of the United States fees, charges, requirements, or restrictions different from those imposed on other vessels competing in the trade, or preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel;

(b) Reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States;

(c) Are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors and which cannot be justified under generally accepted international agreements or practices and which operate to the detriment of the foreign commerce or the public interest of the United States;

(d) Restrict or burden a carrier's intermodal movements or shore-based maritime activities, including terminal operations and cargo solicitation; forwarding and agency services; non-vessel-operating common carrier operations; or other activities and services integral to transportation systems; or

(e) Are otherwise unfavorable to shipping in the foreign trade of the United States.

Subpart D—Petitions for Section 19 Relief

§ 585.401 Who may file.

Any person who has been harmed by, or who can reasonably expect harm from, existing or impending conditions unfavorable to shipping in the foreign trade of the United States, may file a petition for relief under the provisions of this part.

§ 585.402 Filing of petitions.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573.

§ 585.403 Contents of petitions.

Petitions for relief from conditions unfavorable to shipping in the foreign trade of the United States shall set forth the following:

(a) A concise description and citation of the foreign law, rule, regulation, practice or competitive method complained of;

(b) A certified copy of any law, rule, regulation or other document involved and, if not in English, a certified English translation thereof;

(c) Any other evidence of the existence of such practice or competitive method;

(d) A clear description, in detail, of the harm already caused or which may reasonably be expected to be caused petitioner, including:

(1) Statistics for the representative period showing the type and amount of revenue loss or operating cost increase suffered or projected, such as a present or prospective cargo loss if harm is alleged on that basis. Such statistics shall include figures which permit comparison or computation of the proportional effect of the harm alleged. For example, when the harm alleged is loss of cargo, supporting evidence shall include the total cargo carried or projected in the trade for the period;

(2) Statistics or other evidence for the representative period showing increased costs, inferior services or other harm to cargo or other non-vessel interest if injury is claimed on that basis; and

(3) A statement as to why the period is representative.

(e) A recommended regulation, the promulgation of which will, in the view of the petitioner, adjust or meet the alleged conditions unfavorable to shipping in the foreign trade of the United States.

§ 585.404 Amendment or dismissal of petitions.

Upon the failure of a petitioner to comply with the provisions of this part, the petitioner will be notified by the Secretary and afforded reasonable opportunity to amend its petition. Failure to timely amend the petition may result in its dismissal. For good cause shown additional time for amendment may be granted.

Subpart E—Proceedings

§ 585.501 Participation of interested persons.

In the event that participation of interested persons is deemed necessary by the Commission, notice will be published in the **Federal Register** and interested persons will then be allowed to participate in this proceeding by the submission of written data, views or arguments, with or without opportunity to present same orally.

§ 585.502 Discovery.

The Commission may authorize a party to a proceeding to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States.

§ 585.503 Subpoenas.

In proceedings under this part, the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence.

§ 585.504 Witness fees.

In proceedings under this subpart, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States, subject to funds being provided by appropriations Acts.

§ 585.505 Failure to supply information.

For failure to supply information ordered to be produced or compelled by subpoena in proceedings under this part, the Commission may—

(a) After notice and an opportunity for hearing, suspend tariffs of a common carrier or that common carrier's right to use the tariffs of conferences of which it is a member; or

(b) Assess a civil penalty of not more than $5,000 for each day that the information is not provided.

§ 585.506 Enforcement of orders.

In proceedings under this part, when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties.

§ 585.507 Postponement, discontinuance, or suspension of action.

The Commission may, on its own motion or upon petition, postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall postpone, discontinue or suspend any or all such actions if the President informs the Commission that postponement, discontinuance or suspension is required for reasons of foreign policy or national security.

§ 585.508 Publication, content and effective date of regulation.

The Commission shall incorporate in any regulations adopted under the rules of this part a concise statement of their basis and purpose. Regulations shall be published in the **Federal Register**. Except where conditions warrant and for good cause, regulations promulgated under the rules of this part shall not become effective until at least 30 days after the date of publication.

Subpart F—Corrective Actions

§ 585.601 Actions to correct unfavorable conditions.

Upon submission of a petition filed under the rules of this part, or upon its own motion, the Commission may find that conditions unfavorable to shipping in the foreign trade of the United States do exist, and may, without further proceedings, issue regulations which may:

(a) Impose equalizing fees or charges;

(b) Limit sailings to and from United States ports or the amount or type of cargo carried;

(c) Suspend, in whole or in part, tariffs filed with the Commission for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences in United States trades of which it is a member for any period the Commission specifies;

(d) Suspend, in whole or in part, an ocean common carrier's right to operate under an agreement, including any agreement authorizing preferential treatment at terminals or preferential terminal leases, whether filed with the Commission or not filed with the Commission pursuant to the exemptions granted in 46 CFR Part 572; or any agreement filed with the Commission authorizing space chartering, or pooling of cargo or revenues with other ocean common carriers;

(e) Impose a fee, not to exceed $1,000,000 per voyage;

(f) Request the collector of customs at the port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to a vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in subpart C;

(g) Request the collector of customs at the port or place of destination in the United States to collect any fees imposed by the Commission under paragraph (e) of this section;

(h) Request the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in subpart C, to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; or

(i) Take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

§ 585.602 Penalty.

A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended under § 585.505 or § 585.601 of this part, or after its right to use another tariff has been suspended under those sections, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff.

By the Commission.

Joseph C. Polking,

Secretary.

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