Philadelphia District Office is under the jurisdiction of the Northeast Regional office, issuers located in this area should file with the Northeast office. The choice to file in Atlanta for issuers geographically located in the Philadelphia office's jurisdiction has been eliminated. No other change is being made in the regional processing system. Offices which have not offered a review program in the recent past, i.e., Salt Lake City, San Francisco, Philadelphia and Miami will not commence such a program, and filers in the areas subject to the jurisdiction of these offices continue to have the filing choice between Washington, DC and the supervising regional office, or in the case of Miami, in the Atlanta District Office.

The Commission finds that, pursuant to section 553(b) of the Administrative Procedure Act[7], this action relates solely to "agency organization, procedure, or practice" and that therefore notice and prior publication of the rules is unnecessary.

Statutory Basis, Text of Revisions and Authority

The amendments to the Commission's rules and forms are being made pursuant to sections 2, 3(b), 6, 7, 8, 10 and 19(a) of the Securities Act.

List of Subjects in 17 CFR Parts 230 and 239

Reporting and recordkeeping, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. By revising paragraph (e) of § 230.252 to read as follows:

§ 230.252 Offering Statement.

* * * * *

(e) *Number of copies and where to file.* Seven copies of the offering statement, at least one of which is manually signed, shall be filed either with the Commission's Regional Office responsible for the region or district in which the issuer's principal business operations are conducted or are proposed to be conducted, or with the Commission's main office in Washington, DC. No filings are accepted by the Southeast Regional Office; issuers that conduct or propose to conduct principal business operations in the region or district subject to its supervision may file with the Atlanta District Office. An issuer which has or proposes to have its principal business operations in Canada shall file with the Regional Office nearest the place where the issuer's principal business operations are conducted or proposed to be conducted or with the Commission's main office in Washington, DC, unless the offering is to be made through a principal underwriter located in the United States, in which case the appropriate Regional Office is the office for the region or district in which such underwriter has its principal office. No filings may be made in any district office except the Atlanta District Office. While every effort is made to process filings where initially made, the Commission may reassign a filing to a different office for processing.

* * * * *

3. By revising § 230.455 to read as follows:

§ 230.455 Place of filing.

All registration statements and other papers filed with the Commission shall be filed at its principal office, except for statements of Form SB–1 (§ 239.9 of this chapter) and Form SB–2 (§ 239.10 of this chapter). Registration statements on Form SB–1 or SB–2 may be filed with the Commission either at its principal office or at the Commission's regional or district offices as specified in General Instruction A to each of those forms. Such material may be filed by delivery to the Commission through the mails or otherwise.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

5. Form SB–1 (§ 239.9) is amended by revising General Instruction A.2. to read as follows:

Note: The text of Forms SB–1 and SB–2 do not and the amendments will not appear in the Code of Federal Regulations.

Form SB–1

* * * * *

General Instructions

A. Use of Form and Place of Filing

* * * * *

2. If the small business issuer is not a reporting company, it should file the registration statement in the regional office responsible for the region or district that is closest to its principal place of business, or the Washington, D.C. office. However, no filings may be made in the Southeast Regional Office; issuers with principal places of business in the region or district subject to its jurisdiction may file in the Atlanta District Office. While every effort is made to process filings where initially made, the Commission may reassign a filing to a different office for processing.

* * * * *

6. Form SB–2 (§ 239.10) is amended by revising General Instruction A.2. to read as follows:

Form SB–2

* * * * *

General Instructions

A. Use of Form and Place of Filing

* * * * *

2. Initial public offerings on Form SB–2 should be filed in the regional office responsible for the region or district that is closest to its principal place of business, or the Washington, D.C. office. However, no filings may be made in the Southeast Regional Office; issuers with principal places of business in the region or district subject to its jurisdiction may file in the Atlanta District Office. While every effort is made to process filings where initially made, the Commission may reassign a filing to a different office for processing.

* * * * *

Dated: December 8, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–30509 Filed 12–14–93; 8:45 am]

BILLING CODE 8010–01–M

[7] 5 U.S.C. 553(b).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket No. RM93–10–001; Order No. 558–A]

New Reporting Requirement Implementing Section 213(b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No. FERC–714; Order Denying Rehearing

Issued: December 9, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order denying rehearing.

SUMMARY: This order denies a request for rehearing of that portion of the Commission's final rule in this proceeding finding that the Commission has jurisdiction over certain electric cooperatives for transmission-information reporting purposes. Based on its review of the relevant statutory language and statutory purpose and of the pertinent case law, the Commission has concluded that the transmission-information reporting requirements apply to cooperatives which own or operate electric power transmission facilities used for wholesale sales.

EFFECTIVE DATE: The order denying rehearing is effective December 9, 1993.

FOR FURTHER INFORMATION CONTACT: Daniel L. Larcamp, Assistant General Counsel, Electric Rates and Corporate Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2088.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of the Final Rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Background

On September 30, 1993, the Commission issued a final rule establishing a new transmission-information filing requirement, FERC Form No. 715, and modifying the existing FERC Form No. 714 to require reporting of the hourly incremental cost of energy.[1] The final rule implemented section 213(b) of the Federal Power Act (FPA), which the Energy Policy Act of 1992 added to the FPA.[2] That provision requires the Commission to adopt a rule requiring "transmitting utilities" to file annually information concerning potentially available transmission capacity and known constraints.

The Commission found that it has jurisdiction to apply the new reporting requirements to certain electric cooperatives because the term "transmitting utility" encompasses the term "electric utility," and a cooperative is an "electric utility." In the preamble to the final rule, the Commission recognized the holdings of *Dairyland Power Cooperative*[3] and *Salt River Project Agr. Dist.* v. *FPC*[4] to the effect that the Commission did not have traditional FPA rate jurisdiction over cooperatives regulated by the Rural Electrification Administration. But the Commission rejected these decisions as inapposite. The Commission noted that these cases concerned whether a cooperative is a "public utility," but did not consider whether a cooperative is an "electric utility" as defined in section 3(22) of the FPA, as added by the Public Utility Regulatory Policies Act of 1978 (PURPA).[5] It was in PURPA that Congress first gave the Commission specific authority to order an electric utility to provide transmission service, authority that was later expanded in the Energy Policy Act.

Request for Rehearing

On October 22, 1993, Alabama Electric Cooperative, Inc. (Alabama Electric) filed a request for rehearing of Order No. 558. Alabama Electric challenges the Commission's finding that the Commission has "transmission jurisdiction" (jurisdiction to order an entity to provide transmission and to order entities to file transmission information) over cooperatives which own or operate transmission facilities used for wholesale sales. Alabama Electric states that *Dairyland* and *Salt River* are not inapposite because they reveal a Congressional intent not to subject cooperatives to the regulatory scheme for public utilities that Congress enacted in 1935. Alabama Electric maintains that Congress did not alter its intent when it enacted PURPA. It argues that, given the lack of jurisdiction over cooperatives that existed at the time when Congress enacted PURPA, it is implausible that Congress would have swept cooperatives within the Commission's jurisdictional ambit without explicitly stating its intention to do so. There is no explicit statutory statement to that effect.

Discussion

Any discussion of the Commission's jurisdiction must begin with the words of the statute. These words reveal a Congressional intention to grant the Commission broad transmission jurisdiction, including jurisdiction over cooperatives that meet the definition of transmitting utilities.

The Commission issued its transmission-information rule under section 213(b) of the FPA, as added by the Energy Policy Act. Section 213(b) directs the Commission to require "transmitting utilities" to provide potential transmission customers, state regulatory authorities, and the public with information concerning potentially available transmission capacity and known constraints. The definition of "transmitting utility" includes "any electric utility which owns or operates electric power transmission facilities which are used for the sale of energy at wholesale."[6] An "electric utility" includes "any person . . . which sells electric energy."[7] The statute specifically includes the Tennessee Valley Authority (TVA) within the definition of "electric utility" and specifically excepts Federal power marketing authorities from this definition.[8] Section 3(4) of the FPA defines "person" as an individual or corporation.[9] Section 3(3) of the FPA defines "corporation" to include "any organized group of persons, whether incorporated or not."[10] Order No. 558 noted that, because cooperatives fall within the definition of "corporation," they are persons that sell electric energy, and, as such, are "electric utilities" and are, therefore, "transmitting utilities" if they own or operate transmission facilities used for wholesale sales.

[1] New Reporting Requirement Implementing Section 213(b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No. FERC–714, Order No. 558, 58 FR 52420 (Oct. 8, 1993), 64 FERC ¶ 61,369 (1993).

[2] Pub. L. 102–486, 106 Stat. 2776 (1992)(codified at 16 U.S.C. 824*i*).

[3] 37 FPC 12 (1967) (*Dairyland*).

[4] 391 F2d. 470 (D.C. Cir.), *cert. denied*, 393 U.S. 857 (1968) (*Salt River*).

[5] Pub L. 95–617, 92 Stat. 3117 (1978) (codified at 16 U.S.C. 796 (22)). Section 3 (22) was also amended by the Energy Policy Act to add municipal utilities within the definition.

[6] 16 U.S.C. 796(23).

[7] 16 U.S.C. 796(22).

[8] *Id.*

[9] 16 U.S.C. 796(4).

[10] 16 U.S.C. 796(3).

Alabama Electric dismisses this analysis as "definitional hopscotch."[11] However, the fact is that Alabama Electric confuses jurisdiction over public utilities, which are subject to the full panoply of Commission jurisdiction under the FPA, and jurisdiction over electric utilities and transmitting utilities, which in some cases (*i.e.*, where they are not also public utilities) are subject only to limited jurisdiction, primarily under sections 210–213 and 316A of the FPA.

As a fundamental matter, Alabama Electric overlooks the very broad definitions of "person" and of "corporation," which were part of the FPA when Congress in PURPA added the definition of "electric utility." Had Congress *not* wanted cooperatives to be "electric utilities" for the purposes of the Commission's authority over transmission service, it would have said so in defining the term "electric utility."[12]

While Alabama Electric argues that the absence of a specific reference to cooperatives means that Congress meant to exclude them, we find that this is not a reasonable reading of the statute.[13] The definition of "electric utility," which explicitly uses the term "person," which, in turn, explicitly uses the term "corporation," is broadly inclusive. The term does not list every entity that it includes. It makes sense that Congress would specifically mention only those entities that were *not* to be included, or that would otherwise be excluded by the definitions already in the statute (municipalities, which were specifically excluded from the pre-existing definition of "corporation"). In these circumstances specific mention of TVA only demonstrates that Congress intended to *include* TVA when it was specifically *excluding* federal power marketing agencies. The inclusion of TVA does not demonstrate that Congress intended to exclude completely unrelated entities, such as cooperatives.

Alabama Electric disagrees with this view of the statute; it implies that because Congress explicitly included one entity, the TVA, within the FPA definition of "electric utility," it intended to exclude cooperatives from the definition.[14] But a term of inclusion is usually a term of enlargement rather than an expression of limitation.[15] Just because Congress included TVA does not mean it intended to *exclude* any other category of entities that fit within the definition that it was adopting. Nor need we infer from the definition the entities excluded from it. When Congress wanted to exclude certain entities from the term "electric utility," it did so explicitly, and the only entities that it excluded from the term were Federal power marketing agencies.[16] Congress likewise could have excluded cooperatives from the term, but chose not to.[17]

What Alabama Electric refers to as "definitional hopscotch"[18] is nothing more than the standard way to construe the meaning of a statute containing a series of definitions that depend on each other for clarity. It is well settled that:

> [S]tatutory definitions of words used elsewhere in the same statute furnish such authoritative evidence of legislative intent and meaning that they are usually given controlling effect * * *. Such internal legislative construction is of the highest value and prevails over * * * other extrinsic aids. [19]

The construction that the Commission has given to the terms "electric utility" and "transmitting utility" also results in no incongruity and does not distort or defeat the intent of PURPA or of the Energy Policy Act. Rather, it gives full effect not only to all of the necessary terms of PURPA and of the Energy Policy Act, but also to the statutes' purposes. The construction that the Commission has given to the terms "electric utility" and "transmitting utility" is thus not only a fair interpretation of the meaning of the words as found in the statute but also is consistent with Congress' purpose in enacting the statute, as discussed below.

Alabama Electric argues that, when Congress amended the Federal Power Act in PURPA, it was aware of *Dairyland* and *Salt River*, and thus knew that the Commission had no jurisdiction over cooperatives as "public utilities." According to Alabama Electric, the absence from the legislative history of any discussion of those cases indicates that Congress did not intend the Commission to have jurisdiction over cooperatives.[20]

We do not agree with this reading of the legislative history. In fact, the legislative history of PURPA suggests that, when Congress passed PURPA in 1978, it intended to include cooperatives within the Commission's transmission jurisdiction. PURPA resulted from Congress' awareness that the Nation was facing an energy shortage. One of the measures that Congress adopted to meet that shortage was to add section 211 to the FPA, giving the Commission specific authority, in certain instances, to order transmission service. In doing so, Congress did not exclude cooperatives.[21]

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[11] Alabama Electric Request for Rehearing at 2.

[12] Congress in the Energy Policy Act amended the FPA section 3(22) definition of "electric utility" by adding the phrase "(including any municipality)." This is because municipalities were explicitly excluded from the FPA definition of "corporation" and therefore were not "persons." Thus, just as Congress added "municipality," Congress could easily have clarified that cooperatives were not intended to be covered. The fact is that Congress did not.

[13] It is important to note that section 211 of the FPA, as added by PURPA, gave the Commission explicit authority to order electric utilities—not just public utilities—to wheel power, assuming the statutory criteria were met. Electric utilities encompass a broader group of entities than do public utilities. For example, while Congress did not explicitly state that the Commission's authority under section 211 extended to electric utilities located within the Electric Reliability Council of Texas, the Commission, based on the plain meaning of the section 3(22), concluded it has jurisdiction. *See* Central Power and Light Company, *et al.*, 9 FERC ¶ 61,065 at 61,219 (1979). Such a plain meaning approach is equally appropriate in this situation.

[14] Alabama Electric Request for Rehearing at 5 ("In enacting PURPA, Congress was explicit and unambiguous when it wanted to include an entity such as TVA within a definition.").

[15] Federal Land Bank of St. Paul v. Bismark Lumber Co., 314 U.S. 95, 99–100 (1941); Federal Election Comm. v. Mass. Citizens for Life, 769 F.2d 13, 17 (1st Cir. 1985), *aff'd*, 479 U.S. 238 (1986); American Fed. of Tel. & Radio Artists v. N.L.R.B., 462 F.2d 887, 889–90 (D.C. Cir. 1972); 2a Norman J. Singer, Sutherland, Statutes and Statutory Construction 152 (5th ed. 1992).

[16] 16 U.S.C. 796(22).

[17] Alabama Electric's arguments, carried to their logical conclusion, would require a finding not only that cooperatives which own or operate electric power transmission facilities used for the sale of electric energy at wholesale could not be required to provide information pursuant to section 213(b) or wheeling pursuant to section 211, but also that a large number of cooperatives could not apply for a section 211 wheeling order. Under Alabama Electric's reasoning, cooperatives that are not persons *generating* electric energy for sale for resale, *see* section 211(a), *i.e.* all distribution-only cooperatives, would not be able to seek a wheeling order under section 211. We do not believe that Congress intended to exclude hundreds of distribution-only cooperatives from the ability to seek a 211 order.

[18] Alabama Electric Request for Rehearing at 2.

[19] Sierra Club v. Clark, 755 F.2d 608, 613 (8th Cir. 1985) (quoting from 1A Norman J. Singer, Sutherland, Statutes and Statutory Construction 310 (4th ed. 1972)).

[20] Alabama Electric Request for Rehearing at 4–5.

[21] H.R. Rep. No. 1750, 95th Cong., 2d Sess. 67, 91–92 (1978); *see also id.* at 64, 66; H.R. Rep. No. 496, 95th Cong., 1st Sess., Part 4 at 151 (1977). The National Energy Act, an earlier version of the legislation that became PURPA, defined "electric utility" as "any person, State Agency or Federal Agency, which sells electric energy." This is precisely the definition of the term that appears in section 3(4) of PURPA. *Compare* H.R. Rep. No. 496, 95th Cong. 1st Sess., Part 4 at 133 *with* 16 U.S.C. 2602(4). The Senate Committee Report on the Public Utility Regulatory Policies Act of 1977 (the 1977 PURPA) tracks the description of cooperatives and their place in the electric utility industry that appears in the House Committee's report on H.R. 6831. The 1977 PURPA would also have given the Commission general authority to order transmission service. *See* S. Rep. No. 442, 95th Cong., 1st Sess. at 7–10, 32. Moreover, the House Committee

Congress' silence with respect to *Dairyland* and *Salt River* is not surprising; in PURPA, Congress was not giving the Commission authority over REA-funded cooperatives as public utilities. Rather, Congress gave the Commission new authority to order interconnection and wheeling, but (as discussed *infra*) also provided that the exercise of such authority, in and of itself, would not make such entities public utilities. There was, then, no need to address *Dairyland* and *Salt River*.

There is further evidence in the legislative history that this view is correct. The Senate's final debates on the PURPA Conference Report reveal that sections 210, 211, and 212 arose partly in response to a situation in which the Electric Reliability Council of Texas (ERCOT), which contains a major portion of the electric utilities in Texas, had operated in electrical isolation from the rest of the United States for a number of years. Several of the major utilities in ERCOT strongly opposed interconnection between ERCOT and the Southwest Power Pool.[22] Explaining the rationale behind the jurisdiction that Congress was giving to the Commission in sections 210, 211 and 212 to order interconnection and transmission service, Senator Domenici, a member of the Senate Energy and Natural Resources Committee and one of the conferees, stated:

> The old act clearly defined a limited area of jurisdiction, after which if . . . [the Federal Power Commission] had jurisdiction they had very broad jurisdiction with reference to the companies. Then . . . [ERCOT] comes along, and we are not willing to give the Federal Power Commission a broad jurisdiction for these kinds of cases over which they had no jurisdiction intrastate, totally intrastate distributors, for instance, as one; *REA as one*, municipally owned is another, but rather we are saying if that kind of non-jurisdictional situation exists the parties or a State commission can ask the Federal Power Commission to assume jurisdiction for the very limited purposes stated here, the interconnect we have described here so specifically.[23]

By the time Congress enacted PURPA in 1978, cooperatives were no longer merely radial operations, supplying electric energy to farms. Many, if not most, cooperatives were connected to the national transmission system and often received their electric energy from other utilities. When Congress decided to increase the efficiency of electric transmission and stimulate competition in the bulk power supply market, it noted the position of cooperatives within the electric utility industry and fashioned a definition of "electric utility" broad enough to include cooperatives among the entities over which the Commission has jurisdiction when ordering interconnection and transmission service. The Conference Report on PURPA highlighted this inclusion when it noted that PURPA gave the Commission certain "limited jurisdiction . . . for electric utilities . . . not otherwise subject to Commission jurisdiction under part II of the act."[24]

Alabama Power further argues that even if rural cooperatives were found to be entities described in sections 210, 211 and 212, section 201(b)(2) limits Commission jurisdiction to require compliance with the reporting requirements under section 213.[25] As discussed below, this argument is simply misplaced.

Sections 211 and 212, as enacted in PURPA, provided that certain entities, including any "electric utility," could seek an order requiring transmission services from any other "electric utility." Because electric utilities are not all public utilities otherwise subject to the Commission's jurisdiction under the FPA, section 211 broadened the category of entities over whom the Commission had transmission jurisdiction. However, Congress also added section 201(b)(2) to the FPA, to specify that *compliance* with an order under the Commission's new authority over interconnection and transmission services (sections 210, 211 and 212 of the FPA) "shall not make an electric utility or other entity subject to the jurisdiction of the Commission for any purposes other than [for purposes of carrying out such provision or for purposes of applying the FPA's enforcement authorities with respect to such provisions]."[26] In other words, Congress ensured that compliance with an order under 210, 211 or 212, in and of itself, does not subject an entity to the Commission's jurisdiction as a public utility. When Congress in the Energy Policy Act changed the potential target of a section 211 order from any "electric utility" to a "transmitting utility," it did not change section 201(b)(2).

Section 201(b)(2) provides Alabama Electric no help. The provision is important if an entity must comply with an order of the Commission under 210, 211 or 212. The Commission has not issued such an order to Alabama Electric. Moreover, even if it did issue such an order, and even if section 201(b)(2) were brought into play, this would have no implications regarding section 213 jurisdiction.[27]

In the Energy Policy Act, Congress directed the Commission to obtain information under section 213(b) precisely to aid implementation of the expanded authority to order transmission services under section 211.[28] Entities requesting transmission service orders are first required to make requests for transmission service to the transmitting utility, and the type of information that the Commission is gathering in Order No. 558 is the type of information that an entity may need to make such a request.[29] To carry out our responsibilities under section 213(b), the Commission must obtain this information from all transmitting utilities, including those which are electric cooperatives.

Based on our reading of the statutory language, the statutory purpose, the legislative history and the case law, we conclude that the new reporting requirements apply to cooperatives which own or operate electric power transmission facilities which are used for the sale of electric energy at wholesale. We will, therefore, deny Alabama Electric's request for rehearing.[30]

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surveyed the electric industry and described the place of cooperatives within the industry in considerable detail. *See* H.R. Rep. No. 496, 95th Cong. 1st Sess. Part 4, at 126–133 (1977).

[22] See Remarks of Senator Bartlett, Senator from Oklahoma, a member of the Senate Committee on Energy and Natural Resources and one of the conferees, regarding the provisions of sections 202 through 204 of PURPA, which became sections 210, 211, and 212 of the FPA, 124 Cong. Rec. S17808 (October 9, 1978).

[23] 123 Cong. Rec. S16376 (October 5, 1977)(emphasis supplied).

[24] H.R. Rep. No. 1750, 95th Cong., 2d Sess. 93 (1978); *see also id.* at 94–95.

[25] Request for Rehearing at 6.

[26] 16 U.S.C. 824(b)(2). See H.R. Rep. No. 1750, 95th Cong., 2nd Sess. at 95 (1978).

[27] Of course, a transmitting utility subject to section 213(b) that is not a public utility will not become a public utility by virtue of its compliance with section 213(b) or with our final rule.

[28] While the entities that could be subject to a section 211 order were narrowed, the Commission's ability to order transmission was made easier as a result of the Energy Policy Act amendments.

[29] Moreover, we note that in 1981 and 1982, in compliance with the Commission's qualifying facility regulations, Alabama Electric, as a "non-regulated *electric utility*," 16 U.S.C. 2602(9) (emphasis supplied), filed reports with the Commission, indicating how it would comply with section 210 of PURPA. See Alabama Electric Cooperative PURPA Implementation Plan, filed March 23, 1981, revised July 12, 1982, Docket No. IR–000–273. (Alabama Electric filed under a then-existing Commission regulation that appeared at 18 CFR 292.401(c). The Commission has since deleted this regulation). Alabama Electric apparently believed that it was an electric utility as defined in section 3(4) of PURPA (any person . . . which sells electric energy) but not an electric utility as defined in the FPA definitions.

[30] We also note that under § 141.51 of the Commission's regulations, 18 CFR 141.51, any electric utility, as defined under PURPA section

Continued

The Commission orders:

Alabama Electric's request for rehearing is hereby denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–30549 Filed 12–14–93; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 91F–0358]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of styrene block polymers with 1,3-butadiene, hydrogenated, as components of articles that contact food. This action is in response to a petition filed by W. R. Grace & Co.

DATES: Effective December 15, 1993; written objections and requests for a hearing by January 14, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 30, 1991 (56 FR 49485), FDA announced that a food additive petition (FAP 0B4231) had been filed by W. R. Grace & Co. (Dewey and Almy Division), 55 Hayden Ave., Lexington, ME 02173, proposing that § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210) be amended to provide for the safe use of styrene block polymers with 1,3-butadiene, hydrogenated, as components of articles that contact food. The agency concludes that although the additive will be used exclusively in the manufacture of closures for food containers, it is more properly regulated under § 177.1810 *Styrene block polymers* (21 CFR 177.1810).

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of the food additive is safe, and that § 177.1810 should be amended as set forth below.

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 14, 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 177

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 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 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 177.1810 is amended in the table in paragraph (b) by redesignating entry 3 as entry 3 (i) and revising it and by adding new entry 3 (ii) to read as follows:

§ 177.1810 Styrene block polymers.

* * * * *

(b) Specifications:

3(4), 16 U.S.C. 2602(4), operating a control area must complete and file with the Commission the applicable schedules in FERC Form No. EIA–714. Alabama Electric has been filing those schedules for years and filed them again this year. Yet the PURPA definition of "electric utility" is virtually identical to the FPA definition of the same term, and there is no more legislative direction specific to the PURPA definition than to the FPA definition. Alabama Electric can hardly concede that it is an "electric utility" for the purposes of PURPA, and still maintain that it is not an "electric utility" under the virtually identical FPA definition of the term.

Styrene block polymers	Molecular weight (minimum)	Solubility	Glass transition points	Maximum extractable fraction in distilled water at specified temperatures, times, and thicknesses	Maximum extractable fraction in 50 percent ethanol at specified temperatures, times, and thicknesses
* *	*	*		* *	*
3. (i) Styrene block polymers with 1,3-butadiene, hydrogenated (CAS Reg. No. 66070–58–4): for use as articles or as components of articles that contact food of Types I, II, IV–B, VI, VII–B, and VIII identified in Table 1 in § 176.170(c) of this chapter.	16,000	do	-50 °C (-58 °F) to -30 °C (-22 °F) and 92 °C (198 °F) to 98 °C (208 °F).	0.002 mg/cm² (0.01 mg/in²) of surface at reflux temperature for 2 hr on a 0.071 cm (0.028 in) thick sample.	0.002 mg/cm² (0.01 mg/in²) of surface at 66 °C (150 °F) for 2 hr on a 0.071 cm (0.028 in) thick sample.
(ii) Styrene block polymers with 1,3-butadiene, hydrogenated (CAS Reg. No. 66070–58–4): for use at levels not to exceed 42.4 percent by weight as a component of closures with sealing gaskets that would contact food of Types III, IV–A, V, VII–A, VIII, and IX identified in Table 1 in § 176.170(c) of this chapter, and in condition of use D as described under Table 2 in § 176.170(c) of this chapter.	16,000	do	do	do	Do.

* * * * *

Dated: December 6, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–30431 Filed 12–14–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervision Federal Prisoners: Prisoners Transferred to the United States Under Prisoner-Exchange Treaties

AGENCY: Parole Commission, Justice.

ACTION: Interim rule with request for public comment.

SUMMARY: The U.S. Parole Commission is amending its regulation concerning transfer treaty prisoners to suspend the requirement for a downward adjustment of 15 percent from the release date determined by the Commission under 18 U.S.C. 4106A and to remove a provision authorizing the Commission to reopen a decision if the prisoner is denied good time credit for prison misconduct. The amendment reflects the new policy of the U.S. Bureau of Prisons which now deducts foreign and domestic good time credits from the release date set by the Commission under 18 U.S.C. 4106A. The 15 percent downward adjustment was instituted by the Commission to compensate transferees, whose release dates are set pursuant to the sentencing guidelines, for the absence of the statutory good time deductions that would reduce the guideline sentences of similarly-situated U.S. Code offenders. An interim rule suspending that downward adjustment is necessary because, in three judicial circuits, federal appellate courts have now ruled that the U.S. Bureau of Prisons must deduct a transferee's foreign and domestic good time credits under 18 U.S.C. 4105(c)(1) from the release date established by the Commission.

DATES: Effective Date: The interim rule takes effect December 15, 1993. *Comments*: Comments must be submitted by February 14, 1994 in order to be received by the Commission prior to consideration of a final rule.

ADDRESSES: Send comments to Richard K. Preston, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Office of General Counsel, U.S. Parole Commission, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission introduced the 15 percent downward adjustment in release dates for transferees and the reopening for institutional misconduct at 58 FR 30703 (May 27, 1993). The Commission announced that it was adopting a provision that required each release date determined under 18 U.S.C. 4106A contain at 15 percent downward adjustment recognizing that under the Bureau of Prisons policy in effect at the time, that all good time (both foreign and domestic) was deducted from the full term of the foreign sentence pursuant to 18 U.S.C. 4105. The Commission recognized that this interpretation of the law raised a legitimate concern about disparity between transferees and similarly-situated U.S. Code offenders as well as problems of discipline for the Bureau of Prisons. To ameliorate this disparity, the Commission adopted the 15 percent adjustment to reflect the potential good time that would reduce the guideline sentence of a similarly-situated U.S. Code offender. The rule also instituted a means for modifying the adjusted release date if the transferee violated prison rules. This reopening was found to be necessary because under the Bureau of Prisons policy then in effect, the withholding of good time credit pursuant to 18 U.S.C. 3624(b) only had a real impact in cases where the Commission had continued the transferee to expiration of his foreign sentence.

Since that time, three federal appellate courts (see *Ajala v. United States Parole Comm'n*, 997 F.2d 651 (9th Cir.), *reh'g denied*, _____ F.2d. _____ (9th Cir. Oct. 13, 1993); *Trevino-Casares v. United States Parole Comm'n*, 992 F.2d 1086 (10th Cir.), *reh'g denied*, _____ F.2d _____ (10th Cir. Aug. 10, 1993); *Asare v. United States Parole Comm'n*, 2 F.3d 540 (4th Cir. 1993)) have held that the Bureau of Prisons must deduct the offender's foreign and domestic service credits from the release date established by the

U.S. Parole Commission under 18 U.S.C. 4106A. These courts have found that Congress intended that a release date be treated as a new sentence for good time calculation purposes. In light of these decisions, the Bureau of Prisons has decided to apply the foreign and domestic good behavior credits to the release data set by the Commission.

Accordingly, for transferees in whose cases the Bureau of Prisons will apply foreign and domestic good time credits to the 4106A release date, the 15 percent downward adjustment must be suspended in order to avoid giving the transferee more credits than are deserved. Similarly, since the Bureau of Prisons can now adequately sanction a transferee for an institutional rule infraction, the Commission must suspend the reopening provision adopted in May, 1993, at 28 CFR 2.62(k)(7). At the present time, the Bureau of Prisons is correctly treating the original release date established by the Commission under the sentencing guidelines before the 15 percent adjustment as the baseline for service credit deductions. This interim rule confirms that practice, and precludes an underserved windfall for transfer treaty prisoners as well as prevents any double sanction for an institutional rule infraction.

Implementation

This rule will be applied at all transfer treaty hearings held after this date. The rule is also to be applied retroactively to prior determinations where the Commission adjusted the guidelines release date by 15 percent and/or reopened a case under 28 CFR 2.62(k)(7). The rule will not apply to transferees who have already been released and it will not serve to modify or reduce any period of supervised release that a transferee is now serving.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a major rule within the meaning of Executive Order 12291. This rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the U.S. Parole Commission adopts the following amendment to 28 CFR Part 2.

The Amendments

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR Part 2, § 2.62 is amended by revising the second sentence of paragraph (a)(5) to read as set forth below.

3. 28 CFR Part 2, § 2.62 is further amended by revising paragraph (i)(2) to read as set forth below.

4. 28 CFR Part 2, § 2.62 is further amended by removing paragraph (k)(7) and by redesignating paragraph (k)(8) as new paragraph (k)(7).

§ 2.62 Prisoners transferred pursuant to treaty.

(a) *Applicability, jurisdiction and statutory interpretation.*

* * * * *

(5) * * * However, the release date shall be treated by the Bureau of Prisons as if it were the full term date of a sentence for the purpose of establishing a release date pursuant to 18 U.S.C. 4105(c) and 18 U.S.C. 3624(a). The Bureau of Prisons release date shall supersede the release date established by the Parole Commission under 18 U.S.C. 4106A and shall be the date upon which the transferee's period of supervised release commences.

* * * * *

(i) *Final decision.*

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(2) Whenever the Bureau of Prisons applies service credits under 18 U.S.C. 4105 to a release date established by the Commission, the release date used by the Bureau of Prisons shall be the date established by the Parole Commission pursuant to the sentencing guidelines and not a date that resulted from any adjustment made to achieve comparable punishment with a similarly-situated U.S. Code offender. The application of service credits under 18 U.S.C. 4105 shall supersede any previous release date set by the Commission. The Commission may, for the purpose of facilitating the application of service credits by the Bureau of Prisons, reopen any case on the record to clarify the correct release date to be used, and the period of supervised release to be served.

* * * * *

Dated: November 5, 1993.

Edward D. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 93–30529 Filed 12–14–93; 8:45 am]

BILLING CODE 4410–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). Part 2619 contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. Part 2676 contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in January 1994, and to multiemployer plans with valuation dates in January 1994.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–778–8850 (as of December 20, 1993, use 202–326–4024) (202–778–8859 for TTY and TDD (as of January 24, 1994, use 202–326–4179)). (There are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the January 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", *i.e.*, all benefits provided under the plan as of the plan termination date, using the