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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[Docket Nos. AO-245-A8 & AO-250-A6]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Order Amending the Orders

Correction

In FR Doc. 85-934 beginning on page 1429 in the issue of Friday, January 11, 1985, make the following corrections:

§ 907.22 [Corrected]

On page 1431, first column, in § 907.22(d), first line, insert the word "are" between "who" and "not". In the fourth line, insert the following after the word "members,": two alternate grower members, two additional alternate grower members,

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 210

Petroleum Allocation and Price Regulations; Reduction of Recordkeeping Requirements

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to Executive Order 12287, and to eliminate unnecessary and costly regulatory burdens on firms and on the public, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) amends 10 CFR 210.1, which requires the maintenance of oil pricing and allocation records pursuant to 10 CFR Parts 210, 211, and 212. This amendment eliminates this recordkeeping requirement for all firms, except those with records which are essential to the timely and orderly completion of the oil pricing enforcement program and those with necessary Entitlements-related records.

EFFECTIVE DATE: February 5, 1985.

FOR FURTHER INFORMATION CONTACT:

James N. Solit, Office of Enforcement Programs, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6500.

Jack Vandenberg, Public Information Officer, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-5810.

SUPPLEMENTARY INFORMATION:

I. Background

More than ten years ago petroleum price and allocation controls were imposed pursuant to the Emergency Petroleum Allocation Act of 1973 (EPAA), as amended (15 U.S.C. 751 *et seq.*). To aid the government's enforcement of these controls, firms and individuals subject to the controls were required to comply with extensive reporting and recordkeeping requirements. Under the requirements, these firms and individuals had to generate and maintain those records necessary to demonstrate compliance with the controls.

On January 28, 1981, in Executive Order 12287 (46 FR 9909, January 30, 1981), the President removed all remaining price and allocation controls from crude oil and refined petroleum products. The Order continued the reporting and recordkeeping requirements then in effect but directed the Secretary of Energy to "promptly review those requirements and . . . [to] eliminate them, except for those that are necessary for emergency planning and energy information gathering purposes required by law."

On March 30, 1981, ERA eliminated or modified most of the reporting requirements. Simultaneously, however, the agency adopted 10 CFR 210 to require all firms to maintain the historical records compiled as a result of the requirements in 10 CFR Parts 210, 211, and 212 that were in effect on January 27, 1981, the final day of controls. (46 FR 20508, April 3, 1981). ERA continued these recordkeeping requirements to enable DOE to bring its enforcement activity to an orderly conclusion.

Subsequently, ERA proposed to exempt certain types of firms from the recordkeeping requirement. (48 FR 261, January 4, 1983). All of the public comments received supported the adoption of this proposal. However, because of enforcement litigation which required for a limited period of time the continuation of the recordkeeping requirements, ERA withdrew the proposal. (48 FR 55577, December 14, 1983). In the notice withdrawing the proposal, ERA reaffirmed its intention to reduce the burden of unnecessary recordkeeping by stating:

> ERA recognizes the cost and burden the maintenance of records pursuant to § 210.1 imposes on firms. Thus, ERA will monitor the litigation process and, when circumstances allow, will take appropriate action to reduce the record preservation requirements of the regulations. (48 FR 55577, December 14, 1983).

In the year following the withdrawal of that proposal, the number of firms having records necessary to DOE for enforcement purposes decreased substantially. On November 14, 1984, ERA thus proposed to exempt most firms from the recordkeeping requirements. (49 FR 45445, November 16, 1984). On this proposal ERA received ten comments (counting two letters from one commenter as one comment), which

will be discussed in pertinent portions of this preamble. All but two comments urged adoption of the proposal.

II. Amendment

A. Effect of Prior Recordkeeping Requirements

The recordkeeping requirements that were in effect immediately prior to the adoption of this amendment forced each of the more than 200,000 firms that were subject to the rules and regulations under the EPAA to maintain records relating to their EPAA compliance for the entire eight-year period of controls. Thus, many firms had been required to maintain records for almost twelve years.

In comparison, the Internal Revenue Service normally requires firms to maintain their records for three years. (26 CFR 1.6001–1 and 301.6501(a)–1). The Securities and Exchange Commission requires firms to maintain most of their records for not more than six years. (17 CFR 240.17a–4; 270.31a–2; and 275.204–2). The Federal Trade Commission generally requires firms to maintain their records for four years or less. (16 CFR 300.31; 303.39; 305.15; 453.6; and 703.6).

The prior DOE requirements applied not only to firms subject to ERA audits and enforcement actions; they also extended to firms and individuals that were never charged with alleged regulatory violations. Additionally, unless otherwise relieved of such requirements, they continued to apply to firms that had fully resolved all regulatory disputes with DOE.

Those requirements remained in place for nearly four years after decontrol and during that time imposed on thousands of firms—especially retailers, jobbers, and other small business concerns—heavy burdens and costs which ultimately were passed on to the public in the form of higher prices. They also diverted financial resources from economically productive activities to the maintenance of records, thus lessening productivity and efficiency.

The comments received from the Society of Independent Gas Marketers of America (SIGMA) point out the burdens that those requirements imposed on small businesses. SIGMA, a trade association of independent, private-brand marketers and chain retailers of motor fuels, stated:

> ERA should adopt its proposed rule. The records required to be generated and retained are not conventional business records ordinarily generated and maintained by petroleum marketers, including SIGMA members. These marketers generally are small businesses who otherwise would not generate and keep such records, particularly when their small management staffs are pressed in most instances to handle the scheduling and accomplishment of motor fuel purchases and deliveries against the competition of major oil companies. ERA appropriately recognizes their recordkeeping burden in proposing the rule change.
>
> Moreover, further retention of records generated to demonstrate compliance with DOE's now-expired regulations is unnecessary for most product resellers and retailers because ERA has indicated that it will not initiate further enforcement activity of petroleum marketers. Petroleum marketers, thus, should be permitted to destroy records, many of which are over 10 years old. This is a very long time for small businesses to maintain such records, particularly when few, if any, have microfilm programs or sophisticated systems for document filing and recall. By contrast, the Internal Revenue Service requires that records be retained for only three years. (SIGMA comments, p. 2).

After carefully reviewing the recordkeeping requirements in effect immediately prior to the adoption of this amendment, ERA determined that the negligible benefits from requiring all firms to continue maintaining all of their records was clearly outweighed by the burden imposed on American businesses and consumers.

Therefore, pursuant to Executive Order 12287, ERA proposed on November 14, 1984, to eliminate the recordkeeping requirements for all firms except for those having records necessary to DOE for enforcement purposes. (49 FR 45445, November 16, 1984). Today ERA adopts that proposal, with a few modifications, as a final rule.

Two commenters argued that because most enforcement work has been completed, the benefits of continuing any recordkeeping requirements are substantially less than the burdens imposed by such requirements. These commenters, therefore, called for the immediate elimination of all recordkeeping requirements. ERA appreciates the need to end the recordkeeping requirements as soon as possible, but believes that the limited requirements in this amendment are necessary at this time for the orderly and timely completion of the enforcement program. However, ERA will continue to review the remaining recordkeeping requirements and will take prompt action to reduce them further, and to eliminate them altogether, as soon as possible.

Firms still required by this final rule to maintain records will be subject to 10 CFR 210.1 only until such records are no longer necessary to DOE for enforcement purposes. Firms exempted from further recordkeeping may wish, however, to retain voluntarily their records for other reasons, such as support for claims in proceedings administered by the Office of Hearings and Appeals (OHA) pursuant to 10 CFR Part 205, Subpart V.

Concerning Subpart V proceedings, one commenter opposed exempting any firm from the recordkeeping requirements until all such proceedings are finally concluded. The commenter argued that records of all firms should be available to claimants in Subpart V proceedings. For the reasons discussed in this preamble, it would be unreasonable and unfair to continue imposing recordkeeping burdens on all firms, including those which will never become involved in Subpart V proceedings, until all such proceedings are finally concluded.

However, as is more fully set forth below, ERA has determined that certain records of firms whose restitutionary payments are presently subject to distribution by DOE are necessary to DOE in determining the proper distribution of such payments. Therefore, this amendment revises the proposed category of "Firms Under Orders for Restitutionary Payments" to require these firms to maintain the records necessary to DOE for distribution purposes.

B. Firms Required to Maintain Records

Under this amendment, the firms required to maintain records have pending or unresolved enforcement matters, have records essential for the preparation and prosecution of enforcement cases involving other firms, have records necessary for the distribution of restitutionary payments, or have necessary Entitlements-related records. To the extent possible, firms are required to maintain only those records relevant to the requirements of the enforcement or Entitlements program, thus exempting the vast majority of firms from the recordkeeping requirements and permitting many others to reduce their current inventory of records. The amendment makes a technical change in the proposed rule to clarify this point.

Those firms still required to maintain records fall within the limited categories described below. *All other firms are exempted immediately from the recordkeeping requirements of 10 CFR 210.1.*

A firm may fall into more than one category. Such a firm must comply with the recordkeeping requirements for all categories in which it is included. Also, as a firm progresses through the enforcement process, it may move from one category to another. For example, a firm which is presently under audit may subsequently become a party in

litigation. Therefore, the final rule revises the proposal to make clear that when a firm drops out of one category and is no longer subject to the recordkeeping requirements of that category, the firm remains subject to the recordkeeping requirements of any other category in which it may fall.

1. Firms Which Are Parties in Litigation

At this time there are pending before administrative and judicial tribunals enforcement cases brought by ERA against firms alleged to have violated the price and allocation regulations. Independently of any recordkeeping requirement, these firms, as parties to administrative or judicial litigation, have a duty not to destroy evidence relevant to the proceedings in which they are involved. To eliminate future disputes about which particular records contain evidence relevant to a certain proceeding, ERA proposed to require a firm which is a party in litigation with DOE to retain all of its records until the final conclusion of the litigation.

Two commenters suggested ERA require firms in litigation to maintain only those records containing evidence relevant to the proceedings in which the firms are parties. ERA will study this suggestion as part of its continuing review of the remaining recordkeeping requirements. However, because of the need to avoid disputes concerning relevancy which could delay completion of the enforcement program, ERA is requiring at this time that firms in litigation with DOE maintain all of their records.

The records of some firms in this category are also needed by DOE for other purposes. For example, certain records of a firm in litigation may also be (unknown to the firm) needed by the Department as third-party records. The requirement for this firm to maintain these third-party records may continue after the final conclusion of the litigation.

To ensure that such a firm will maintain, after the conclusion of litigation, those records which are still needed by DOE, the amendment revises the proposal to provide that DOE will notify in writing each firm which is a party in litigation of the final resolution of the litigation and whether or not any of its records need to be maintained for a further period. If the firm is still required to maintain certain records, DOE will notify the firm when such records are no longer needed.

The amendment also makes a technical change in the proposed definition of "a party in litigation" to include Notices of Probable Disallowance and Proposed Orders of Disallowance. A Notice of Probable Disallowance and a Proposed Order of Disallowance are analogous to a Notice of Probable Violation and a Proposed Remedial Order, respectively, and are issued in transfer pricing cases.

Therefore, under the amendment a firm is a party in litigation with DOE if: (a)(1) The firm has received a Notice of Probable Violation, a Notice of Probable Disallowance, a Proposed Order of Disallowance or a Proposed Remedial Order; or (2) the firm and DOE are parties in a lawsuit arising under the EPAA or the regulations issued thereunder; and (b) DOE has not notified the firm in writing of the final (*i.e.*, non-appealable) administrative or judicial resolution or settlement regarding the alleged violations, or DOE has not informed the firm in writing that the government has concluded its review of the matter. As the amended rule expressly states, a firm which was not a party in litigation at the time the amendment became effective may subsequently join this category at any time and become subject to its recordkeeping requirements.

The amendment requires a firm which is a party in litigation with DOE to maintain all of its records until the firm is notified in writing by DOE of the final resolution of the litigation and that none of its records are needed for other purposes.

2. Firms With Restitutionary Payments Subject to Distribution

ERA proposed to establish a category of firms known as "Firms Under Orders for Restitutionary Payments." The proposed category covered firms subject to an obligation to make restitutionary payments over an extended time. The proposal required each such firm to maintain records until the firm completed its payments.

One commenter suggested that ERA require each firm in this proposed category to maintain relevant records until the final resolution of all judicial and administrative restitution proceedings involving payments made by that firm. This commenter argued that because some potential refund claimants lack the records necessary to prove their claims, ERA should require the firms subject to a restitutionary obligation to maintain the records needed by such claimants to establish their claims.

Another commenter, the Director of OHA, requested ERA to require those firms, identified by OHA, whose restitutionary payments are presently subject to distribution by DOE, to maintain for a limited time certain records relevant to the period covered by the settlement or order mandating the restitutionary payments. The Director states that in some Subpart V proceedings OHA needs certain records of such firms to identify potential claimants and to establish a method of allocating refunds among successful claimants. The Director suggested that ERA require each firm which has completed making restitutionary payments but whose payments are still subject to distribution by DOE, to maintain its relevant records until June 30, 1985, unless DOE extends this period on a firm-by-firm basis. The Director also suggested that ERA require each firm which is still making restitutionary payments to maintain the relevant records until six months after the firm completes making such payments, unless DOE extends this period on a firm-by-firm basis. A firm in either group would be required to maintain its records for a shorter period if DOE notified the firm that it no longer needed its records for distribution purposes.

After careful consideration of these comments, ERA decided to revise the proposed category to cover those firms whose restitutionary payments are presently subject, to distribution by DOE. ERA designated the revised category as "Firms With Restitutionary Payments Subject to Distribution."

Therefore, the amendment requires each firm which, as of November 30, 1984, has completed making restitutionary payments but whose payments are still subject to distribution by DOE, to maintain relevant records. Specifically, each such firm must maintain the records containing the sales volume data and customers' names and addresses for the period covered by the consent order or administrative or judicial order which imposed the restitutionary obligation. Each firm must maintain these records until June 30, 1985, unless ERA extends this period on a firm-by-firm basis. If before the end of this period or an individual firm's extension, ERA determines that the firm's records are no longer needed for distribution purposes, ERA will so notify the firm in writing and the firm will no longer be required to maintain its records.

The amendment also requires each firm which, as of November 30, 1984, was still required to make restitutionary or other payments, including sums for civil penalties, to maintain all of its records until the firm completes making such payments. This requirement applies to restitutionary payments to be made either to DOE or to another party. If the payments are late, the completion of payment requires the restitution of

principal and full interest at the applicable rates. After completing such payments, the firm will be required to maintain relevant records, as specified above, for six months, unless ERA extends this period on a firm-by-firm basis. If before the end of the six-month period or an individual firm's extension, ERA determines the firm's records are no longer needed for distribution purposes, ERA will so notify the firm in writing and the firm will no longer be required to maintain its records.

As was suggested by the Director of OHA in his comments, the revised category of "Firms with Restitutionary Payments Subject to Distribution," covers only those firms whose payments are presently subject to distribution by DOE. DOE will include in every future order which imposes a refund obligation a requirement that the firm subject to the order maintain for an appropriate period the records needed by DOE to distribute the firm's payments.

ERA is notifying the firms which have completed making payments by publishing, as an Appendix B to this final rule, a list of all such firms. This list includes all such firms identified by OHA as having records necessary to OHA in Subpart V proceedings. ERA is notifying the firms still required to make payments by publication of the final rule in the **Federal Register.**

3. Firms Under Audit

A firm is considered under audit if: (a) The firm has been audited by ERA and has not received a Notice of Probable Violation or a Proposed Remedial Order and ERA has not informed the firm in writing that ERA will take no enforcement action; (b) ERA is presently conducting an audit; or (c) ERA has notified the firm of an audit but the firm has refused to provide records and is subject to a subpoena. Any firm that is under audit or that has been notified that it is subject to an audit has a duty to maintain records relevant to that investigation. Relevant records include all records necessary to establish historical prices or volumes which serve as the basis for determining the lawful prices or volumes of any subsequent regulated transaction which is subject to audit. Firms under audit include firms with audits currently in progress, firms that have been notified of audits but have refused to provide records and are subject to subpoena enforcement action and firms with completed audits in which ERA has not made a determination to initiate a formal enforcement action (such as issuing a Proposed Remedial Order).

a. *Firms with Audits in Progress or with Completed Audits in Which ERA Has Not Yet Made a Determination to Initiate a Formal Enforcement Action.* ERA proposed to require firms presently under audit which do not have outstanding subpoenas or do not have subpoenas enforced after November 1, 1983, and firms with completed audits in which ERA has not yet made a determination to initiate a formal enforcement action, to maintain their records for a limited period of time. The proposal required each firm to maintain its records until June 30, 1985, unless ERA extended this period on a firm-by-firm basis. The proposal also stated that a firm would be required to maintain its records for a shorter period if ERA notified the firm that it no longer needed the firm's records for enforcement purposes.

Two commenters opposed providing for any extensions beyond June 30, 1985. ERA believes that by June 30, 1985, it will have substantially completed the audit-related enforcement work involving the firms in this category and, therefore, expects there to be few extensions of this period. However, ERA wishes to preserve its ability to do so, in the event that unanticipated situations occur.

Therefore, the amendment adopts the proposal and requires each of these firms, which ERA notified by mail prior to publication of this final rule, to maintain its records unitl June 30, 1985, unless ERA extends this period on a firm-by-firm basis. It before the end of this period or an individual firm's extension, ERA determines that it no longer needs the firm's records for enforcement purposes, ERA will so notify the firm in writing and the firm will no longer be required to maintain its records.

Thus, a firm is required to maintain its records until one of the following: (1) June 30, 1985, unless on an individual firm basis the period is extended; (2) the end of the firm's extension; or (3) the firm receives written notification that ERA no longer needs the records.

By June 30, 1985, or by the end of an individual firm's extension, each of the firms in this group will either: (1) Become a party in litigation (as defined in paragraph 1 above), in which case the firm will still be required to maintain its records; or (2) not become a party in litigation, in which case the firm will no longer be required to maintain its records, unless the firm is required to do so in accordance with the terms of an order which imposes a restitutionary obligation, as discussed in paragraph 2 above. However, such a firm may still be required to maintain certain records because of the firm's inclusion in another category.

If a firm under audit should discontinue its voluntary cooperation and require a subpoena, such a firm will then be subject to the recordkeeping requirements for firms which have outstanding or recently enforced subpoenas, as discussed below.

b. *Firms Which Have Outstanding or Recently Enforced Subpoenas.* A number of firms subject to audit have refused to allow ERA to examine their records, with the result that the agency has issued subpoenas for the records sought. In many cases, judicial enforcement of the subpoenas has been required. Due to delays imposed by these actions, along with the uncertainties this lack of cooperation brings to program management during the final phase of the enforcement work, the amount of time allocated to complete audits for firms which have received subpoenas is substantially longer than that for firms that have voluntarily cooperated in an audit.

Consequently, ERA proposed to require those firms with outstanding subpoenas or which receive subpoenas in the future, as well as firms that have already provided records pursuant to a subpoena enforced after November 1, 1983, to maintain their records for two years *after* full compliance with the subpoena, or until notified in writing by ERA, whichever is sooner.

One commenter recommended that ERA require such a firm to maintain its records for only one year after full compliance with the subpoena. For the reasons discussed above, ERA audits of firms which have not voluntarily provided their records often require significant amounts of time to complete. Therefore, ERA believes it is more prudent to require such firms to retain their records for two years after subpoena compliance, unless before the end of this period ERA notifies a firm that it no longer needs the records in the enforcement process.

Therefore, the amendment in this regard is identical to the proposal and requires those firms: (1) With outstanding subpoenas; (2) which receive subpoenas in the future; or (3) have already provided records pursuant to a subpoena enforced after November 1, 1983, to maintain their records for two years after full compliance with the subpoena. For purposes of this final rule, a firm is in full compliance with a subpoena if ERA has notified the firm in writing that it is in full compliance with the subpoena, or if ERA has received from the firm a sworn certification of compliance with the subpoena as required by 10 CFR 205.8. If, prior to the end of this two-year period, the firm

becomes involved in litigation with DOE relating to its pricing or allocation practices during the period of controls, that firm will then be subject to the recordkeeping requirements applicable to firms which are parties in litigation, as discussed in paragraph 1 above, or if, prior to the end of this two-year period, the firm is issued an order which imposes a restitutionary obligation, the firm will then be subject to the recordkeeping requirements prescribed by that order. Such a firm may also be required to maintain certain records because of the firm's inclusion in another category.

4. Inquiries Relating to Newly Discovered Oil Reports

As a result of an opinion by the Temporary Emergency Court of Appeals in *Seneca Oil Co.* v. *Department of Energy* (712 F.2d 1384 [TECA 1983—], which resolved a regulatory interpretation relating to the definition of "newly discovered" crude oil, ERA is having to obtain supplemental data from certain firms on crude oil production they reported during 1978 and thereafter.

ERA proposed to require these firms, which reported the production of "newly discovered" crude oil in 1978 and thereafter, to maintain the crude oil production records which are necessary to establish that the crude oil qualifies as "newly discovered" under 10 CFR 212.79, together with certain records for properties from which oil certified as "newly discovered" was sold.

ERA has determined that it can more exactly define the time period involving the needed records. The "newly discovered" category existed from June 1, 1979, through January 27, 1981; however, to determine whether crude oil qualifies as "newly discovered", ERA must review certain records for 1978 and prior years.

Therefore, the amendment requires these firms to retain certain production records for crude oil reported as "newly discovered" from June 1, 1979, through January 27, 1981, along with production and sales records from certain prior years for the properties from which this oil was sold. Prior to publication of this final rule, ERA notified by mail each firm in this category and identified the records which that firm must retain pursuant to this amendment.

The proposal also required these firms to retain these records until June 30, 1985, unless ERA on a firm-by-firm basis extended this period. In addition, the proposal stated that a firm would be required to maintain its records for a shorter period if ERA notified a firm that it no longer needed the firm's records for enforcement purposes.

One commenter opposed providing for any extensions beyond June 30, 1985. ERA believes that by June 30, 1985, it will have substantially completed this phase of the enforcement program and, therefore, expects there to be few, if any, extensions of this period. However, ERA believes it should preserve its ability to extend the period in the event that unanticipated situations occur.

For this reason the amendment requires each of these firms to maintain these records until June 30, 1985, unless ERA on a firm-by-firm basis extends this period. If before the end of this period or an individual firm's extension, ERA determines that it no longer needs the firm's records for enforcement purposes, ERA will so notify the firm in writing and the firm will no longer be required to maintain its records.

Thus, a firm is required to maintain its records until one of the following: (1) June 30, 1985, unless on an individual firm basis the period is extended; (2) the end of the firm's extension; or (3) the firm receives written notification that ERA no longer needs the records.

By June 30, 1985, or by the end of an individual firm's extension, each of the firms in this group will either: (1) Become a party in litigation (as defined in paragraph 1 above), in which case the firm will still be required to maintain its records; or (2) not become a party in litigation, in which case the firm will no longer be required to maintain its records, unless the firm is required to do so by an order which imposes a restitutionary obligation, as discussed in paragraph 2 above. The firm may also be required to maintain certain records because of the firm's inclusion in another category.

5. Third-Party Records

In limited instances, DOE needs the records of one firm in support of enforcement work involving another firm. Such records are known as third-party records. The proposal required each of the firms having such records to retain them until June 30, 1985, unless DOE extended that period on a firm-by-firm basis. The proposal also stated that a firm would be required to maintain its records for a shorter period if DOE notified that firm that it no longer needed the firm's records for enforcement purposes.

Two commenters opposed providing for extensions beyond June 30, 1985. DOE has the goal of obtaining all the necessary records from all third-party firms by June 30, 1985. Therefore, DOE expects to make few extensions but desires to preserve its ability to do so in the event that it becomes necessary to subpoena the third-party records or unanticipated situations occur.

As was proposed, the amendment requires these third-party firms to retain only those records considered essential to the completion of the enforcement matters for which the records are needed. Those records considered essential will be specifically identified in a certified letter to firms identified in Appendix A to the rule. Each of these third-party firms is required to maintain the records identified by DOE until June 30, 1985, unless DOE on a firm-by-firm basis extends this period. Firms identified in Appendix A that have not received a letter will be subject to all of § 210.1(a), until otherwise notified. If before the end of this period or an individual firm's extension, DOE determines that it no longer needs a firm's third-party records for enforcement purposes, DOE will so notify the firm in writing and the firm will no longer be required to maintain its Records.

Thus, a firm is required to maintain its third-party records until one of the following: (1) June 30, 1985, unless on an individual firm basis the period is extended; (2) the end of the firm's extension; or (3) the firm receives written notification that DOE no longer needs the records.

6. Entitlements Records

One commenter suggested ERA require firms which had participated in the Entitlements program to maintain relevant records until after the conclusion of certain litigation concerning ERA's decision not to publish final Entitlements lists.

The Entitlements program was established during the period of petroleum price and allocation controls to allocate the benefits of price controls on old oil and operated, in general, to transfer money among refiners so that all refiners had approximately the same average crude oil acquisition costs. During the period of controls these transfers were given effect through the publication of Entitlements lists each month.

Following decontrol participants in the Entitlements programs submitted data to ERA for use in compiling two final Entitlements lists (the January 1981 Entitlements List and the Entitlement Adjustments List). On June 28, 1984, ERA announced its decision not to publish these lists because publication would be inconsistent with the return to a decontrolled market and the objectives of the EPAA. (49 FR 27410, July 3, 1984). This decision is currently

under challenge in *Texaco* v. *DOE*, Nos. 84–391, 84–410, and 84–456 (D. Del.).

In order to preserve the *status quo* pending the outcome of this litigation, the amendment revises the proposal to require all participants in the Entitlements program to maintain the records related to their participation in the Entitlements program until six months after the final judicial resolution (including any and all appeals) of *Texaco* v. *DOE* or until notified by ERA, whichever is sooner.

7. Notification of Firms Required to Maintain Records

ERA proposed to notify firms which are parties in litigation and firms under orders for restitutionary payments by publication of the final rule in the Federal Register. In addition, ERA proposed to notify firms under audit, firms required to maintain "newly discovered" crude oil production records, or firms required to maintain third-party records, by certified mail prior to publication of the final rule.

One commenter requested that ERA notify by certified mail all firms subject to the final rule. ERA believes that because of the nature of the litigation process, firms in litigation are fully aware that they are involved in lawsuits. ERA also decided to notify firms under audit with outstanding or recently enforced subpoenas by publication of the final rule because such firms received not only the subpoena but also a data statement (DATS) letter or similar letter indicating the beginning of the audit.

However, firms with audits in progress or with completed audits in which ERA has not determined whether to initiate a formal enforcement action, or firms required to maintain "Newly discovered" crude oil production records, may be less likely to be aware of their exact status in the enforcement process. In an effort to assist these firms in determining their exact status, ERA decided, as a matter of convenience, to notify such firms by certified mail. This notification is intended as a courtesy, and a firm's status and recordkeeping requirements ar determined by the rule.

The amendment revised the proposed category of "Firms Under Orders for Restitutionary Payments" and designated the revised category as "Firms With Restitutionary Payments Subject to Distribution." In addtion to sending courtesy letters, ERA is identifying the firms which have completed making restitutionary payments by publishing, as an appendix to the final rule a list prepared by OHA and ERA of all such firms. Those which are identified on Appendix B and/or which receive a courtesy letter are required to maintain records relevant to distribution of the restitutionary payments. Because the firms still making payments are presently subject to orders prescribing these payments, such firms will continue to be subject to all of the § 210.1(a) recordkeeping requirements.

Finally, firms whose records are needed in support of enforcement work involving another firm, except parties in litigation, will be specifically notified by letter and by publication in Appendix A. Because there is no other means by which such firms will be aware of these third-party recordkeeping requirements, identification in Appendix A will be determinative of the firm's continued obligation to maintain records and the certified notice letter will be determinative of the specific records required to be maintained.

ERA is notifying the firms which participated in the Entitlements program by publication of the final rule.

III. Procedural Matters

A. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981), requires an agency to prepare a regulatory impact analysis for any major rule. Because this final rule substantially reduces recordkeeping burdens and thus lessens costs to firms and the public, ERA has determined that this amendment is not a major rule as defined in Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), requires an agency to prepare a regulatory flexibility analysis for any rule which will have a significant economic impact on a substantial number of small entities.

Although ERA has determined that no formal regulatory flexibility analysis need be prepared, this amendment benefits many small entities by relieving them of substantial recordkeeping burdens. Therefore, this amendment furthers the objectives of the Regulatory Flexibility Act.

C. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved those recordkeeping requirements continued by this final rule and has assigned to them OMB Control Number 1903–0073.

D. Administrative Procedure Act

Paragraph (d) of 5 U.S.C. 553 provides that a final rule shall be published in the Federal Register at least 30 days before the effective date of the rule. One of the exceptions to this requirement is for substantive rules that grant an exemption or relieve a restriction. This amendment, by exempting most firms from the recordkeeping requirements, qualifies for this exemption and may be made effective less than 30 days following its publication.

E. Environmental Review

ERA has determined that the final rule, which is essentially administrative in nature, is not a major federal action with a significant environmental impact. Consequently, no Environmental Assessment or Environmental Impact Statement is required under the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*).

List of Subjects in 10 CFR Part 210

Petroleum allocation, Petroleum price regulations, Reporting and recordkeeping requirements.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, E.O. 11748, 38 FR 33577; Economic Stabilization Act of 1970, as amended, Pub. L. 92–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 27; E.O. 11748, 38 FR 33575; Cost of Living Council Order Number 47, 39 FR 24)

In consideration of the foregoing, Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., on January 31, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

PART 210—GENERAL ALLOCATION AND PRICE RULES

Subpart A—Recordkeeping

Section 210.1 of Subpart A of Title 10 CFR Ch. II is amended by designating the existing paragraph as paragraph (a) and adding paragraphs (b) and (c) and Appendices A and B to read as follows: [1]

§ 210.1 Records.

(a) The recordkeeping requirements that were in effect on January 27, 1981, in Parts 210, 211, and 212 will remain in effect for (1) all transactions prior to February 1, 1981; and (2) all allowed expenses incurred and paid prior to April 1, 1981 under § 212.78 of Part 212. These requirements include, but are not limited to, the requirements that were in effect on January 27, 1981, in § 210.92 of this part; in §§ 211.67(a)(5)(ii); 211.89;

[1] **Editorial Note:** The text of paragraph (a) is set forth for the convenience of the reader.

211.109, 211.127; and 211.223 of Part 211; and in §§ 212.78(h)(5)(ii); 212.78(h)(6); 212.83(c)(2)(iii)(E)(I); 212.83(c)(2)(iii)(E)(II); 212.83(c)(2)(iii); "F_i"; 212.83(i); 212.93(a); 212.93(b)(4)(iii)(B)(I); 212.93(i)(4); 212.94(b)(2)(iii); 212.128; 212.132; 212.172; and § 212.187 of Part 212.

(b) Effective February 5, 1985, paragraph (a) of this section shall apply, to the extent indicated, only to firms in the following categories. A firm may be included in more than one category, and a firm may move from one category to another. The fact that a firm becomes no longer subject to the recordkeeping requirements of one category shall not relieve that firm of compliance with the recordkeeping requirements of any other category in which the firm is still included.

(1) Those firms which are or become parties in litigation with DOE, as defined in paragraph (c)(1) of this section. Any such firm shall remain subject to paragraph (a) of this section. DOE shall notify the firm in writing of the final resolution of the litigation and whether or not any of its records must be maintained for a further period. DOE shall notify a firm which must maintain any records for a further period when such records are no longer needed.

(2)(i) Those firms which as of November 30 1984, have completed making all restitutionary payments required by an administrative or judicial order, consent order, or other settlement or order but which payments are on February 5, 1985, still subject to distribution by DOE. This requirement is applicable to only those firms listed in Appendix B. Any such firm shall maintain all records for the time period covered by the administrative or judicial order, consent order, or other settlement or order requiring the payments, evidencing sales volume data for each product subject to controls and customers' names and addresses, until one of the following: June 30, 1985, unless this period is extended on a firm-by-firm basis; the end of the individual firm's extension; or the firm is notified in writing that its records are no longer needed.

(ii) Those firms which as of November 30, 1984, are required to make restitutionary or other payments pursuant to an administrative or judicial order, consent order, or other settlement or order. Any such firm shall remain subject to paragraph (a) of this section until the firm completes all restitutionary payments required by the administrative or judicial order, consent order, or other settlement or order. However, after completing all such payments, a firm shall maintain all records described in paragraph (b)(2)(i) of this section until one of the following: Six months after the firm completes all such payments, unless this period is extended on a firm-by-firm basis; the end of the individual firm's extension; or the firm is notified in writing that its records are no longer needed.

(3)(i) Those firms with completed audits in which DOE has not yet made a determination to initiate a formal enforcement action and firms under audit which do not have outstanding subpoenas. Any such firm shall maintain all records for the period covered by the audit including all records necessary to establish historical prices or volumes which serve as the basis for determining the lawful prices or volumes for any subsequent regulated transaction which is subject to audit, until one of the following: June 30, 1985, unless this period is extended on a firm-by-firm basis; the end of the individual firm's extension; or the firm is notified in writing by DOE that its records are no longer needed. However, if a firm in this group shall become a party in litigation, the firm shall then be subject to the recordkeeping requirements for firms in litigation set forth in paragraph (b)(1) of this section.

(ii) Those firms under audit which have outstanding subpoenas on February 5, 1985, or which receive subpoenas at any time thereafter or which have supplied records for an audit as the result of a subpoena enforced after November 1, 1983. Any such firm shall remain subject to paragraph (a) of this section until two years after ERA has notified the firm in writing that is in full compliance with the subpoena or until ERA has received from the firm a sworn certification of compliance with the subpoena as required by 10 CFR 205.8. However, if a firm in this group shall become a party in litigation, the firm shall then be subject to the recordkeeping requirements for firms in litigation set forth in paragraph (b)(1) of this section.

(4) Those firms which are subject to requests for data necessary to verify that crude oil qualifies as "newly discovered" crude oil under 10 CFR 212.79. Any such firm shall maintain the records evidencing such data until one of the following: June 30, 1985, unless this period is extended on a firm-by-firm basis; the end of an individual firm's extension; or the firm is notified in writing by DOE that its records are no longer needed. However, if a firm in this group shall become a party in litigation, the firm shall then be subject to the recordkeeping requirements for firms in litigation set forth in paragraph (b)(1) of this section.

(5) Those firms whose records are determined by DOE as necessary to complete the enforcement activity relating to another firm which is also subject to paragraph (a) of this section unless such firms required to keep records have received certified notice letters specifically describing the records determined as necessary. At that time, the specific notice will control the recordkeeping requirements. These firms have been identified in Appendix A. Any such firm shall maintain these records until one of the following: June 30, 1985, unless this period is extended on a firm-by-firm basis; the end of the individual firm's extension; or the firm is notified in writing by DOE that its records are no longer needed.

(6) Those firms which participated in the Entitlements program. Any such firm shall maintain its Entitlements-related records until six months after the final judicial resolution (including any and all appeals) of *Texaco* v. *DOE*, Nos. 84–391, 84–410, and 84–456 (D. Del.), or the firm is notified by DOE that its records are no longer needed, whichever occurs first.

(c) For purposes of this section:

(1) A firm is "a party in litigation" if:

(i)(A) The firm has received a Notice of Probable Violation, a Notice of Probable Disallowance, a Proposed Remedial Order, or a Proposed Order of Disallowance; or

(B) The firm and DOE are parties in a lawsuit arising under the Emergency Petroleum Allocation Act of 1973, as amended (15 U.S.C. 751 *et seq.*) or 10 CFR Parts 205, 210, 211, or 212; and

(ii)(A) There has been no final (that is, non-appealable) administrative or judicial resolution, or

(B) DOE has not informed the firm in writing that the Department has completed its review of the matter.

(2) A firm means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship, or any other entity, however organized, including charitable, educational, or other eleemosynary institutions, and state and local governments. A firm includes a parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

(OMB Control No. 1903–0073.)

Appendix A to § 210.1—Third Party Firms

Name of Firm

A & R, Inc.
A. J. Petroleum
ADA Resources, Inc.
ATC Petroleum
Abbco Petroleum, Inc.
Ada Oil Company

Adams Grocery
Advanced Petroleum Distributing Co.
Agway Inc.
Allegheny Petroleum Corp.
Alliance Oil and Refining Company
Allied Chemical Corp.
Allied Transport
Amerada Hess Corp.
American Natural Crude Oil Assoc.
Amoco Production Company
Amorient Petroleum, Inc.
An-Son Transportation Co.
Anadarko Products Co.
Andrus Energy Corp.
Antler Petroleum
Arco Pipeline Company
Armada Petroleum Corp.
Armour Oil Company
Arnold Brooks Const. Inc.
Ashland Oil
Asiatic Petroleum Co.
Aspen Energy, Inc.
Athens General Hospital
Atlantic Pacific Energy, Inc.
Atlas Processing Company
B & B Trading Company
BLT, Inc.
BPM, Ltd.
Baker Services, Inc.
Basin Inc.
Basin Petroleum, Inc.
Beacon Hill Mobil
Belcher Oil Company
Bighart Pipeline Company
Bigheart Pipeline Corp
Bowdoin Square Exxon
Bowdoin Super Service (Sunoco)
Brio Petroleum, Inc.
Brixon
C.E. Norman
CPI Oil & Refining
CRA-Farmland Industries, Inc.
Calcaseiu Refining, Ltd.
Carbonit Houston, Inc.
Carr Oil Company, Inc.
Castle Coal & Oil Co.
Central Crude Corporation
Century Trading Co.
Charter Crude Oil
Chastain Vineyard
Chevron USA, Inc.
Cibro Petroleum, Inc.
Cirillo Brothers
Cities Service (Citgo) Station
Cities Service Company
Cities Service Midland
City of Athens
Clarke County Board of Education
Claude E. Silvey
Coastal Corporation (The)
Coastal Petroleum and Supply Inc.
Coastal States Trading Company
Commonwealth Oil Refining Co., Inc.
Coral Petroleum Canada, Inc.
Coral Petroleum, Inc.
Corex of Georgia
Cothran Interstate Exxon
Couch's Standard Chevron
Cougar Oil Marketers Inc.
Crude Company (The)
Crystal Energy Corporation
Crystal Refining
D & E Logging
DDC Corporation of America
Darrell Williamson
Davis Ellis
Days Inn of America, Inc.
Delta Petroleum & Energy Corp.
Derby & Company, Inc.
Derby Refining Company
Dewveall Petroleum
Dixie Oil Company
Dixon Oil Co.
Don Hardy
Donald Childs
Dow Chemical Company
Dr. Joe L. Griffeth
Driver Construction Co.
Drummond Brothers, Inc.
Duffie Monroe & Sons Co., Inc.
ECI (A/K/A Energy Cooperative Inc.)
Earnest Dalton
Earth Resources Trading
Eastern Seaboard Petroleum, Inc.
Elmer Hammon
Elvin Knight
Empire Marketing, Inc.
Encorp.
Energy Cooperative, Inc.
Energy Distribution Co.
Englehard Corporation
Englehard Oil Corporation
Entex
Evans Oil Co.
Exxon Company
F & S Trading Company, Inc.
Farmers Union Central Exchange, Inc.
Farmland Industries Inc.
Fasgo, Inc.
Fedco Oil Company
Federal Employees Distributing Co.
Fitzpatrick Spreader
Flutz Oil Company
Flying J. Inc.
Foremost Petroleum
Four Corners Pipe Line
Frank Katz
Frank W. Abrahamsen
Frank's Butane, Inc.
Friendswood Refinery
Frontier Manor Collection
Fuel Oil Supply & Terminaling, Inc.
G. C. Clark Company
GPC Marketing Company
Gary Refining Co.
Geer Tank Trucks, Inc.
Gene Clary
Gene McDonald
General Crude Oil Company
Geodynamics Oil & Gas Inc.
George Kennedy
George Smith Chevron
Gleason Oil Company
Glenn Company
Globe Oil Co.
Godfrey's Standard Service
Good Hope Industries, Inc.
Good Hope Refineries, Inc.
Granite Oil Company
Guam Oil & Refining Co., Inc.
Gulf States Oil & Refining Company
H. D. Adkinson
H. H. Dunson
H.S. & L, Inc.
HNG Oil Company
Harbor Petroleum, Inc.
Harbor Trading
Harmony Grove Mills, Inc.
Harry Rosser
Hast Oil, Inc.
Heet Gas Company
Henry Alva Mercer
Herndon Oil & Gas Company
Horizon Petroleum Company
Houston Oil & Minerals Products Co.
Houston Oil & Refining
Howell Corporation
Hurricane Trading Company, Inc.
Hydrocarbon Trading and Transport Co.
Inco Trading
Independent Refining Corp.
Independent Trading Corporation
Indiana Refining, Inc.
Intercontinental Petroleum Corp.
International Crude Corporation
International Petro
International Petroleum Trading, Inc.
International Processors
Isthmus Trading Corporation
J & M Transport
J. & J.'s Fast Stop
J. A. Rackerby Corporation
J. H. Baccus
J. H. Baccus & Co.
J. J. Williamson
J. M. Petroleum Corporation
JPK Industries
Jack W. Grigsby
Jaguar Petroleum, Inc.
James L. Bush
Jay Petroleum Company
Jay-Ed Petroleum Company
John W. McGowan
Kalama Chemical, Inc.
Kelly Trading Corp.
Kenco Refining
Kerr-McGee Corporation
Koch Fuel
Koch Industries, Inc.
Kocolene Oil
Kocolene Station
L & L Resources, Inc.
L.S. Parker
LaGloria Oil & Gas
Lajet, Inc.
Lamar Refining Co.
Langham Petroleum Corp.
Larry Roberts
Laurel Oil, Inc.
Lee Allen
Lincoln Land Sales Company
Listo Petroleum Inc.
Longview Refining Corp.
Love's Standard
Lucky Stores Inc.
M.L. Morrow
Magna Energy Corporation
Magnolia Oil Company
Mansfield Oil Co.
Mapco Petroleum, Inc.
Mapco, Inc.
Marion Trading Co.
Marlex Oil & Refining, Inc.
Marlin Petroleum, Inc.
Martin Oil Company
Mathew's Grocery
McAuleep Oil Co.
McAuley Oil Company
Meadows Gathering, Inc.
Mellon Energy Products Co.
Merit Petroleum, Inc.
Metro Wash, Inc.
Miller Oil Purchasing Co.
Minor Oil, Inc.
Minro Oil, Inc.
Mitchell Oil Co.
Mitsui & Co. (USA) Inc.

Mobil Bay Refining Company
Montgomery Well Drilling
Mundy Food Market
Munford, Inc.
Mutual Petroleum
NRG Oil Company
National Convenience Stores
National Cooperative Refinery
Nicholson Grocery and Gas
North American Petroleum
Northeast Petroleum Corp.
Northeast Petroleum Corporation
Northgate Auto Center
Northwest Crude, Inc.
Nova Refining Corp.
Occidental Petroleum Corp. (includes Permia)
Ocean Drilling and Exploration Co.
Oil Exchange, Inc.
Oilco
Omega Petroleum Corp.
Otoe Corporation
Oxxo Energy Group, Inc.
P & O Falco, Inc.
P. L. Heatley Co.
PEH, Inc.
PIB, Inc.
PSW Distributors Company
Pacific Refinery, Inc.
Pacific Resources, Inc.
Pan American Products Corp.
Par Brothers Food Store
Pauley Petroleum Inc.
Pennzoil Co.
Permian Corporation (The)
Pescar International Corp.
Pescar International Trading Co.
Petraco (U.S.A.) Inc.
Petrade International
Petrol Products, Inc.
Phillips Petroleum Company
Phoenis Petroleum Co.
Phoenix Petroleum Co.
Pine Mountains
Poole Petroleum
Port Petroleum
Presley Oil Co.
Procoil Inc.
Publiker Industries, Inc.
Pyramid Dist. Co., Inc.
Questor Crude Oil Company
Quitman Refining Co.
R. H. Garrett Paving
Ra-Gan Fuel, Inc.
Reeder Distributing Co.
Reeder Distributors
Reese Exploration Co.
Research Fuels Inc.
Revere Petroleum Co.
Richardson-Ayres, Inc.
Robert Bishop
Robert Patrick
Roberts Grocery
Rock Island Refining Corporation
Rogers Oil Company
Roy Baerne
Russell Oil Company
S. G. Coplen
SECO (Scruggs Energy)
Saber Crude Oil, Inc.
Saber Refining Company
Salem Ventures, Inc.
Samson Resources Company
Santa Fe Energy Products Co.
Saye's Truck Stop
Scandix Oil Limited
Score, Inc.
Scruggs Energy Company
Scurlock Oil Company
Scurry Oil Company
Seamount Petroleum Company
Seaview Petroleum Company
Sector Refining, Inc.
Selfton Miller
Shepherd Trading Corporation
Shulze Processing
Sigmor Corporation
Skelly Oil Company
South Hampton Refining Company
South Texas LP Gas Co.
Southern Crude Oil Resources
Southern Terminal & Transport, Ltd.
Southern Union Company
Southwest Petro. Energy
Southwest Petrochem
Standard Oil Co. (Ohio)
Standard Oil Co. of California
Standard Oil Company (Indiana)
Standard Oil Company (Ohio)
Sterling Energy Company
Steve Childs
Stix Gas Company, Inc.
Sunset Grocery
Sunset Oil & Refining, Inc.
Swanee Petroleum Company
T & P Enterprises
T. B. Eley
T. E. Jawell
Tauber Oil Company
Tenneco, Inc.
Tesoro Crude Oil Company
Texana Oil & Gas Corp.
Texas American Petrochemicals (TAP)
Texas City Refining
Texas Eastern Transmission Corp.
Texas Energy Reserve Corporation
Texas Pacific Oil Company
Thomas Cockvell
Thomas Petroleum Products, Inc.
Thorton Oil Company
Thyssen Incorporated
Tiger Petroleum Company
Time Oil Co.
Tipperary Refining Company
Tom Banks
Tom Smith
Tomlinson Petroleum, Inc.
Tosco Corporation
Total Petroleum, Inc.
Trans-Texas Petroleum Corp.
Transco Trading Company
Turboil Oil and Refining
Two Rivers Oil & Gas Co., Inc.
U-Fill 'er Up
USA Gas, Inc.
Uni Oil Company
Union Oil of California
Doram Energy
United Petroleum Marketing
United Refining Company
United Refining, Inc.
Universal Rundle
Val-Cap, Inc.
Vedetta Oil Trading, Inc.
Vedette Oil Trading, Inc.
Vickers Energy Corp.
W. C. Colquitt
W. T. Strickland
W. W. Blanton
W.A. Nunnally, Jr., Construction Co.
W.D. Porterfiled
Wellven, Inc.
West Texas Marketing Corp.
Western Crude Oil, Inc.
Western Fuels, Inc.
Wight Nurseries of Oglethorpe Co.
William Seabolt
Wilson's Used Tractors
Windsor Gas Corp.
Wyoming Refining

Appendix B to § 210.1—Firms With Completed Payments Subject to Distribution

The following firms have completed making restitutionary payments to DOE but their payments are still subject to distribution by DOE. Each such firm must maintain relevant records until June 30, 1985, unless this period is extended on a firm-by-firm basis. Relevant records are all records of the firm, including any affiliates, subsidiaries or predecessors in interest, for the time period covered by the judicial or administrative order, consent order, or other settlement or order requiring the payments, evidencing sales volume data for each product subject to controls and customers' names and addresses.

Name of firm	Location
A. Tarricone Inc	Yonkers, NY.
Adolph Coors Company	Golden, CO.
Allied Materials Corp & Excel	Oklahoma City, OK.
Aminoil USA, Inc	Houston, TX.
Amtel, Inc	Providence, RI.
Apache Corporation	Minneapolis, MN.
APCO Oil Corporation	Oklahoma City, OK.
Arapaho Petroleum, Inc	Breckenridge, TX.
Arkansas Louisiana Gas Company.	Shreveport, LA.
Arkla Chemical Corporation	Shreveport, LA.
Armour Oil Company	San Diego, CA.
Associated Programs Inc	Boca Raton, FL.
Atlanta Petroleum Production	Fort Worth, TX.
Automatic Heat, Inc	
Ayers Oil Company	Canton, MD.
Aztex Energy Corporation	Knoxville, TN.
Bak Ltd	Narbeth, PA.
Bayou State Oil/IDA Gasoline	Shreveport, LA.
Bayside Fuel Oil Depot Corp	Brooklyn, NY.
Bellridge Oil Company	Los Angeles, CA.
Blaylock Oil Co., Inc	Homestead, FL.
Blex Oil Company	Minneapolis, MN.
Boswell Oil Company	Cincinnati, OH.
Box, Cloyce K	Dallas, TX.
Breckenridge Gasoline Company	Kansas City, KS.
Brownlie, Wallace, Armstrong	Denver, CO.
Bucks Butane & Propane Service	San Jose, CA.
Budget Airport Associates	Los Angeles, CA.
Busler Enterprises Inc	Evansville, IN.
Butler Petroleum Corp	Butler, PA.
C.K. Smith & Company, Inc	Worcester, MA.
Cap Oil Company	Tulsa, OK.
Champlain Oil Co., Inc	South Burlington, VT.
Chapman, H.A	Tulsa, OK.
Cibro Gasoline Corporation	Bronx, NY.
City Service Inc	Kalispell, MT.
Coastal Corporation	Houston, TX.
Coline Gasoline Corporation	Santa Fe Springs, CA.
Collins Oil Co	Aurora, IL.
Columbia Oil Co	Hamilton, OH.
Conto Service Inc	East Farmingdale, NY.
Conoco, Inc	Houston, TX.
Consolidated Gas Supply Corp	Hastings, WV.
Consolidated Leasing Corp	Los Angeles, CA.
Consumers Oil Co	Rosemead, CA.
Continental Resources Company	Winter Park, FL.
Cordele Operating Co	Corsicana, TX.
Cosby Oil Co., Inc	Whittier, CA.
Cougar Oil Co	Selma, AL.
Cross Oil Co., Inc	Wellstone, MO.
Crystal Oil Company (formerly Vallery Corp.).	Shreveport, LA.
Crystal Petroleum Co	Corpus Christi, TX.
Devon Corporation	Oklahoma City, OK.
Dorchester Gas Corp	Dallas, TX.
E.B. Lynn Oil Company	Allentown, PA.
E.M. Bailey Distributing Co	Paducah, KY.
Eagle Petroleum Co	Wichita Falls, TX.
Earls Broadmoor	Houma, LA.
Earth Resources Co	Dallas, TX.

Name of firm	Location
Eastern Petroleum Corp	Annapolis, MD.
Edington Oil Co	Los Angeles, CA.
Elias Oil Company	West Palm Beach, FL.
Elm City Filling Stations, Inc	New Haven, CT.
Empire Oil Co	Bloomington, CA.
Endicott, Eugene	Redmond, OR.
Enserch Corp	Dallas, TX.
Enterprise Oil & Gas Company	Detroit, MI.
F.O. Fletcher, Inc	Tacoma, WA.
Fagadau Energy Corporation	Dallas, TX.
Farstad Oil Company	Minot, ND.
Field Oil Co., Inc	Ogden, UT.
Fina Petroleum Co., Inc	Norfolk, VA.
Foster Oil Co	Richmond, MI.
Franks Petroleum Inc	Shreveport, LA.
Fresoil Oil Co	
Gas Systems Inc	FL Worth, TX.
Gate Petroleum Co., Inc	Jacksonville, FL.
GCO Minerals Company	Houston, TX.
Getty Oil Company	Los Angeles, CA.
Gibbs Industries, Inc	Revere, MA.
Glaser Gas Inc	Calhoun, CO.
Glover, Lawrence H	Patchogue, NY.
Goodman Oil Company	Boise, ID.
Grant Rent a Car Corporation	Los Angeles, CA.
Grimes Gasoline Co	Tulsa, OK.
Gulf Energy & Development Corp. (also known as Gulf Energy Development Corp.).	San Antonio, TX.
Gulf Oil Corp	Houston, TX.
Gull Industries, Inc	Seattle, WA.
H.C. Lewis Oil Co	Welch, WV.
Hamilton Brothers Petroleum Co	Denver, CO.
Harris Enterprise Inc	Portland, OR.
Heller, Glenn Martin	Boston, MA.
Hendel's Inc	Waterford, CT.
Henry H. Gungoll Associates	Enid, OK.
Hertz Corporation, The	New York, NY.
Hines Oil Co	Murphysboro, IL.
Horner & Smith, A Partnership	Houston, TX.
Houston Natural Gas Corp	Houston, TX.
Howell Corporation/Quintana Refinery Co.	Houston, TX.
Hunt Industries	Dallas, TX.
Hunt Petroleum Corp	Dallas, TX.
Husky Oil Company of Delaware	Cody, WY.
Ideal Gas Co., Inc	Nyssa, OR.
Independent Oil & Tire Company	Elyria, OH.
Inland USA, Inc	St. Louis, MO.
Inman Oil Co	Salem, MO.
Intermorth, Inc	Omaha, NE.
J.E. DeWitt, Inc	South El Monte, CA.
J.M. Huber Corp	Houston, TX.
James Petroleum Corp	Bakersfield, CA.
Jay Oil Company	Fort Smith, AR.
Jimmys Gas Stations Inc	Auburn, ME.
Jones Drilling Corporation	Duncan, Okl.
Juniper Petroleum Corporation	Denver, Co
Kansas-Nebraska Natural Gas Co	Hastings, NE.
Keller Oil Company, Inc	Effingham, IL.
Kenny Larson Oil Co., Inc	
Kent Oil & Trading Company	Houston, TX.
Key Oil Co., Inc	Tuscaloosa, AL.
Key Oil Company	Bowling Green, KY.
Kiesel Co	St. Louis, MO.
King & King Enterprise	Kansas City, MO.
Kingston Oil Supply Corp	Port Ewen, NY
Kirby Oil Company	
L & L Oil Co., Inc	Belle Chasse, LA.
L.P. Rech Distributing Co	Roundup, MT.
La Gloria Oil and Gas Co	Houston, TX.
Lakes Gas Co., Inc	Forest Lake, MN.
Lakeside Refining Co./Crystal	Southfield, MI.
Landsea Oil Company	Irvine, CA.
Leathers Oil Co., Inc	Portland, OR.
Leese Oil Company	Pocatello, ID.
Leonard E. Bolcher, Inc	Springfield, MA.
Lincoln Land Oil Co	Springfield, IL.
Liquid Products Recovery	Houston, TX.
Little America Refining Co	Salt Lake City, UT.
Lockheed Air Terminal Inc	Burbank, CA.
Lowe Oil Company	Clinton, MO.
Lucia Lodge Arco	Big Sur, CA.
Luke Brothers Inc	Calera, OK.
Lunday Thargard Oil	South Gate, CA.
Malco Industries Inc	Cleveland, OH.
Mapco, Inc	Tulsa, OK.
Marine Petroleum Co	St. Louis, MO.
Marlen L. Knutson Dist. Inc	Stanwood, WA.
Martin Oil Service, Inc	Blue Island, IL.
Martinoil Company	Fresno, CA.
Marvel Fuel Oil and Gas Co	
McCarty Oil Co	Wapakoneta, OH.
McCleary Oil Co., Inc	Chambersburg, OH.
McClure's Service Station	Salisbury, PA.
McTan Corporation	Abilene, TX.
Mesa Petroleum Company	Amarillo, TX.
Midway Oil Co	Rock Island, IL.
Midwest Industrial Fuels, Inc	La Crosse, WI.
Mississippi River Transmission	St. Louis, MO.
Mitchell Energy Corp	Woodlands, TX.
Montana Power Co	Butte, MT.
Moore Terminal and Barge Co	Monroe, LA.
Mountain Fuel Supply Company	Salt Lake City, UT.
Moyle Petroleum Co	Rapid City, SD.
Mustang Fuel Corporation	Oklahoma City, OK.
Naphsol Refining Company	Muskegon, MI.
National Helium Corporation	Liberal, KS.
National Propane Corp	Wyandanch, NY.
Navajo Refining Company	Dallas, TX.
Nielson Oil & Propane, Inc	West Point, NE.
Northeast Petroleum Industries	Chelsea, MA.
Northeastern Oil Co., Inc	Gillette, WY.
Northwest Pipeline Corp	Salt Lake City, UT.
O'Connell Oil Co	Pittsfield, MA.
Oceana Terminal Corp. et al	Bronx, NY.
OKC Corporation	Dallas, TX.
Olin Corporation	Stamford, CT.
Oneok Incorporation	Tulsa, OK.
Ozona Gas Prpocessing Plant	Tyler, TX.
Pacer Oil Co. of Florida, Inc	Ormond Beach, FL.
Pacific Northern Oil	Seattle, WA.
Panhandle Eastern (Century)	Houston, TX.
Parade Company	Shreveport, LA.
Parham Oil Corporation	Nashville, TN.
Pasco Petroleum Co., Inc	Phoenix, AZ.
Pedersen Oil, Inc	Silverdale, WA.
Pennzoil Company	Houston, TX.
Perry Gas Processors, Inc	Odessa, TX.
Peoples Energy Corp	Chicago, IL.
Perta Oil Marketing Corp	Beverly Hills, CA.
Peterson Petroleum Inc	Hudson, NY.
Petro-Lewis Corp	Denver, CO.
Petrolane-Lomita Gasoline Co	Long Beach, CA.
Petroleum Heat & Power Co. Inc	Stamford, CT.
Petroleum Sales/Services Inc	Buffalo, NY.
Pioneer Corp	Amarillo, TX.
Planet Engineers Inc	Denver, CO.
Plateau, Inc	Albuquerque, NM.
Plaquemines Oil Sales	Belle Chasse, LA.
Point Landing Inc	Hanrahan, LA.
Port Oil Company, Inc	Mobile, AL.
Post Petroleum Co	West Sacramento, CA.
Power Pak Co., Inc	Houston, TX.
Pride Refining, Inc	Abilene, TX.
Pronto Gas Co	Abilene, TX.
Propane Gas & Appliance Co	New Brockton, AL.
Prosper Energy Corporation	Dallas, TX.
Pyro Energy Corporation	Evansville, ID.
Pyrolax Gas Corporation	Houston, TX.
Quaker State Oil	Oil City, PA.
Quarles Petroleum, Inc	Fredericksburg, VA.
Resources Extraction Process	Houston, TX.
Reynolds Oil Co	Kremling, CO.
Richardson Ayers Jobbers, Inc	Alexandria, LA.
Riverside Oil, Inc	Evansville, IL.
Roberts Oil Co. Inc	Albuquerque, NM.
Rookwood Oil Terminals Inc	Cincinnati, OH.
Sabar Energy, Inc	Houston, TX.
Sanesco Oil Co	Escondido, CA.
Schroeder Oil Company	Carroll, IA.
Seminole Refining Inc	St. Marks, FL.
Sid Richardson Carbon & Gas	Ft. Worth, TX.
Sigmore Corporation	San Antonio, TX.
Southwestern Refining Co., Inc	Salt Lake City, UT.
Speedway Petroleum Co., Inc	Fitchburg, MA.
St. James Resources Corp	Boston, MA.
Standard Oil Co. (Indiana)	Chicago, IL.
Stinnes Inter Oil Inc	New York, NY.
Tenneco Oil Company	Houston, TX.
Texas/Arkansas/Colorado/Oklahoma/Oil Purchasing.	Dallas, TX.
Texas Gas & Exploration	Dallas, TX.
Texas Oil & Gas Corporation	Dallas, TX.
Texas Pacific Oil Company, Inc	Dallas, TX.
The True Companies	Casper, WY.
Thompson Oil Inc	Purcellville, VA.
Tiger Oil Co	Yakima, WA.
Time Oil Company	Seattle, WA.
Tipperary Corp	Midland, TX.
Tippins Oil & Gas Co	Richmond, MO.
Triton Oil & Gas Corp	Dallas, TX.
U.S. Compressed Gas Company	King of Prussia, PA.
U.S. Oil Company	Combined Locks, WI.
U.S.A. Petroleum, Inc	Santa Monica, CA.
Union Texas Petroleum Corp	Houston, TX.
United Oil Company	Hillside, NJ.
Upham Oil & Gas Co	Mineral Wells, TX.
Vargas Inc	Fresno, CA.
VGS Corporation	Jackson, MS.
Waller Petroleum Company, Inc	Towson, MD.
Warren Holding Company	Providence, RI.
Warrior Asphalt Co. of Alabama	Tuscaloosa, AL.
Webco Southern Oil Inc	Smyrna, CA.
Wellen Oil Co	Jersey City, NJ.
Wiesehan Oil Co	
Willis Distributing Company	Erie, PA.
Winston Refining Company	Fort Worth, TX.
Witco Chemical Corporation	New York, NY.
World Oil Company	Los Angeles, CA.
Worldwide Energy Corp	Denver, CO.
Young Refining Corporation	Douglasville, GA.
Zia Fuels (G.G.C. Corp.)	Hobbs, NM.

[FR Doc. 85-2918 Filed 2-1-85 11:55 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket No. 84-ANM-11]

Alteration of VOR Federal Airways and Restricted Areas; Nevada

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments redescribe several areas, alter the Continental Control Area in connection with these restricted areas and alter the descriptions of V-253 and V-200 in the vicinity of the Utah, NV, Test Range to widen the corridor west of Salt Lake City, UT. These actions will permit more flexibility for traffic maneuvering between the restricted areas thereby reducing delays.

EFFECTIVE DATE: 0901 G.m.t., April 11, 1985.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On June 6, 1984, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to redescribe several restricted areas, alter the Continental Control Area and alter the descriptions of V-253 and V-200 in the vicinity of the Utah, NV, Test Range to widen the corridor west of Salt Lake City, UT (49 FR 23392). Interested parties were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA.

Discussion of Comments

All comments received were favorable except for four which are discussed below:

Joseph R. Payne, owner, J. P. Ranch and President, Pilot Creek Ranches, Inc.—Mr. Payne objected to the proposed airspace of R-6404A and R-6404C (western portion of the northern range complex), due to conflict with his airborne ranching operation (monitoring the movement/well being of his cattle) and the restriction of airspace around his "planned" fly-in community.

The Western-Pacific Region issued a determination on the proposed Pilot Creek Ranches Airport on August 17, 1984, which advised Mr. Payne that the FAA would ensure civil access to that airport regardless of the designation of that airspace. FAA/USAF negotiations on January 17, 1984, resulted in a commitment by USAF to provide a corridor through/into R-6404 to accommodate access to/from that airport. The USAF will enter into a Memorandum-of-Understanding (MOU) with Mr. Payne to ensure completion of his herd monitor flights, etc.

The Confederated Tribes of the Goshute Reservation—The Goshute Tribes objected to the proposal due to an anticipated restriction of essential services now provided by air; a fear that future expanded use of the airstrip would be impossible and that the "need" for civil access would be determined by the USAF instead of the civil entity.

The USAF and the state of Utah are entering into MOU's that will provide civil access to the restricted areas for such purposes as flights to/from Ibapah Airport (Goshute airstrip). The USAF will not determine the "need" for these flights. The Goshute Tribe questioned the ability of the USAF to provide service to their area given the traditionally poor communications services in that area.

The USAF has recently installed two remote communication sites in the UTTR area. The Goshute Peak site is expected to provide adequate air/ground communications at the Ibapah Airport. Additionally, the first of four gap-filler radar sites has been funded for installation in 1985. These installations should provide radar coverage in the entire R-6405 area.

Beehive Telephone Company—Beehive Telephone Company provides telephone services to areas within the existing and proposed UTTR restricted airspace. Mr. Art Brothers, President, Beehive Telephone Company, indicated that aircraft are used to maintain the telephone service in that area and that the service he receives within the UTTR seems to depend on the individual controller on duty.

Clover Control (USAF ATC facility which provides service within the UTTR) has been providing access to Beehive Telephone Company's operation for years. The improved communications and the proposed gap-filler radars mentioned above are expected to allow for a greatly improved service to all users.

The State of Utah, Governor's Office—The Governor's Office of the State of Utah concurs with the widening of the east/west corridor between the ranges, but objected to the expansion of R-6405 to the south and west. The State commented that the wildlife characteristics of the area, the maintenance and herding techniques of the local ranching operations, and the heavy reliance on small aircraft by the local communities would increase conflict between the Air Force and other users of that airspace. At a meeting on December 3, 1984, at the State Capitol Building in Salt Lake City, Utah, between the FAA, USAF, and Governor Scott M. Matheson, the Governor stated several concerns. One concern was the existence of USAF plans to expand the restricted areas beyond the existing Military Operations Areas. The USAF stated they had no plans at this time to ask for further expansion of the UTTR airspace. The Governor asked if expansion of airspace was proposed to make up for airspace lost in widening the corridor. The USAF explained the need for redesigning the airspace not only made up for the loss of corridor airspace, but allowed for efficient operation of the type of aircraft now being used by the USAF. The Governor also expressed concern for those local citizens and local agencies that have a need for access to those areas to perform essential services. The USAF stated that provisions would be made in the MOU to allow appropriate state agencies/citizens with access to the airspace. The Governor agreed to enter into an approriate MOU with the USAF and agreed to participate in a review of the MOU's annually.

Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.123, 71.151 and 73.64 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6 dated January 3, 1984.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations redescribe several restricted areas, alter the Continental Control Area in connection with these restricted areas and alter the descriptions of V-253 and V-200 in the vicinity of the Utah, NV, Test Range to widen the corridor west of Salt Lake City, UT. These actions aid flight planning and improve the flow of traffic west of Salt Lake City, UT.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

VOR Federal airways, Continental control area and restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, § 71.123, § 71.151 and § 73.64 of Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

§ 71.123

V-253—[Amended]

By removing the words "From Fairfield, UT, INT Fairfield 326° and Salt Lake City, 265° radials; 24 miles, 85 MSL Bonneville; 5 miles, 85 MSL, 90 MSL Lucin, UT;" and substituting the words "From Lucin, UT."

V-200—[Amended]

By removing the words "From Fairfield, UT," and substituting the words "From Bonneville, UT; via INT Bonneville 084 and Fairfield, UT, 326° radials; Fairfield;"

§ 71.151

R-6402 Dugway Proving Ground, Dugway, UT—[Removed]

R-6402A Dugway Proving Ground, Dugway, UT—[New]

R-6402B Dugway Proving Ground, Dugway, UT—[New]

R-6404A Hill AFB Range South, UT—[Amended]

By removing the words "Range South"

R-6404B Hill AFB Range North, UT—[Amended]

By removing the words "Range North"

R-6404C Hill AFB Range East, UT—[Amended]

By removing the words "Range East"

R-6406 Wendover, UT—[Removed]

R-6406A Wendover, UT—[New]

R-6406B Wendover, UT—[New]

§ 73.64

R-6402 Dugway Proving Ground, Dugway, UT—[Removed]

R-6402A Dugway Proving Ground, Dugway, UR—[New]

Boundaries. Beginning at lat. 40°25'00" N., long. 112°56'00" W.; to lat. 40°25'00" N., long. 113°07'00" W.; to lat. 40°20'20" N., long. 113°07'00" W.; to lat. 40°20'20" N., long. 113°20'02" W.; to lat. 39°55'00" N., long. 113°26'40" W.; to lat. 39°52'00" N., long. 113°27'00" W.; to lat. 39°49'00" N., long. 113°08'00" W.; to lat. 39°44'00" N., long. 113°08'00" W.; to lat. 39°46'00" N., long. 112°56'00" W.; to lat. 40°00'00" N., long. 112°43'00" W.; to lat. 40°13'00" N., long. 112°43'00" W.; to the point of beginning.

Designated altitudes. Surface to FL 580.

Time of designation. Continuous.

Controlling agency. FAA, Salt Lake City ARTCC.

Using Agency. Commander, Dugway Proving Ground, UT.

R-6402B Dugway Proving Ground, Dugway, UT—[New]

Boundaries. Beginning at lat. 40°13'00" N., long. 112°43'00" W.; to lat. 40°18'00" N., long. 112°43'00" W.; to lat. 40°25'00" N., long. 112°50'00" W.; to lat. 40°25'00" N., long. 112°56'00" W.; to the point of beginning.

Designated altitudes. 100 feet AGL to FL 580.

Time of designation. Continuous.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. Commander, Dugway Proving Ground, UT.

R-6404A Hill AFB, UT—[Revised]

Boundaries. Beginning at lat. 41°11'30" N., long. 112°45'30" W.; to lat. 41°18'00" N., long. 113°50'00" W.; to lat. 41°06'30" N., long. 114°02'30" W.; to lat. 40°55'30" N., long. 114°02'30" W.; to lat. 40°55'00" N., long. 114°00'00" W.; to lat. 40°55'00" N., long. 112°50'30" W.; to lat. 41°01'00" N., long. 112°39'00" W.; to lat. 41°07'00" N., long. 112°39'00" W.; to the point of beginning.

Designated altitudes. Surface to FL 580

Time of designation. Continuous.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6404B Hill AFB, UT—[Revised]

Boundaries. Beginning at lat. 40°55'00" N., long. 112°50'30" W.; to lat. 40°55'00" N., long. 114°00'00" W.; to lat. 40°49'00" N., long. 113°40'00" W.; to lat. 40°52'00" N., long. 112°57'00" W.; to the point of beginning.

Designated altitudes. Surface to 13,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. Commander, 6501 Range Squadron, Air Force Systmes Command, Hill FAB, UT.

R-6404C Hill AFB, UT—[New]

Boundaries. Beginning at lat. 41°16'00" N., long. 113°50'00" W.; to lat. 41°11'30" N., long. 114°15'00" W.; to lat. 40°59'30" N., long. 114°15'00" W.; to lat. 40°55'30" N., long. 114°02'30" W.; to lat. 41°06'30" N., long. 114°02'30" W.; to the point of beginning.

Designated altitudes. 100 feet to AGL to FL 280.

Time of designation. Continuous.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6405 Wendover, UT—[Revised]

Boundaries. Beginning at lat. 40°39'00" N., long. 114°00'00" W.; to lat. 40°23'00" N., long. 114°15'00" W.; to lat. 39°40'00" N., long. 114°15'00" W.; to lat. 39°23'00" N., long. 114°00'00" W.; to lat. 39°23'00" N., long. 113°19'00"W.; to lat. 39°46'00" N., long. 112°56'30" W.; to lat. 39°44'00" N., long. 113°08'00" W.; to lat. 39°49'00" N., long. 113°08'00" W.; to lat. 39°52'00" N., long. 113°27'00" W.; to lat. 39°55'00" N., long. 113°26'40" W.; to lat. 39°55'00" N., long. 113°48'00" W.; to lat. 40°00'00" N., long. 113°48'00" W.; to lat. 40°00'00" N., long. 114°00'00" W.; to the point of beginning.

Designated altitudes. 100 feet AGL to FL 580.

Time of designation. Continuous.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6406 Wendover, UT—[Removed]

R-6406A Wendover, UT—[New]

Boundaries. Beginning at 40°39'00" N., long. 113°00'00" W.; to lat. 40°39'00" N., long. 114°00'00" W.; to lat. 40°17'00" N., long. 114°00'00" W.; to lat. 40°20'20" N., long. 113°49'00" W.; to lat. 40°20'20" N., long. 113°07'00" W.; to lat. 40°25'00" N., long. 113°07'00" W.; to lat. 40°25'00" N., long. 112°56'00" W.; to lat. 40°29'00" N., long. 113°00'00" W.; to the point of beginning.

Designated altitudes. Surface to FL 580.

Time of designation. Continuous.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6406B Wendover, UT—[New]

Boundaries. Beginning at lat. 40°39'00" N., long. 113°00'00" W.; to lat. 40°29'00" N., long. 113°00'00" W.; to lat. 40°25'00" N., long. 112°56'00" W.; to lat. 40°25'00" N., long. 112°50'00" W.; to the point of beginning.

Designated altitudes. 100 feet to AGL to FL 580.

Time of designation. continuous.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6407 Dugway Proving Ground, Dugway, UT—[Revised]

Boundaries. Beginning at lat. 2 40°20'0" N., long. 113°20'02" W.; to lat. 39°55'00" N., long. 113°26'40" W.; to lat. 39°55'00" N., long. 113°48'00" W.; to lat. 40°00'00" N., long. 113°48'00" W.; to lat. 40°00'00" N., long. 114°00'00" W.; to lat. 40°17'00" N., long. 114°00'00" W.; to lat. 40°20'20" N., long. 113°49'00" W.; to the point of beginning.

Designated altitudes. Surface to FL 580.

Time of Designation. Continuous.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. Commander, Dugway Proving Ground, UT.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on January 29, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-2855 Filed 2-4-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 103

[Docket No. 24454; Amdt. No. 103-1]

Ultralight Vehicles; Operating Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: Federal Aviation Regulations (FAR) currently require ultralight vehicle operators to remain clear of prohibited and restricted areas, unless otherwise authorized by the using or controlling agency, but not restrict ultralight operations in the vicinity of space flight operations or the proximity of the President. This final rule amends ultralight operating regulations to require the ultralight vehicle operators also remain clear of areas designated for space flight operations and areas in proximity to Presidential and certain other parties.

DATES: *Effective date:* February 5, 1985. Comments concerning provisions of this regulation must be submitted by March 5, 1985.

ADDRESS: Send comments on the rule in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24454, 800 Independence Avenue, S.W., Washington, D.C. 20591.

Comments may be examined in the Rules Docket, weekdays except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:
Bill Davis, Office of Air Traffic Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C 20591; telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this regulatory action by submitting such written data, views or arguments, as they may desire. Comments that provided the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the above specified address. All communications received on or before the closing date for comments will be considered by the Administrator. Commenters who wish the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is written: "Comments to Docket No. 24454." The postcard will be date/time stamped and returned to the commenter. The provisions in this rule may be changed in the light of comments received. All comments submitted will be available, both before and after closing date for the comments, in the Rules Docket for examination by interested persons. A report summarizing substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington D.C. 20591, or by calling (202) 4265-8058. Communications must identify the docket number.

Background

On July 27, 1981, the FAA published Notice of Proposed Rulemaking No. 81-6 (46 FR 38472) and included in that proposal a number of operational limitations for ultralight vehicles. More than 2,500 persons and organizations submitted comments to that proposal. After consideration of those comments, on September 2, 1982, the FAA promulgated FAR Part 103 defining the operating requirements for ultralight vehicles (47 FR 38770). Those regulations became effective on October 4, 1982, and remain in effect today.

Need for Amendment

In recent months, there have been intrusions by aircraft into areas designated for space flight operations. Such intrusions have resulted in the disruption of launch and recovery operations and an increased concern for the safety of space flight support operations.

Additionally, there have been intrusions by aircraft into security areas designated for the President and other parties. Some of these intrusions have resulted in the activation of extensive security measures for protection of the President and the Presidential party and have raised serious concerns for the welfare of those being protected. While most of these incidents have not involved ultralight vehicles, ultralights present the same risks as certificated aircraft for the purposes underlying these protected areas.

In responding to the concerns raised by these intrusions, the FAA has reviewed the scope of the regulations prohibiting unauthorzed aeronautical operations, including ultralight vehicles, within the designated areas. FAR Part 91, § 91.102 authorizes flight limitations in the proximity of space flight operations. Section 91.104 authorizes flight restrictions in the proximity of the President, Vice-President, and other public figures. FAR Part 103 prescribes rules governing the operation of ultralight vehicles. Sections 103.17 and 103.19 prohibit operation of an ultralight in various categories of controlled and special use airspace, including restricted areas and prohibited areas. However, neither Part 91 nor Part 103 expressly prohibits the operation of ultralight vehicles in areas designated for space flight operations, under § 91.102, or for Presidential security, under § 91.104.

In promulgating Part 103, it was the FAA's intent that ultralight operators comply with the same restrictions that are applicable to conventional aircraft operations in general under §§ 91.102 and 91.104. The preamble to Part 103 published in the **Federal Register** (47 FR 38775) cited both "Presidential security" and "the launch and recovery of rocket-powered vehicles" as grounds for the exclusion of ultralights from certain airspace. Neither Part 91 nor Part 103, as issued, contains language which technically prohibits ultralights from entering areas designated under §§ 91.102 or 91.104.

The FAA is concerned that continued absence of specific reference to sections 91.102 and 91.104 flight restrictions in Part 103 may be construed by ultralight operators as permission to operate through these areas. Both the ultralight operator and the persons or operations for which the area is designated could be jeopardized by such flights; and the FAA remains convinced that any unauthorized ultralight vehicle operation in areas designated by §§ 91.102 or 91.104 results in an unsafe condition. In this respect, ultralight vehicles present the same potential threat as aircraft operated under Part 91, and the FAA believes that the provisions of §§ 91.102 and 91.104 should apply equally to both.

Because this amendment will serve to prevent disruption of space flight operations and infringement on secure areas for Presidential and other parties in the immediate future, I find that notice and public procedure hereon are not in the public interest and that good cause exists for making the regulation effective immediately.

Because this amendment imposes no additional burden on ultralight vehicle operators, this document involves a rulemaking action which is not a major rule under Executive Order 12291 and is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The economic impact of this regulation is so minimal that a full regulatory evaluation is not necessary.

List of Subjects in 14 CFR Part 103

Aviation safety, Ultralight vehicles.

Adoption of the Amendment

Accordingly, Part 103 of the Federal Aviation Regulations (14 CFR Part 103, Subpart B—Operating Rules) is amended by adding § 103.20 as follows:

§ 103.20 Flight Restrictions in the Proximity of Certain Areas Designated by Notice to Airmen.

No person may operate an ultralight vehicle in areas designated in a Notice to Airmen under § 91.102 or § 91.104 of this chapter, unless authorized by ATC.

(Secs. 307 and 313(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.45)

Issued in Washington, D.C., on January 14, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-2854 Filed 2-4-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM84-16-003; Order No. 400-A]

Methodology for Sales of Electric Power to Bonneville Power Administration

Issued February 1, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing and clarifying final rule.

SUMMARY: In Order No. 400, the Commission approved Bonneville Power Administration's new methodology for determining the average system cost of a utility's resources under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839–839h (1982).

By this order, the Commission denies a request for rehearing of Order No. 400. The Commission addresses the objections raised by the petitioners and reaffirms the positions taken in Order No. 400. In addition, the Commission clarifies one part of Order No. 400.

DATE: This order was issued on February 1, 1985.

FOR FURTHER INFORMATION CONTACT: John H. Clements, Room 8006A, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

I. Introduction

The Federal Energy Regulatory Commission is denying rehearing of its final rule [1] which approved the Bonneville Power Administration's (BPA's) new methodology for determining the "average system cost" (ASC) of a utility's resources under the Pacific Northwest Electric Power Planning and Conservation Act (NPA).[2]

Section 5(c) of the NPA provides for a power exchange program which is designed to make the benefit of BPA's relatively low preference power rates available to residential customers of investor-owned utilities (IOUs) in the Pacific Northwest. Under the exchange program, an IOU may sell power to BPA at the ASC of the utility's resources. BPA then sells the same amount of power to the utility at BPA's preference rate, which is generally lower. The power "exchange" in section 5(c) is generally a paper transaction; BPA makes a payment to the IOU for the difference between the IOU's ASC and BPA's preference rate. The IOUs must pass this benefit on to their customers. BPA's direct service industrial customers (DSIs), including large aluminum companies, pay the entire cost of this subsidy through their payments to BPA, until July 1, 1985. After that date, some of the cost will also be apportioned among other BPA customers.

On October 30, 1984, the Commission received a request for rehearing from a number of utilities and public utility commissions.[3] The applicants also requested that the rule be stayed pending a final Commission decision on the petition. On November 21, 1984, the Commission issued an order denying the request for a stay and granting rehearing for purposes of further consideration.[4]

The applicants make several arguments. In brief, applicants contend that the revised methodology is inconsistent with the NPA, that the Commission afforded too much deference to BPA's determinations and failed to apply its expertise to the review process, that the Commission should have found the new methodology to be unlawfully filed, that the continuing cost review provision makes the methodology unascertainable, and that the Commission unlawfully granted BPA the authority to establish ASC filing requirements. For the most part, applicants' arguments merely reiterate arguments previously considered and rejected in Order No. 400. Certain of their arguments, however, merit additional discussion.

II. Discussion

A. Consistency of the New Methodology with the NPA

The new methodology excludes from ASC the costs of return on equity and taxes. Applicants contend that the new ASC methodology is not consistent with the NPA because achievement of "wholesale rate parity," which is a purpose of the exchange program,[5] requires BPA to pay the "full" cost of power exchanged to BPA and full cost means all costs except the three specific cost exclusions in NPA section 5(c)(7).[6] They argue that full cost must include return on equity and taxes because these costs are universally recognized as elements of a utility's cost of service under traditional ratemaking concepts and because the retail customers of the IOUs will not receive the full benefits intended unless these costs are included.

The Commission appreciates the concerns of these applicants but, in light of the Commission's limited reviewing role,[7] the Commission is not persuaded that a different result is either possible or desirable. The legislative history of the NPA states that Congress intended to allow the IOUs' residential customers to:

> Share in the economic benefits of the lower-cost Federal resources marketed by BPA. [The Act] will provide these consumers wholesale rate parity with residential consumers of preference utilities in the region.[8]

As the Commission explained in the Final Rule, BPA has made a reasoned interpretation that this concept means that the wholesale rate for exchange sales is to be the same rate as BPA's rate for sales to its preference customers for resale, rather than the elimination of all cost differentials between public and private utilities.

BPA's interpretation is not inconsistent with the Congressional purpose underlying section 5(c) to make BPA's preference power available to both public and private utilities because, under section 5(c), the IOUs are entitled to purchase at BPA's preference rate. Moreover, had Congress intended that traditional cost of service determinations be strictly followed, it would not have provided for the three statutory cost exclusions from ASC. Further, had Congress intended that the ASC subsidy be inextricably linked to retail cost determinations, it could have easily accomplished that by leaving the Administrator out of the process altogether and letting the State commissions develop the ASC methodology. In addition, the legislative history indicates that the sharing of preference power was not intended to result in retail rate equality, but simply

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[1] Methodology for Sales of Electric Power to Bonneville Power Administration, 49 FR 33,293 (Oct. 5, 1984) (Order No. 400) (Docket No. RM84-16-000).

[2] Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839–839h (1982).

[3] The petitioners are: CP National Corporation, Idaho Power Company, Idaho Public Utilities Commission, The Montana Power Company, Montana Public Service Commission, Pacific Power and Light Company, Portland General Electric Company, Public Utility Commissioner of Oregon, Puget Sound Power and Light Company, Utah Power and Light Company, The Washington Utilities and Transportation Commission, and The Washington Water Power Company.

[4] 49 FR 46727 (Nov. 28, 1984).

[5] H.R. Rep. No. 976, 96th Cong., 2d Sess. 35 (1980); *See also* S. Rep. No. 272, 96th Cong., 1st Sess. 27–28 (1979).

[6] The three exclusions are the costs of serving new large industrial loads, new loads outside the region, and cancelled plant.

[7] *See* Sales of Electric Power to Bonneville Power Administration, Methodology and Filing Requirements, 48 FR 46970 (Oct. 17, 1983) (Order No. 337) (Docket No. RM81-41-000).

[8] *See* note 5, *supra*.

to provide a measure of relief to the IOUs' customers through a subsidy mechanism.[9] This is further indicated by the language of section 5(c)(7). That section provides that BPA may sell power to an IOU at its preference rate, but need not purchase replacement power from the IOU if it can find a less expensive source. In such an event, the IOU's customers would still receive BPA's preference rate, but BPA would not be required to reimburse the IOU for its costs at all.

The Commission again stresses that the ASC methodology is a mechanism for calculating a subsidy, not for establishing a traditional cost of purchased power. In determining the appropriate level of this subsidy, BPA is required to balance *all* of the economic interests in the region, including those of the customers who ultimately bear the cost of the subsidy. The Administrator is given considerable discretion by the statute in this regard. Petitioners' reading of the NPA as requiring the ASC to be calculated using only traditional utility ratemaking methods would unduly restrict the Administrator in exercising this discretion. The Administrator has reasonably concluded that customers of public utilities should not necessarily be subsidizing all costs of private utilities that result from inherent differences in the two forms of business organization. Thus, the Commission believes that excluding the costs of taxes and the return on equity from the subsidy paid by BPA and, subsequently, by its customers, contradicts neither the letter nor spirit of the NPA.

B. Application of Commission Expertise in the Review Process

Applicants also argue that the Commission erred by "declining to apply its expertise" in reviewing the new ASC methodology, because it approved the methodology notwithstanding its rejection of certain of BPA's arguments in support of removing the costs of taxes and return on equity. However, the Commission notes that it did accept BPA's argument that ASC need not include all costs except the specific exclusions of section 5(c)(7).[10]

C. Commission Deference to BPA's Statutory Interpretation

In Order No. 400, the Commission stated that even if the new ASC methodology is an abrupt departure from the old methodology, it is entitled to the same deference as the Administrator's original determination.[11] Applicants contend that this statement violates two principles: First, that a contemporaneous statutory construction by an agency charged with administering a statute, which is followed consistently thereafter, is entitled to great weight;[12] second, that an agency which seeks to change its position in such circumstances bears a greater burden to provide reasoned analysis than it otherwise might.[13]

The first stated principle is correct, but does not apply here. The original methodology was the result of negotiations among all the affected parties, not solely statutory construction in the strict sense. Moreover, BPA's administrative rules provided for changes in the methodology to accommodate experience.[14] BPA invoked this provision after several years of experience under the original methodology, when it was in a better position to assess how well the exchange program was working under that methodology. Thus, is it questionable whether the original methodology rests on a contemporaneous statutory construction in the strict sense.

The cases cited by the applicants indicate a radical departure from a contemporaneous construction after decades of consistent practice and that the interpretations were consistent with common commercial usage or had received Congressional approval.[15] Also, as noted above, the interpretation underlying the original methodology never rose to the level of a "longstanding and consistent" administrative interpretation of the kind considered in *Leslie Salt* and *Bunte Brothers*. Nor does "average system cost" of a utility's resources have any customary commercial meaning,[16] and there is no Congressional endorsement of the original methodology. Thus, in the Commission's view, BPA must clear no additional hurdles. It need only provide the reasoned analysis customarily required of any agency revising its statutory interpretation.[17] As noted above, the Commission concludes that such a reasoned analysis has been provided and that the Commission should afford BPA's current determination no less deference than BPA has previously been afforded.

D. BPA's Continuing Cost Review

Applicants also object to approval of that provision of the new methodology in which BPA reserves the right to review the appropriateness of the costs and loads determined by the State commissions and submitted in each IOU's ASC forms. Petitioners object because "[n]o standard exists by which to restrict BPA's ability to unilateraly remove any cost item."

While the NPA requires establishment of an ascertainable methodology for determining the "average system cost of a utility's resources", it provides no specific standards other than the three specific exclusions in NPA section 5(c)(7). This indicates that the Administrator's discretion was intended to be quite broad, which is consistent with the fact that the Administrator is implementing a new, complex and largely untested program that involves a sensitive balancing of several economic interests. The Administrator cannot be expected to anticipate each and every action by a State Commission which may result, even inadvertently, in an ASC filing not in compliance with the ASC methodology.

The flexibility provided by the cost review provision is consistent with the purpose of having a formula type methodology. In this regard, establishment of a working ASC methodology is somewhat akin to the establishment of a formula rate or unit sale contract in the traditional

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[9] The Report of the House Committee on Interstate and Foreign Commerce states that the requirement that BPA sell exchange power to the IOUs at its preference rate:

> Is not likely to result in parity in the retail rates being paid by consumers of preference customers and consumers of investor-owned utilities, but it should equalize the wholesale costs of electric power with a resulting benefit [to] the investor-owned utilities' customers.

H.R. 96-976 (Part I), 96th Cong., 2d Sess. 60 (May 15, 1980).

[10] The Commission notes, as a practical matter, that if exclusion of return on equity is accepted, exclusion of taxes should logically also be accepted. This is because nearly all taxes actually paid are on return on equity. Other types of taxes are recovered under the methodology as separate cost components.

[11] 49 FR at 39295.

[12] Applicants cite Norwegian Nitrogen Products Co. v. U.S., 288 U.S. 294 (1933) and Aluminum Co. of America v. Central Lincoln Peoples' Utility District, *et al.*, 104 S.Ct. 2472, 472 (1984).

[13] Applicants cite Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Inc. Co., 103 S. Ct. 2856 (1983).

[14] Section VI of Appendix C to the BPA/IOU contracts.

[15] U.S. v. Leslie Salt Co., 350 U.S. 373 (1956); FTC v. Bunte Bros, Inc., 312 U.S. 349 (1941).

[16] As BPA notes, part of the impetus for invoking the change provision came from BPA's Direct Service Industrial Customers (DSIs) and others. Record of Decision, pp. 15-16.

[17] *See* Middle South Energy, Inc. v. FERC, ——— F.2d ———, No. 83-1632 (D.C. Cir. Nov. 6, 1984) (Ginsburg, J., dissenting in part).

ratemaking context. While the Commission may approve a formula, the application of that formula is not necessarily free from controversy for all time. The parties may subsequently raise issues of fact and/or law regarding the application of the formula which require Commission consideration.[18]

Finally, Order No. 400 stated that it is not the Commission's intent that the provision may be used to indiscriminately revise the methodology, and that any exclusions will be scrutinized at the time the Commission reviews each ASC filing.[19] The Commission will reject any exclusion that does not conform to the methodology.

E. Standard for Interpretation of the Change Provision

The original ASC methodology stated that BPA may initiate procedures to change the methodology no sooner than "one year after the immediately previous ASC methodology has been adopted by Bonneville and approved by the FERC." Section 12 of the IOUs' contracts with BPA makes this language "a part of this contract." Each contract is on file with the Commission as a rate schedule under the Federal Power Act. BPA filed the new methodology with the Commission more than one year after the Commission gave interim approval to the old methodology, but less than one year after final approval. Applicants argue that the one-year change provision is a contractual provision, that it should be interpreted to run from the date of final approval. BPA used the interim approval date.

In the Final Rule, the Commission held that it has no authority to interpret the change provision because it is a BPA administrative rule and that even if the Commission did have authority to interpret the provision, it is bound to accept BPA's interpretion of its own regulations as controlling unless plainly erroneous or inconsistent, whether or not the regulation is incorporated by reference into a contract.

On rehearing, applicants raise again the argument made in the IOUs' comments on the proposed rule that the change provision is a contractual term in filed rate schedules, and that the Commission therefore has authority to review BPA's interpretation of the change provision pursuant to the *Mobile-Sierra* doctrine.[20] This argument was also considered and rejected in the Final Rule. After considering the applicants' arguements, the Commission is still persuaded of the soundness of its original position.

Applicants also dispute the Commission's holding that even if it has authority to interpret the change provision, the Administrator's interpretation is controlling unless it is plainly erroneous or inconsistent. Applicants contend that no deference is required because the change provision is merely a term of the contracts between BPA and the IOUs. They state that contracts between Federal agencies and private parties are to be construed "by application of the same principles as if the contract were between individuals;" that is, to give effect to the mutual intention of the parties.[21] Applicants further note that the general rule stated above applies notwithstanding that the contract language draws on and/or is identical to statutory or regulatory language.[22]

The Commission believes applicants have misapplied the principles upon which they rely. The record indicates that the contracts incorporate the BPA regulations by reference, rather than merely adopt the same language. Section 12 of the contracts states that the ASC methodology itself and the various appendices to the contract are made "a part of this contract." This language indicates an incorporation by reference. As the Commission stated in the Final Rule, the fact that BPA's administrative rule was incorporated by reference into a contract does not alter the principle that regulations are to be construed to give effect to the promulgating agency's intent.[23] Moreover, under applicants' construction, the ASC methodology itself, as "part of" the contracts, would be reduced to a mere contractual term, which is clearly incorrect. Thus, the "mutual intent" rule of construction does not apply here. Morever, the Commission has concluded that the cases cited by applicants do not apply to the facts in this situation.

F. Filing Requirements

Petitioners contend the Commission erred "in giving BPA the power to establish ASC filing requirements"[24] in § 301.1(d) of the regulations.[25] That section states that "[t]he procedures established by the Administrator provide the filing requirements" for all ASC-based filings. Applicants apparently read § 301.1(d) as approving or authorizing BPA's establishment of a twenty-day period following approval of a new methodology for submission to BPA of new ASC filings.

Section 301.1(d) does not grant BPA power to establish ASC filing requirements. The Administrator's authority to establish filing requirements before BPA exists by virtue of BPA's inherent authority to establish such regulations as are necessary to carry out its responsibilities under the NPA. As the Commission noted in Order No. 400, "the NPA empowers the Commission to review the methodology itself, not BPA's related procedures."[26]

Filing requirements before this Commission are, of course, to be established by this Commission. Order No. 400 established no such requirements. As before, filings under the NPA must comply with § 35.30(c) of the regulations, which provides that utilities have 15 days from the date of BPA's report on a utility's ASC to file with the Commission the ASC determined by BPA, BPA's report, and the utility's ASC schedules.[27] The only adjustment to the Commission's procedural regulations was the revision to § 35.30(b), regarding the effective date of rates. That section was amended only to the extent of providing that, with respect to the initial exchange period after Commission approval of a new ASC methodology, an IOU's ASC-based rate will be effective retroactively back to the effective date of the final rule only if the utility files its new ASC within 20 days. The final rule required any utility that files a revised ASC with BPA in accordance with this deadline to promptly file with the Commission a notice of timely filing of the new ASC.[28] Thus, the Commission was not approving or disapproving BPA's 20 day filing requirement. Rather, it adopted a procedural amendment to its own rules consistent with BPA's rule. The Commission's decision with respect to BPA's 20 day filing requirement was that it was reasonable to use as a basis for

[18] For example in Connecticut Municipal Electric Energy Cooperative, Inc. v. Connecticut Power and Light Co., Docket No. EL83-14-000, the complainant and respondent had entered into a unit sale contract providing that the complainant would purchase a portion of the output of a certain generating facility and would bear fixed and variable costs as specified in a detailed formula. The complaint alleged that the respondent had improperly applied the formula and failed to provide adequate support for the data used herein. The Commission set the matter for hearing. The proceeding was subsequently settled. 23 FERC ¶ 61,388 (1983).

[19] 49 FR at 39299.

[20] *See* United Gas Pipeline Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

[21] Petition at 15, *citing* Reading Steel Casting Co. v. U.S., 268 U.S. 186, 188 (1925).

[22] Skelly Oil v. Phillips Petroleum Co., 339 U.S. 667, (1950) and Pennzoil Co. v. FERC, 645 F.2d 360 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982).

[23] 49 FR at 39297. *See* Honeywell, Inc. v. U.S., 661 F.2d 182, 186 (Ct. Cl. 1981).

[24] Petition at 18.

[25] 18 CFR 301.1(d)(1984).

[26] 49 FR at 39295.

[27] 18 CFR 35.30(c) (1984).

[28] 49 FR at 39300.

establishing *this Commission's* filing requirements, insofar as they affect when a utility that has not conformed its rate schedule to the new methodology will be considered not to have had any ASC-based rate on file with the Commission.[39]

For the reasons set forth above, petitioners' request for rehearing is denied.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-2879 Filed 2-4-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 85-22]

Changes to the Customs Service Field Organization: Columbia-Snake; Boise, Idaho; Colorado Springs, CO

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by creating a new Customs district to be known as the Columbia-Snake Customs district. Boise, Idaho, is being designated as a port of entry for this new district, other pre-existing ports of entry which fall within the geographic boundaries of the new district retain their port designation. Also, Colorado Springs, Colorado, is being designated as a Customs station within the Great Falls, Montana, Customs district. These actions are taken pursuant to the Trade and Tariff Act of 1984, and as a continuation of Customs nationwide effort to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public.

EFFECTIVE DATE: February 5, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D C. 20229, (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

The Customs Service has primary responsibility for: (1) Collecting revenue (including Customs duties, excise taxes, fees and penalties) due on imported merchandise; (2) processing persons, cargo, baggage, and mail entering the U.S. from foreign countries; (3) enforcing import and export prohibitions to protect the general welfare and security of the U.S. and (4) collecting international trade statistics. To facilitate the execution of these duties, Customs has an organizational structure consisting of regions, divided into districts, ports of entry within districts, and ports supervising stations.

From time to time, the Customs field organization must be amended to respond to changing demands of the importing/exporting community or to Congressional intent. The Trade and Tariff Act of 1984 (Pub. L. 98-573), signed by the President on October 30, 1984, is such an instance when the organizational structure of Customs must be realigned. Accordingly, these amendments create a new Customs district, port of entry, and station.

Columbia-Snake Customs District

Pursuant to section 238 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), a new Customs district to be known as the Columbia-Snake Customs district is being established. The district headquarters will be at Portland, Oregon, and the geographical boundaries of the district are as follows: the State of Oregon; that part of the State of Idaho below 47° latitude; the State of Washington counties of Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Skamania, Wahkiakum, Walla Walla and Whitman and that area of Pacific County, State of Washington, south of a line that would be in effect if the northern boundary of Wahkiakum County were extended westward to the Pacific Ocean. The ports of entry for the Columbia-Snake Customs district are those ports of entry that existed within the above described territories as of October 30, 1984, the day of enactment of Pub. L. 98-573, with the addition of Boise, Idaho, as an additional port of entry for the new district.

Boise, Idaho, Port of Entry

Customs ports of entry are places (seaports, airports, or land border ports) designated by the Secretary of the Treasury where Customs officers or employees are assigned to accept entries of merchandise, clear passengers, collect duties and enforce the various provisions of Customs and related laws.

Pursuant to section 238 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), Boise Idaho, is being designated as a port of entry within the Columbia-Snake Customs district. The description is as follows:

The port limits of Boise generally include the city limits, within the County of Ada, from the NW corner of Section 27, Township 4 N, Range 1 E, (the intersection of Cloverdale Road and Chinden Boulevard), easterly along the section lines to the NE corner of Section 25, Township 4 N, Range 2 E, then southerly along the section lines to the SE corner of Section 1, Township 2 N, Range 2 E, (the intersection of Holcomb Road and Columbia Road), then westerly on Columbia Road along the section lines to the SW corner of Section 3, Township 2 N, Range 1 E, (the intersection of Columbia Road and Cleveland Road, then northerly on Cloverdale Road along the section lines to the NW corner of Section 27, Township 4 N, Range 1 E, (the intersection of Cloverdale Road and Chinden Boulevard).

Colorado Springs, Colorado, Customs Station

Customs stations are places other than ports of entry where Customs officers or employees are placed for the purpose of entering and clearing vessels and other carriers, accepting entries of merchandise, examining baggage, collecting duties, and enforcing the various provisions of customs and related laws. Stations may be established or terminated by the Commissioner of Customs.

The significant difference between ports of entry and stations is that, at stations, the Federal Government is reimbursed for:

(1) The salaries and expenses of its officers or employees for services rendered in connection with the entry or clearance of vessels; and

(2) Except as otherwise provided by the Customs Regulations, the expenses (including any per diem allowed in lieu of subsistence), but not the salaries of its officers or employees, for services rendered in connection with the entry or delivery of merchandise.

Customs stations are established under the authority of section 1, 37 Stat. 434, section 301, 80 Stat. 379; 5 U.S.C. 301, 19 U.S.C. 1.

This document further amends the Customs Regulations by designating Colorado Springs, Colorado, as a Customs station. This is not a designation pursuant to Pub. L. 98-573, but is being done as part of Customs continuing efforts to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public.

The Customs station at Colorado Springs, Colorado, comes under the jurisdiction of the Great Falls, Montana, Customs district and will be supervised

[39] 18 CFR 35.30(b)(2) (1984).

by the Denver, Colorado, port of entry. The geographical limits are as follows:

The area, within the County of El Paso, within the following boundaries: Beginning at a point one mile west of the intersection of Woodmen Road and Interstate Highway #25, easterly along Woodmen Road to its intersection with Marksheffel Road, then southerly along Marksheffel Road to its terminus at the northeast corner of the Peterson Air Force Base boundary, then following the eastern boundary of Peterson AFB southerly to its intersection with Drennan Road, then easterly 2½ miles, then southerly 2 miles, then westerly 2½ miles, then northerly 2 miles to Drennan Road, then westerly on Drennan Road to a point one mile west of its intersection with Interstate Highway #25, then northerly along a point one mile west of Interstate Highway #25 to its intersection with Woodmen Road.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Exports, Organization and functions (Government agencies).

Amendments to the Regulations

To reflect the establishment of the new district, port, and station, it is necessary to amend §§ 101.3 and 101.4, Customs Regulations (19 CFR 101.3, 101.4), which list the Customs regions, districts, ports and stations.

PART 101—GENERAL PROVISIONS

§ 101.3 Customs regions, districts and ports.

Section 101.3(b) is amended in the following manner:

1. In the part of the table describing the North Central Region, the "Area" column directly opposite "Great Falls, Mont.," is revised to read, "The States of Montana, Wyoming, Colorado, Utah, and that part of Idaho above 47° latitude."

2. Also in the North Central Region, the following is added in the appropriate columns just below "Great Falls, Mont."

* * * * *

Name and headquarters	Area	Ports of entry
"Portland, Oreg."	"That part of the State of Idaho below 47° latitude.".	"COLUMBIA-SNAKE CUSTOMS DISTRICT PORTLAND, OREG., Boise, Idaho, Pub. L. 98-573, T.D. 85-22 (See remainder of district listing under Pacific Region)."

* * * * *

3. In the part of the table describing the Pacific Region, the "Area" column directly opposite "Portland, Oreg." is revised to read "The State of Oregon, the State of Washington counties of Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Skamania, Wahkiakum, Walla Walla, and Whitman, and that part of Pacific County, south of a line that would be in effect if the northern boundary of Wahkiakum County were extended westward to the Pacific Ocean."

4. Also in the Pacific Region, the following is added in the appropriate column to correspond the new area description of "Portland Oreg."

* * * * *

Ports of Entry

"COLUMBIA-SNAKE CUSTOMS DISTRICT PORTLAND, OREGON

Astoria (including territory described in T.D. 73-338).

Coos Bay, Oreg. (E.O. 4094, Oct. 28, 1924; E.O. 5193, Sept. 14, 1929; E.O. 5445, Sept. 16, 1930; E.O. 9533, Mar. 23, 1945; 10 FR 3173).

Longview (including territory described in T.D. 73-338).

Newport, Oreg. (See remainder of district listing under North Central Region.)"

* * * * *

5. Also in the Pacific Region, the "Area" column directly opposite "Seattle, Wash.," is revised to read "The State of Washington except for the counties of Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Skamania, Wahkiakum, Walla Walla, and Whitman, and that part of Pacific County south of a line that would be in effect if the northern boundary of Wahkiakum County were extended westward to the Pacific Ocean."

§ 101.4 Entry and clearance of vessels at Customs stations.

Section 101.4(c) is amended by inserting the following in the appropriate columns between "Great Falls, Mont." and "Pembina, N. Dak."

* * * * *

Customs stations	Port of entry having supervision
"Colorado Springs, Colo."	"Denver, Colo."

* * * * *

Notice, Public Comment, and Delayed Effective Date

Because the amendments relating to the Columbia-Snake district and the Boise, Idaho, port of entry merely comply with provisions of the Trade and Tariff Act of 1984, Pub. L. 98-573, notice, public comment, and a delayed effective date are not required. The amendment relating to Colorado Springs, Colorado, is a change in agency organization and pursuant to 5 U.S.C. 553(b)(B), notice and public comment are unnecessary. Also, because this amendment updates the Customs Regulations to reflect Customs current field organization, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because these actions relate to the organization of the Customs Service, they are not regulations or rules subject to Executive Order 12291.

Regulatory Flexibility Act

These amendments are not subject to the provisions of Pub. L. 96-354, the Regulatory Flexibility Act (5 U.S.C. 601-612), because publication of a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other law.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,
Commissioner of Customs.

Approved: January 17, 1985.

Edward T. Stevenson,
Acting Assistant Secretary of the Treasury.

[FR Doc. 85-2887 Filed 2-4-85; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

38 CFR Part 17

Treatment of Veterans in Noncontiguous States, Territories and Possessions

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is amending its medical regulations (38 CFR Part 17) to extend the authority for treating veterans at VA expense in non-VA facilities outside of the United States as authorized by Pub. L. 98-528. This amendment will permit

continuation of a benefit already available to eligible veterans.

DATES: These amendments are effective January 30, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph F. Fleckenstein, Chief, Policies and Procedures Division (136F), Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C.20420, (202) 398–3785.

SUPPLEMENTARY INFORMATION: Pub. L. 98–528 extended from September 30, 1984, to September 30, 1985, the authority for treating veterans in Puerto Rico, the Virgin Islands and other Territories and Possessions through contract services in non-VA facilities.

The Administrator has determined that this amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; it will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

The VA finds that advance publication for public notice and comments is unnecessary and not required. These changes are primarily date changes reflecting a 1 year statutory extension to an already existing benefit. The regulation changes will not have independent effect. Therefore, the changes come within exceptions to the general VA policy of prior publication for public notice and comment, contained in 38 CFR 1.12. Accordingly, the changes are now public as final regulations.

Since a proposed rule will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, these changes are not subject to that act. In any case, the changes will not have a significant economic impact on a substantial number of small entities because they concern the entitlement of individual veterans and their beneficiaries, and do not have independent effect.

(Catalog of Federal Domestic Assistance Numbers: 64.009 and 64.011.)

List of Subjects in 38 CFR Part 17

Alcoholism, claims, dental health, drug abuse, foreign relations, government contracts, grants programs—healths, health care, health facilities, health professions, medical devices, medical research, mental health programs, nursing homes, Philippines, veterans.

Approved: January 30, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—[AMENDED]

38 CFR Part 17, *Medical*, is amended as follows:

§ 17.50b [Amended]

In § 17.50b, paragraph (e) is amended by changing the date "September 30, 1984" to "September 30, 1985"; and by adding "Pub. L. 98–528" to the end of the cite at the end of the paragraph.

(38 U.S.C. 210(c))

[FR Doc. 85–2861 Filed 2–4–85; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A–5–FRL–2770–3]

Indiana; Rescission of the Interim Enforcement Policy for Sulfur Dioxide Emission Limitations

AGENCY: Environmental Protection Agency.

ACTION: Rescission of the interim enforcement policy for sulfur dioxide in Indiana.

SUMMARY: By this notice, the U.S. Environmental Protection Agency is rescinding its interim enforcement policy for sulfur dioxide emission limitations in Indiana. The Indiana interim enforcement policy was published in the Federal Register on December 31, 1981 (46 FR 63270).

This policy was intended to focus the Agency's enforcement resources on those sources of SO_2 which presented the greatest environmental threat while policies to address the issue of sulfur variability were under review. Since the Agency is no longer considering such policies and since the Agency has proposed to retain short term SO_2 ambient air quality standards, the U.S. EPA has concluded that SO_2 compliance determination on a short term average basis is necessary to assure protection of the short term SO_2 National Ambient Air Quality Standards. Therefore, U.S. EPA is at this time rescinding the Indiana interim enforcement policy, and will enforce the Indiana State Implementation Plan (SIP) SO_2 regulations on the basis of the test methods specified in the Federally approved SIP.

EFFECTIVE DATE: January 9, 1985.

FOR FURTHER INFORMATION CONTACT: David A. Schulz, Air Compliance Branch, U.S. EPA, Region V, Chicago, Illinois 60604 (312) 353–2088.

Dated: January 9, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–2858 Filed 2–4–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 4F3006/R734; PH–FRI 2771–4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Ethalfluralin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide ethalfluralin in or on the raw agricultural commodity sunflower seed. This regulation to establish the maximum permissible level for residues of ethalfluralin in or on this commodity was requested by Elanco Products Co.

EFFECTIVE DATE: Effective on February 5, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of January 11, 1984 (49 FR 1421), which announced that Elanco Products Co., a division of Eli Lilly Co., 740 South Alabama St., Indianapolis, IN 46285, had submitted a pesticide petition (4F3006) to EPA proposing that 40 CFR Part 180 be amended by establishing a tolerance for residues of the herbicide ethalfluralin [*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-

(trifluoromethyl)benzenamine] in or on the agricultural commodity sunflower seed at 0.05 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered include plant and animal metabolism studies; a 90-day rat-feeding study with a no-observed-effect level (NOEL) of 500 ppm (equivalent to 25 milligrams (mg)/kilogram (kg) of body weight (bw)); a 90-day dog-feeding study with a NOEL of 27.5 mg/kg; a rabbit teratology study with a fetotoxic, maternal toxicity, and teratogenic NOEL of 75 mg/kg (the teratogenic effect level is 150 mg/kg with multiple anomalies observed in 2 fetuses out of 76 examined at this level (margin of safety (MOS) values are based on the NOEL of 75 mg/kg/day)); a 3-generation rat reproduction study with a NOEL of 250 ppm (12.5 mg/kg); a 2-year rat chronic feeding/oncogenicity study with a nonneoplastic NOEL of 750 ppm (37.5 mg/kg) and a significant increase in mammary gland fibroadenomas at 250 ppm (12.5 mg/kg) and 750 ppm (37.5 mg/kg) (this study is discussed further below); a 2-year mouse oncogenicity study with no observed oncogenic potential under the conditions of the study up to 1,500 ppm (225 mg/kg), the highest dose tested; a bacterial gene mutation (modified Ames test), positive; and Ames assay, positive; an *in vitro* unscheduled DNA synthesis (UDS) in rat hepatocytes, negative; an *in vitro* mouse lymphoma assay, negative.

The Agency has evaluated dietary exposure to ethalfluralin residues for the commodity proposed. Assuming 100 percent of the proposed crop is treated with residues at the tolerance level (0.05 ppm), using the "one-hit" model, the worst-case dietary oncogenic risk is calculated to be between one incidence in ten million and one incidence in one hundred million. Previously established tolerances provide a dietary oncogenic risk of 3.77 incidences in one million. The incremental increase in risk for sunflower seed in the diet is less than 1 percent of the theoretical maximal residue contribution (TMRC).

Data lacking and considered desirable are as follows: A second species teratology study and a nonrodent chronic feeding study. The petitioner has submitted a rat teratology study which did not indicate teratogenic potential at the dose levels tested (up to 250 mg/kg). This study is considered supplementary, however, because maternal toxicity was not demonstrated at the highest dose used. The petitioner has agreed to repeat the rat teratology study and to conduct a 1-year or longer chronic feeding study using the dog.

Based on a NOEL of 750 ppm in the 2-year rat study and a 100-fold safety factor, the acceptable daily intake (ADI) has been set at 0.375 mg/kg/day with a maximum permissible intake (MPI) of 22.5 mg/day for a 60-kg person. This tolerance and previously established tolerances result in a theoretical maximal residue contribution (TMRC) of 0.0031 mg/day in a 1.5-kg diet or 0.01 percent of the ADI.

There are no regulatory actions pending against the registration of ethalfluralin. The metabolism of ethalfluralin in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method, electron capture gas-liquid chromatography, is available for enforcement purposes. There is no expectation of secondary residues in meat, milk, poultry, and eggs.

Based on the information cited above, the Agency has determined that establishing a tolerance for residues of the pesticide in or on the commodity will protect the public health. Therefore, a tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 28, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.416 is amended in the table by adding and alphabetically inserting the raw agricultural commodity sunflower seed, to read as follows:

§ 180.416 Ethalfluralin; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Sunflower seed	0.05

[FR Doc. 85-2851 Filed 2-4-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[FCC 85-44]

Deleting Unnecessary Notification Requirements for Amateur Operator Examinations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document removes the requirement that Volunteer-Examiner Coordinators (VEC's) notify the FCC of every examination because it is unnecessary.

EFFECTIVE DATE: January 29, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Examinations.

Order

In the matter of amendment of Part 97 of the Commission's Rules to Delete Unnecessary Notification Requirements for Amateur Operator Examinations.

Adopted: January 23, 1985.
Released: January 29, 1985.

By the Commission.

1. On September 22, 1983 we adopted a *Report and Order* in PR Docket No. 83-27, 48 FR 45652 (October 6, 1983), implementing legislation (47 U.S.C. 154(f)(4)) passed by Congress on September 13, 1982 (Pub. L. 97-259) authorizing us to accept the services of volunteers to prepare and administer radio operator examinations in the Amateur Radio Service (ARS). The *Report and Order* established a program effective December 1, 1983, to accept the services of volunteers to prepare and administer amateur operator examinations above the Novice Class.

2. As part of this program we adopted a rule (§ 97.513) requiring Volunteer-Examiner Coordinators (VEC's) to notify the Field Operations Bureau thirty days in advance of the registration deadline for each examination. We adopted this notification requirement out of concern that the public not lose "a known central point (the FCC District Office) where people could call to get complete examination information for their area." *Report and Order*, PR Docket No. 83-27, *supra*, at para. 43.

3. As the program has evolved, we have found that most applicants who wish to take examinations seek to upgrade current licenses. They are generally active participants in the amateur community. They become aware of examination opportunities through many means, including amateur publications, hamfests, word-of-mouth, amateur radio clubs or by directly contacting VEC's. We regularly release a list of current VEC's in each region and their mailing addresses.

4. On the other hand, the requirement that VEC's notify the FCC District Offices of forthcoming examinations has been burdensome to the VEC's and to our Field Operations Bureau (FOB). VEC's often seek (and are routinely granted) waivers of the thirty-day notification requirement due to inability to comply or administrative inconvenience. In most such cases, the public interest benefit of an additional examination opportunity far outweighs the detriment of less than thirty days notice to FOB. In short, there is no need to continue to require our Field District Offices to serve as repositories of these notifications when the information could be more easily obtained directly from the regional VEC.

5. Therefore, we amend § 97.513 of our rules (47 CFR 97.513) to remove the requirement that VEC's notify FOB of examinations 30 days in advance of their registration deadlines. Because candidates may directly contact their VEC's to ascertain the dates of future examination opportunities, this rule amendment will have no effect upon the public. Furthermore, this change will not impose any additional burdens upon the VEC's. Thus, this rule modification is non-controversial. Accordingly, we conclude that good cause has been shown that compliance with the notice and comment provisions of section 553 of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. 553(b)(B).

6. Accordingly, it is ordered pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154(i) and 303(r)) that § 97.513 of the Commission's rules (47 CFR 97.513) is amended as set forth in the attached Appendix to remove the requirement that Volunteer-Examiner Coordinators notify the Field Operations Bureau of forthcoming examinations.

7. Because this rule change operates to relieve a restriction, we find that the effective date provisions of section 553(d) of the Administrative Procedure Act do not apply. See 5 U.S.C. 553(d)(1). Therefore, it is further ordered that this rule change is effective January 29, 1985.

8. For further information about this matter contact John J. Borkowski, Private Radio Bureau, Special Services Division, Personal Radio Branch at (202) 632-4964.

Federal Communications Commission.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

William J. Tricarico,

Secretary.

Appendix

PART 97—[AMENDED]

Part 97, Subpart I, § 97.513 of Title 47 of the Code of Federal Regulations is amended as follows:

Section 97.513 is revised to read:

§ 97.513 Scheduling of examinations.

A VEC will coordinate the dates and times for scheduling examinations (see § 97.26) throughout each of the regions it serves. A VEC may also coordinate the scheduling of testing opportunities at any locations outside of the thirteen regions set forth in § 97.507(b).

[FR Doc. 85-2857 Filed 2-4-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 40899-4135]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment and correction.

SUMMARY: This document amends the final regulations implementing the Framework Amendment for Managing the Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California, Commencing in 1985 (Framework Amendment) which were published on October 31, 1984 (49 FR 43679). This amendment clarifies the authority of the Secretary of Commerce (Secretary) to reopen a quota fishery if it is closed before the end of a scheduled season under § 661.21 based on a overestimate of catch. This document also corrects a typographical error in Part 661, Appendix II, paragraph B.7.

EFFECTIVE DATE: February 5, 1985.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, Director, Northwest Region, NMFS, 206-526-6150; or E.C. Fullerton, Director, Southwest Region, NMFS, 213-548-2575.

SUPPLEMENTARY INFORMATION: Regulations to implement the Framework Amendment were published as proposed on August 14, 1984 (49 FR 32414) and as final on October 31, 1984 (49 FR 43679) and incorporate into 50 CFR Part 661.

During a review of the Framework Amendment and its implementing regulations at the January 1985 meeting of the Pacific Fishery Management Council, the Council found that the characterization of Secretarial authority in § 661.21(a)(2) was not an adequate expression of its original intent when adopting the Framework Amendment. The existing regulations, in § 661.21(a)(2), "Rescission of automatic closure," provide that the Secretary *may* reopen a fishery if it was closed under a quota before the end of a scheduled season based on an overestimate of actual catch (emphasis added). It was brought to the Council's attention that the regulations could be interpreted to imply unlimited Secretarial discretion as to whether there will be a reopening of a fishery. This was not the Council's original intent. The Council had intended for the Secretary to be required

to reopen a fishery if it is found that (1) the fishery was closed under a quota before the end of the scheduled season based on an overestimate of actual catch, (2) the additional open period would be no less than 24 hours, and (3) the reopening of the fishery is consistent with the management objectives for the affected species. The regulations are therefore amended to reflect the Council's recommendation that § 661.21(a)(2) be corrected to express more clearly its original intent in adopting the Framework Amendment. Appendix III of Part 661, which also addresses Secretarial action in rescinding a quota closure (Appendix III, paragraph A.2.), will not be amended because it adequately expresses the Council's intent.

This document also corrects a typographical error in Appendix II. Paragraph B.7.(3) should be correctly listed as B.7.(c)

Classification

The Director, Northwest Region, NMFS, has determined that this action is necessary for the conservation and management of the Pacific coast salmon fishery and that it is consistent with the Framework Amendment, the Magnuson Fishery Conservation and Management Act, and other applicable law.

The Council prepared an environmental impact statement (EIS) for the Framework Amendment; a notice of availability was published on September 28, 1984 (49 FR 38355). There will be no change in environmental impact from that determined in the EIS as a result of this technical amendment and correction

The Council also prepared a regulatory impact review and a regulatory flexibility analysis as a part of the Framework Amendment, which describe the estimated ranges of effects from implemention of the amendment and the regulations and the effects this rule will have on small businesses. There will be no change in impacts from those previously determined as a result of this action.

Because this is a technical amendment to a final rule, it is not considered a rulemaking requiring review under Executive Order 12291.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 661

Fisheries.

Dated: January 30, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 661 and its Appendix are amended as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

1. The authority citation for Part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 661.21 is amended by revising paragraph (a)(2) to read as follows:

§ 661.21 Inseason actions.

(a) *Fixed inseason management provisions.*

* * * * *

(2) *Rescission of automatic closure.* If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours. The season will be reopened by publication of a notice in the **Federal Register** under § 661.22.

* * * * *

3. In Appendix II, paragraph B.7.(3) is corrected by redesignating it as paragraph B.7.(c).

[FR Doc. 85-2813 Filed 2-4-85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 24
Tuesday, February 5, 1985

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records; Acceptable Surety and Agent

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed Rule.

SUMMARY: The proposed rule would establish the basis for a review procedure internal to the Immigration and Naturalization Service for sureties and their agents who demonstrate any inexcusable, prolonged, and repeated failure to pay claims. Under the proposed rule, powers of attorney may be rejected by the Service even though the surety company appears on the Department of the Treasury's List of Acceptable Sureties. The purpose of this procedure is to provide the Service a means to enforce collection of its debts owed by sureties and their agents without resorting to the Revocation of Certificate procedures before the Department of the Treasury as provided in 31 CFR 223.1 et seq. The proposed rule also prohibits posting bond in one state for the release of an alien in another state (long arming). The proposed rule additionally clarifies certain collections and appellate procedures regarding bonds.

DATE: Written comments must be submitted April 8, 1985.

ADDRESSES: Please submit written comments, in duplicate, to the Director, Policy Directive and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

For Specific Information: James H. Walsh, Associate General Counsel, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-2895.

SUPPLEMENTARY INFORMATION: Many agents and surety companies are not paying delinquent bills on properly breached bonds, even after notification from the Regional Counsel that these bills are past due. While litigation is an effective remedy, litigation is expensive and time consuming. Another remedy is to request the Department of the Treasury to initiate action to revoke the Certification of Authority issued to these delinquent sureties. This process is also time consuming and goes against a surety's ability to do business with the United States Government generally as opposed to the Immigration and Naturalization Service alone. Additionally, it is not a viable means to enforce compliance by agents over whom the surety has lost control.

Currently, outstanding delinquent breached bonds owed to the Service are substantial which imposes additional costs upon the Service in collection efforts. Sureties and their agents are incurring large debts and even larger potential liabilities on extant bonds without effective *internal* controls. In most cases Revocation of Certificate proceedings are not initially justified due to the expense and complexity of involving another agency compared with the total vaue of the delinquencies.

It has also become characteristic of sureties who are in trouble with state authorities, or agents seeking to make a quick dollar without close scrutiny of the regulating state authority, to post bond in one state for release of an alien in another state (long arming). Agents sometimes carry out such activities without either the knowledge or the permission of the surety.

The proposed rule would prohibit "long arming", by requiring the alien to be physically present in the state where the agent posts the bond. The agent must also be licensed in that state.

Confusion exists among sureties and agents, or is alleged to exist, as to when a decision is final, and at what point the obligation is due to the Government. Sureties and agents also appear to be confused about the effect of a motion to reconsider on their obligation to pay.

The proposed rule clarifies by regulation when a decision on a breach of bond would become final. It also enunciates the obligation to pay a claim on a breached bond in circumstances where a motion to reconsider has been filed.

A new subsection 103.6(f) will be added to provide guidance on collection of claims on breached bonds. Each surety and agent will be required to deposit $100,000 in escrow in order to be entitled to post bonds in immigration cases. Claims against sureties and agents will be deducted from their escrow balances, if unpaid. If their escrow balance drops below $50,000, the surety or agent will no longer be entitled to post bonds in immigration cases.

The instructions on Form I-352 will be revised to conform to the requirement of an entitled surety rather than an acceptable surety for the posting of bonds in immigration cases.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, will not have significant economic impact on a substantial number of small entities.

This rule would not be a major rule within the definition of Section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Bonding, Fees, Forms, Surety bonds.

Accordingly, it is proposed to amend Chapter I of Title 8 of the Code of Federal Regulations, as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

In § 103.6, paragraphs (b) and (e) would be revised and a new paragraph (f) would be added to read as follows:

§ 103.6 Surety Bonds.

* * * * *

(b) *Entitled sureties and agents.* In order to be entitled to post bonds in immigration cases, each surety and each agent must be acceptable, as set forth in paragraphs (b) (1) and (2) of this section;

must deposit $100,000 in escrow with the Office of the Comptroller, Immigration and Naturalization Service, Room 6307, 425 I Street, NW, Washington, DC 20536; and must maintain a balance on deposit in escrow in excess of $50,000 at all times. If the balance on deposit in escrow for a surety or agent is drawn down to or below $50,000, that surety or agent is automatically no longer entitled to post bonds in immigration cases until the balance on deposit in escrow is replenished to $100,000.

Notwithstanding the foregoing, any surety or agent found by the Commissioner to demonstrate any inexcusable, prolonged, and repeated failure to pay claims shall not be entitled to post bonds in immigration cases after due notice to that surety or agent and an opportunity to provide a written response to the notice.

(1) *Acceptable surety.* Either a company holding a certificate from the Secretary of the Treasury under 31 U.S.C. 9304–9308 as an acceptable surety on Federal bonds, or a surety who deposits cash or United States bonds or notes of the class described in 31 U.S.C. 9301 or 9303 and Treasury Department regulations issued pursuant thereto and which are not redeemable within one year from the date they are offered for deposit, is an acceptable surety.

(2) *Acceptable agent.* An acceptable agent is one who has a license to do business in the state in which the agent proposes to underwrite bonds, and presents valid powers of attorney from an acceptable surety.

(3) *Conditions of Bond Posting.* All of the following conditions must be met before a bond will be accepted. A bond may only be posted:

(i) In the state where the alien is physically present;

(ii) By an agent licensed in that state;

(iii) When the agent presents a power of attorney of a surety licensed in that state;

(iv) By an entitled agent based upon a power of attorney issued by an entitled surety.

* * * * *

(e) *Breach of bond.* A bond is breached when there has been a substantial violation of the stipulated conditions.

(1) The District Director having custody of the file containing the immigration bond executed on Form I–352 shall determine whether the bond shall be declared breached or cancelled, and shall notify the agent on Form I–323 or Form I–391 of the decision, and if declared breached, of the reasons therefore, and of the right to appeal in accordance with the provisions of this Part.

(2) If an appeal is timely and properly filed, a decision on the appeal shall be rendered and the appellant shall be notified of the decision thereon.

(3) Determination by the District Director that a bond has been breached becomes final on the day following the last day for filing an appeal, if a timely appeal is not filed. When appealed, the determination becomes final on the day that the appeal is dismissed. A motion to reconsider a determination that a bond has been breached does not extend the data upon which the determination on a bond breach become final.

(4) A final determination that a bond has been breached creates a claim in favor of the United States which may not be released or discharged by a Service officer, without the prior approval of the General Counsel or designee.

(f) *Collection of Claims on Breached Bonds.* Once the determination that a bond has been breached becomes final, as set forth in paragraph (e)(3) of this section, the surety and agent thereupon are immediately liable to pay the claim based upon the breach. Interest, other charges, penalties, and administrative sanctions are enforceable from that date.

(1) If a surety or agent fails to pay the full outstanding amount owed on a claim within 60 days of a final determination of a bond breach, the full outstanding amount owed thereon, including interest, handling, and penalty charges, will be deducted from the balance on deposit in escrow for that surety or agent, pursuant to paragraph (b) of this section, and the surety or agent will be notified of such deduction.

(2) If the balance on deposit in escrow for a surety or agent is reduced below $50,000 by deductions pursuant to paragraph (f)(1) of this section, that surety or agent will be notified and is automatically no longer entitled to post bonds in immigration cases until the balance on deposit in escrow pursuant to paragraph (b) of this section is replenished to $100,000.

(Sec. 103 of the Immigration and Nationality Act as amended; 8 U.S.C. 1103)

Dated: January 22, 1985.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 85–2801 Filed 2–4–85; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9169]

Associated Mills, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require the Chicago, Ill. manufacturer and seller of the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699, among other things, to cease representing, contrary to fact, that this portable household air cleaning appliance removes most tobacco smoke and substantially all ragweed pollen and dust from the air people breathe under household conditions and that the appliance effectively filters all the air in a 14 foot x 18 foot room in less than an hour. The order would also bar the firm from misrepresenting the ability of any such appliance or equipment to clean or remove any quantity of indoor air contaminants, or the conditions of use under which the appliance would remove those contaminants. The compay would be further required to have within its possession competent and reliable evidence to support any claim relating to the performance characteristics of such appliance; and to maintain for a three year period written records of all materials that substantiate, contradict or qualify performance claims.

DATE: Comments must be received on or before April 8, 1985.

ADDRESS: Comments should be directed to FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Judith Wilkenfeld, FTC/B 411–5, Washington, D.C. 20580. (202) 376–8648.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period

of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14))

List of Subjects in 16 CFR Part 13

Household air cleaning appliances, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between Associated Mills, Inc., a corporation, hereafter sometimes referred to as respondent, by its duly authorized officer, and its attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith, the parties hereby agree that:

1. Respondent, Associated Mills, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 111 N. Canal Street, Chicago, Illinios 60606.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, and has filed answers to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with related materials pursuant to Rule 3.25(f), will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purpose only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

9. Respondent submits with this Agreement an Initial Compliance Report setting forth the manner it will initially comply with Part III of the Order. Final acceptance of this Agreement shall constitute acceptance of the Initial Compliance Report and shall also constitute advice under Section 2.41(d) of the Rules of Practice that implementation of the Initial Compliance Report will constitute compliance with the applicable portions of the Order until such time as the Commission seeks additional evidence of compliance.

Order

For purposes of this Order, the following definitions apply:

1. The terms "air cleaning appliance or equipment" and "appliance or equipment" mean portable household electric cord connected room air cleaners (excluding ashtrays), defined more specifically as machines that (a) operate with an electrical source of power and contain a motor and fan for drawing air through a filter(s); (b) incorporate electrically charged plates in addition to a fan with a filter(s); (c) incorporate a negative ion generator in addition to a fan with a filter(s); or (d) incorporate a negative ion generator only.

2. The term "indoor air contaminants" refers to one or more contaminants including, but not limited to, tobacco smoke, household dust, pollen, or other forms of indoor air pollution.

3. The term "performance characteristics" means:

a. the power, strength or capacity of the appliance or equipment whether expressed in terms of volume of air circulated or in terms of room sizes or otherwise;

b. the cleaning, filtration, or removal ability or speed of operation of the appliance or equipment whether expressed generally or in terms of a specific contaminant, in terms of the filtering media or mechanism, or in terms of the appliance itself.

Part I

It is ordered that respondent Associated Mills, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Pollenex Pure Air "99" Air Cleaner/Deoderizer Model 699 in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, contrary to fact, that the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699 cleans the air of most or removes most tobacco smoke from the air people breathe under household living conditions.

B. Representing, directly or by implication, contrary to fact, that the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699 removes substantially all ragweed pollen or dust from the air people breathe under household living conditions.

C. Representing, directly or by implication, contrary to fact, that the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699 effectively filters all the air in a 14 foot x 18 foot room in less than an hour.

Part II

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699 or any other air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean or remove indoor air contaminants.

B. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean or remove any quantity of indoor air contaminants.

C. Misrepresenting in any manner, directly or by implication, the conditions of use under which any such appliance or equipment will clean or remove indoor air contaminants.

D. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean air or remove indoor air contaminants from enclosures or rooms of any specified size or within any specified period of time.

Part III

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699 or any other air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commision Act, do forthwith cease and desist from:

A. Representing, directly or by implication, the performance characteristics of any such appliance or equipment unless respondent possesses and relies upon a reasonable basis for such representation. A reasonable basis shall consist of competent and reliable evidence which substantiates such representation. To the extent the evidence of a reasonable basis consists of scientific or professional tests, experiments, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, experiments, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

B. Representing, directly or by implication, that any air cleaning appliance or equipment will perform under household living conditions,unless respondent possesses and relies upon competent and reliable scientific tests, experiments, analyses, research or studies which either relate to those conditions or which have been extrapolated by generally accepted procedures to those conditions.

Part IV

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall maintain written records:

1. Of all materials relied upon in making any claim or representation covered by this order;

2. Of all test reports, studies, surveys or demonstrations in its possession that materially contradict, qualify, or call into question the basis upon which respondent relied at the time of the initial dissemination and each continuing or successive dissemination of any claim or representation covered by this order.

Such records shall be retained by respondent for a period of three years from the date respondent's advertisements, sales materials, promotional materials or post purchases materials making such claim or representation were last disseminated. Such records shall be made available to the Commission staff for inspection upon reasonable notice.

Part V

It is further ordered that respondent shall forthwith distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation and placement of advertisements or other sales materials.

Part VI

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

Part VII

It is further ordered that respondent shall, within sixty (60) days after this order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has provisionally accepted an agreement containing a consent order to cease and desist for Associated Mills, Inc. The Commission issued a Part III complaint against Associated Mills, Inc. on October 24, 1983.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns television and print advertisements for the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699, a portable household indoor air cleaning device developed for air contaminant problems.

The Commission's complaint in this matter charged Associated Mills, Inc. with disseminating advertisements containing false, misleading and unsubstantiated representations regarding the performance capabilities of the Pollenex Pure Air "99" Air Cleaner-Deodorizer Model 699. According to the complaint, Pollenex advertisements falsely claimed that the air cleaning appliance eliminates tobacco smoke, 80% of dust and 99% of pollen from the air people breathe under household living conditions. In fact, the complaint alleges, the Pollenex Model 699 can optimally remove no more than 12% of tobacco smoke from indoor air people breathe, as shown by the company's testing and independent tests. Moreover, the complaint alleges, the applicant cannot eliminate dust or pollen.

The complaint also alleges that Associated Mills falsely claimed that the Pollenex Model 699 effectively filters all the air in a 14 foot x 18 foot room every 25 minutes. In fact, the complaint alleges, tests show the applicance cannot filter the air in a 14 foot x 18 foot room in less than an hour.

The complaint further alleges that Associated Mills represented to consumers that it had a reasonable basis for these performance claims, when, in fact, it did not.

The consent order contains provisions designed to remedy the advertising violations charged, as well as to prevent respondent from engaging in similar illegal acts and practices in the future.

Part I of the order prohibits Associated Mills, its successors and assigns, from representing, directly or by implication, that the Pollenex Pure Air "99" Air Clean/Deodorizer Model 699 removes most tobacco smoke or removes substantially all household dust or pollen from the air people breathe under household living conditions. In regard to the Model 699 appliance, Associated Mills is prohibited from representing that the air cleaner effectively filters all the air in a 14 × 18 foot room in less than an hour. These provisions are intended to prohibit, in the future, the specific misrepresentation alleged in the complaint.

Part II of the consent order prohibits future performance misrepresentations in the sale of promotion of the Pollenex Model 699 air cleaner or any other air cleaning appliance or equipment. This provision requires that respondent not misrepresent, in any manner, the ability of an air cleaning appliance or equipment to clean or remove indoor air contaminants; the ability to clean or remove any quantity of contaminants, the conditions of use under which an appliance will perform, or the ability of any appliance to perform in rooms of specified sizes or within specified periods of time. For purposes of this section of the order, "indoor air contaminants" is defined to include tobacco smoke, household dust, pollen or other forms of indoor air pollution.

Further, Part III of the consent order contains a requirement that future performance claims for the Pollenex Model 699 and for any other air cleaning appliance or equipment be supported by a reasonable basis consisting of competent and reliable evidence substantiating the representation. In connection with future ad claims that an air cleaning appliance will perform under household living conditions, Associated Mills is required to possess and rely upon competent and reliable scientific tests which either relate to those conditions or which have been extrapolated by generally accepted procedures to those conditions. In addition, there is attached to the order an Initial Compliance Report which sets forth the manner Associated Mills will initially comply with Part III of the Order. That Report specifies that to the extent Associated Mills relies upon "scientific or professional tests * * *" as providing a reasonable basis for representation of the performance characteristics of its air cleaning appliance, those tests will be conducted in accordance with the protocol developed for the Association of Home Appliance Manufacturers.

Finally, the order contains a three-year recordkeeping provision requiring the retention of materials which support future ad claims, as well as those which materially contradict or qualify the claims.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to consistitue an official interpretation of the agreement and proposed order or to modify in any way its terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-2932 Filed 2-4-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 842 3152]

Descent Control, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require among other things, that a Fort Smith, Ark. marketer and distributor of the "Sky Genie" and other descent systems which are used for descent, rescue, or escape from high places to cease misrepresenting that any descent systems provide an automatically controlled descent or contain long-lasting line. The Order would require the company to have a reasonable basis consisting of specified data before making claims concerning the safety and performance characteristics of descent systems; or representations that the products meet or exceed any standard, or that they are used as sold by any government agency or non-government organization. The firm would also be required to disclose in catalogs, technical bulletins and operating instructions that the line should be replaced after two uses for rapid descent at speeds exceeding 15 feet per second; and that the line would have to be replaced immediately if exposed to certain chemicals, or used to arrest a free fall of two feet or more. Technical bulletins and operating instructions would also have to warn users that a line that has been used as a utiltiy line should not be used as a safety line; that the safety and speed of desenct is dependent upon manual control by the user; and that descent systems should not be used by individuals who are unfamiliar with their use. Additionally, the firm would have to affix a warning label to all descent systems; mail specified safety information to past purchasers; and place advertisements containing the safety information in specified trade publications.

DATE: Comments must be received on or before April 8, 1985.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Karen Egbert, H/411, Washington, D.C. 20580 (202) 523-3553.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Descent systems, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Descent Control, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that the proposed respondent is willing to

enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Descent Control, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Descent Control, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3920 Ayers Road, P.O. Box 6405, Fort Smith, Arkansas 72906.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint attached hereto.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by tbe Commission, it, together with the proposed complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the proposed complaint attached hereto.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission, may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the proposed complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect hereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the following definitions shall apply:

1. "Descent Control" means Descent Control, Inc., its subsidiaries, successors and assigns, and any other entity continuing the business of Descent Control, Inc., that has actual knowledge of this Order.

2. "Descent systems" means all hardware, rope and other components which are marketed and sold for the purpose of work in, or descent, rescue or escape from a high places.

3. "Person" means any individual, partnership, corporation, firm, trust, estate, cooperative, association, or other entity.

4. "Distributor" means any person who, pursuant to a sales agreement with Descent Control, purchases or receives on consignment descent system for resale to the public.

5. "Owner means any person who purchased a Sky Genie descent system directly from Descent Control or from a distributor.

I

It is ordered that respondent Descent Control, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Sky Genie descent systems, or any other descent systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating, or causing the dissemiation of, any advertisement, promotional material, operating instruction, technical manual, label, packaging, or catalog, which represents directly or by implication:

a. That any such descent systems provide an automatically controlled descent, unless such is the case;

b. That any nylon line within any such descent systems is long-lasting, unless such is the case;

c. That any such descent systems meet or exceed a standard of any government agency or non-government organization unless:

(i) There is disclosed clearly and prominently, in close conjunction therewith, a description of which standard is met or exceeded and whether all or only part of the descent systems meet or exceed such standard; and

(ii) At the time the representation is made Descent Control possesses and relies upon a reasonable basis for the representation.

d. That any such descent systems are used, in the form such systems are offered for sale, by any government agency or non-government organization, unless, at the time the representation is made, Descent Control possesses and relies upon a reasonable basis for the representation consisting of a verified written statement from the agency or organization which is claimed to use the descent systems attesting to such use; and

e. Any safety or other performance characteristic of any such descent systems, unless, at the time the representation is made, Dsecent Control possesses and relies upon a reasonable basis for the representation consisting of competent and reliable objective evidence substantiating the representation.

II

It is further ordered that respondent Descent Control, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Sky

Genie descent systems, or any other descent systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose clearly and prominently in each catalog for such systems the following:

1. That the line should be replaced after two uses for rapid descent at speeds in excess of 15 feet per second;

2. That the line must be replaced immediately if one used to arrest a free fall of 2 feet or more; and

3. That the line must be replaced immediately if exposed to any chemicals listed in the operating instructions.

III

It is further ordered that respondent Descent Control, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Sky Genie descent systems,s or any other descent systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose clearly and prominently in each technical bulletin and operating instruction for such descent systems adequate instructions for safe and proper use, including, but not limited to, the following:

1. That the line which is a component of the descent systems should be replaced after two uses for rapid descent at speeds in excess of 15 feet per second;

2. That the line must be replaced immediately if once used to arrest a free fall of 2 feet or more;

3. That the line must be replaced immediately if exposed to any of the following chemicals [herein Descent Control should identify all chemicals which it knows or has reason to know would adversely effect the line in its descent systems];

4. That the line should not be used as a safety line if it has ever been used as a utility line;

5. That the descent systems are not appropriate or safe for use as personal emergency or self-rescue devices by individuals who are not familiar with the proper use and application of the devices; and

6. That the safety and speed of descent of users of the descent systems is dependent upon manual control by the user.

IV

It is further ordered that respondent Descent Control, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Sky Genie descent systems, or any other descent systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to affix to each such descent system and to the packaging thereof a permanent white-adhesive label disclosing clearly and prominently in red letters;

WARNING: This line may break under certain conditions. See operating manual for details.

V

It is further ordered that Descent Control shall within thirty (30) days after the date of service of this order:

1. Provide each of its distributors with the labels described in Part IV and with technical bulletins and operating instructions which contain the disclosures required by Part III in sufficient number to cover each distributor's existing inventory of descent systems; and

2. Instruct and use its best efforts to ensure that each distributor affixes such labels to each descent system and its packaging and includes such technical bulletins and operating instructions with each descent system in the distributor's inventory.

VI

It is further ordered that Descent Control shall send to each owner identified by its records and to each owner identified by its distributor's records, by first class mail, within sixty (60) days after the service of this order, a copy of the letter attached hereto as Appendix A in an envelope clearly stamped on the front with the words "Contains Important Product Safety Information."

VII

It is further ordered that Descent Control shall, within thirty days after the date of service of this Order, place or cause to be placed, in the manner described below, the announcement attached hereto as Appendix B, beginning as soon as space is available, in three consecutive issues of each of the following publications: *Occupational Hazards, Industrial Safety and Hygiene News*, and *National Safety News*.

The printed announcement shall be no smaller than one quarter page in size, and shall not include any additional text or graphics.

VIII

It is further ordered that Descent Control shall distribute a copy of this Order to each present and future officer, employee, agent and representative having sales, advertising, or policy making responsibilities for any descent systems and secure from each such person a signed statement acknowledging receipt of said Order.

IX

It is further ordered that Descent Control shall maintain for at least three years and upon request make available to the Federal Trade Commission for inspection and copying the originals of signed statements required by Part VIII of this Order and all test results, data, and other documents or information relied upon for any representation for any descent systems and any information in the possession of Descent Control which contradicts, qualifies or calls into serious question that representation.

X

It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered that respondent shall, within ninety (90) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail, the manner and form in which it has complied with this Order.

Appendix A

Dear Customer: Our records show that you have purchased a Sky Genie descent system. Recently, it has come to our attention that users of this product may not be aware of necessary precautions to ensure safe use. Therefore, as a result of an agreement with the Federal Trade Commission, we are contacting all of our Sky Genie customers to alert them about the following precautions.

1. THE LINE MAY BREAK if used more than 2 times for rapid descents at speeds in excess of 15 feet per second (for example, rappelling or using it as a climbing rope). Replace the line after 2 rapid descents.

2. DO NOT use the rope as a safety line if it has ever been used as a utility line

3. Replace the line IMMEDIATELY after it has been used to arrest a free fall of 2 feet or more.

4. Replace the line IMMEDIATELY if it has been exposed to any of the following chemicals:

Hydrochloric acid	Acetic acid
Nitric acid	Oxalic acid
Muriatic acid	Phenol
Sulfuric acid	Nitrobenzene

5. The number of turns of the line around the shaft of the Sky Genie will NOT automatically ensure a controlled rate of descent. The user must be prepared to manually control the descent in order to prevent an uncontrolled fall.

6. The durability and life of the line will vary significantly depending on how and where it is used. In order to ensure safe use in an emergency, inspect the line carefully before each use. Look for broken, cut or pulled strands, worn fibers, or any hardening or discoloring of portions of the line. If any of these warning signs are present, the line may break.

If you have any questions on the use and care of the Sky Genie descent system, please write Descent Control, P.O. Box 6405, Fort Smith, Arkansas 72906, or call (800) 643-2539).

Sincerely yours,

President

Appendix B

IMPORTANT SAFETY INFORMATION

[insert company logo]

For owners of

SKY GENIE DESCENT SYSTEMS

Your SKY GENIE line may break or you may suffer an uncontrolled fall if you don't use it properly—follow these important steps for safe use:

1. REPLACE THE LINE when it's been used to arrest a free fall of 2 feet or more.
2. REPLACE THE LINE when it's been exposed to any of the following chemicals: Hydrochloric, Nitric, Muriatic, Sulfuric, Acetic or Oxalic acids, Phenol or Nitrobenzene.
3. REPLACE THE LINE after two rapid descents at speeds in excess of 15 feet per second.
4. BE PREPARED to manually control the speed of descent. The number of turns of the line around the shaft will not automatically ensure a controlled descent.

* For further information, write: Descent Control, P.O. Box 6405, Fort Smith, Arkansas 72906, or call (800) 643-2539.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Descent Control, Inc., Fort Smith, Arkansas 72906.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Descent Control has made false and misleading representations regarding the Sky Genie Descent Systems, which are used for work in, and for descent, escape and rescue from, high places. The complaint alleges that, contrary to Descent Control's representations presetting the Sky Genie device does not provide an automatically controlled descent; rather, the speed of descent depends on user control. The complaint further alleges that the nylon line used with the system is not safe or durable for long periods of time when used for rapid descent or to arrest a free fall. The nylon line of the Sky Genie descent systems is subject to failure or breakage after two uses for descents at speeds in excess of 15 feet per second or after one use to arrest a free fall of 2 feet or more. Furthermore, the complaint alleges that, contrary to Descent Control's representations, the Sky Genie descent systems do not meet or exceed all applicable OSHA standards. All lines sold by Descent Control do not meet OSHA standards for lifelines; the system does not meet federal OSHA standards for boatswain's chairs and, contrary to Descent Control's representations, no OSHA standards exist for escape and rescue. Moreover, the complaint alleges that Descent Control has falsely claimed that the U.S. Army uses the Sky Genie system in the form such systems are offered for sale. In fact, the U.S. Army uses the Sky Genie only after modifying it because the system, as it is sold, does not meet Army standards for escape and rescue systems.

In addition, the complaint alleges that Descent Control has made false and misleading representations about the safety and efficacy of the Sky Genie descent systems because the use and care instructions provided to purchasers have failed to disclose certain material facts concerning the safe use of the system; namely, that:

(1) User control, and not any presetting of the device, determines the speed of descent;

(2) The nylon line should be replaced after two uses for descents at speeds in excess of 15 feet per second; and

(3) The nylon line should be replaced immediately if once used to arrest a free fall of 2 feet or more, or if exposed to certain chemicals commonly found in

and around construction and maintenance sites.

The proposed consent order, which applies to all descent systems marketed and sold by Descent Control, prohibits Descent Control from misrepresenting the durability and life expectancy of the line and from misrepresenting the degree of user control necessary to control the speed of descent. The proposed order requires Descent Control to have a reasonable basis before making any representations as to the safety and performance characteristics of any descent systems; any representations that the descent systems meet or exceed any standard; or any representations that the systems are used, in the form they are sold, by any government or non-government organization. In addition, any representation that the descent system meet or exceed the standard of any government or non-government organization must be accompanied by a disclosure specifying the standard and whether all or only part of the descent systems met the standard.

The proposed order would also require Descent Control to disclose in its catalogs, technical bulletins and operating instructions that the line should be replaced after two uses for descent at speeds in excess 15 feet per second; and must be replaced immediately if used to arrest a free fall of two feet or more, or if exposed to certain chemicals. In addition, the technical bulletin and operating instructions must also disclose that the line should not be used as a safety line if it has ever been used as a utility line, that the descent systems should not be used by individuals who are unfamiliar with their use, and that the safety and speed of descent of those using the descent systems is dependent upon manual control by the user.

Further, the proposed order would require that a permanent label be affixed to each of the descent systems which warns the user to consult the operating instructions to learn of precautions to ensure safe product use.

Moreover, Descent Control will mail notices to past purchasers containing information on needed precautions to ensure safe use of the system. The company will also place advertisements conveying the important safety information in several trade publications to ensure that as many owners as possible receive the information they need to safely use the product.

Finally, the proposed order contains standard provisions that require Descent Control to send copies of the order to all parties responsible for complying with it; to maintain records of compliance for 3 years; to provide the Commission with 30 days' notice of corporate changes; and to file a compliance report within 90 days after service of the complaint and order.

The purpose of this analysis is to facilitate public comment on the proposed order; it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-2933 Filed 2-4-85; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. 9167]

Rush-Hampton Industries, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require the Sanford, Fla. manufacturer of the Ecologizer CA/90 Series 2000 Air Treatment System, among other things, to cease falsely representing, through the use of terms such as "eliminates" or by other means, that the portable household air cleaning appliance removes substantially all formaldehyde gas, tobacco smoke, household dust and pollen from the air people breathe under household conditions; or that the appliance recirculates or filters all the air in a room of a particular size in less than an hour. The firm would also be barred from misrepresenting the ability of any such appliance to clean or remove indoor air contaminents; or the conditions of use under which it would remove those contaminents. Additionally the order would require to the company to have within its possession competent and reliable substantiating evidence for any claim relating to the performance characteristics of an air cleaning appliance; and to maintain records of materials that substantiate, contradict or qualify performance claims for a period of three years.

DATE: Comments must be received on or before April 8, 1985.

ADDRESS: Comments should be directed to FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Judith Wilkenfeld, FTC/B 411-5, Washington, D.C. 20580 (202) 376-8648.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval by the Commission, has been placed on the public record for a period of sixy (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Household air cleaning appliances, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between Rush-Hampton, Industries, Inc. a corporation, hereafter sometimes referred to as respondent, by its duly authorized officer, and its attorneys, and counsel for the Federal Trade Commission is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith, the parties hereby agree that:

1. Respondent, Rush-Hampton Industries, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1201 Silver Lake Drive, Sanford, Florida 32772.

2. Respondent has been served with a copy of the amended complaint issued by the Federal Trade Commission charging it with violating of Section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying and said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's amended complaint in this proceeding

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the

validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is provisionally accepted by the Commission. If this agreement is accepted by the Commission it, together with related materials pursuant to Rule 3.25(f), will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its provisional acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision containing the following order to cease and desist, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order of in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purpose of this Order, the following definitions apply:

1. The term "indoor air contaminants" includes formaldehyde gas, solvent gases, acetic acid, ammonia, other household gases, tobacco smoke, household dust and pollen.

2. The term "performance characteristics" includes:

a. The power, strength or capacity of the appliance or equipment whether expressed in terms of volume of air circulated or in terms of room sizes;

b. The cleaning, filtration, or removal ability or speed of operation of the appliance or equipment whether expressed in terms of a specific contaminant, in terms of the filtering media or mechanism, or in terms of the appliance itself.

Part I

It is ordered that respondent Rush-Hampton Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Ecologizer CA/90 Series 2000 Air Treatment System, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, contrary to fact, that the Ecologizer CA/90 Series 2000 Air Treatment System removes substantially all formaldehyde gas, tobacco smoke, household dust or pollen from the air people breathe under household living conditions, through the use of the word "eliminates" or other phrases that the reasonable consumer would interpret as "substantially all."

B. Representing, directly or by implication, contrary to fact, that the Ecologizer CA/90 Series 2000 Air Treatment System removes most formaldehyde gas or tobacco smoke from the air people breathe under household living conditions.

C. Representing, directly or by implication, contrary to fact, that the Ecologizer CA/90 Series 2000 Air Treatment System recirculates or filters all the air in a 14×18 foot room in less than an hour.

Part II

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Ecologizer CA/90 Series 2000 Air Treatment System or any other cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean or remove indoor air contaminants.

B. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean or remove indoor air contaminants.

C. Misrepresenting in any manner, directly or by implication, the conditions of use under which any such appliance or equipment will clean or remove indoor air contaminants.

D. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean air or remove indoor air contaminants from enclosures or rooms of any specified size or within any specified period of time.

Part III

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Ecologizer CA/90 Series 2000 Air Treatment System or any other cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, the performance characteristics of any such appliance or equipment unless respondent possesses and relies upon a reasonable basis for such representation. A reasonable basis shall consist of competent and reliable evidence which substantiates such representation. To the extent the evidence of a reasonable basis consists of scientific or professional tests, experiments, analysis, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, experiments, analysis, research, studies, or other evidence are conducted and evaluated in an objective manner by

persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

B. Representing, directly or by implication, that any air cleaning appliance or equipment will perform under a set of conditions, including household living conditions, unless respondent possesses and relies upon competent and reliable scientific tests which either relate to those conditions or which have been extrapolated by generally accepted procedures to those conditions.

Part IV

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall maintain written records:

1. Of all materials relied upon in making any claim or representation covered by this order;

2. Of all test reports, studies, surveys or demonstrations in its possession that contradict, qualify, or call into question the basis upon which respondent relied at the time of the initial dissemination and each continuing or successive dissemination of any claim or representation covered by this order.

Such records shall be retained by respondent for a period of three years from the date respondent's advertisements, sales materials, promotional materials or post purchase materials making such claim or representation were last disseminated.

Part V

It is further ordered that respondent shall forthwith distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation and placement of advertisements or other sales materials.

Part VI

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

Part VII

It is further ordered that respondent shall, within sixty (60) days after this order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has provisionally accepted an agreement containing a consent order to cease and desist from Rush-Hampton Industries, Inc. The Commission issued a Part III complaint against Rush-Hamption Industries, Inc. on July 14, 1983.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns television, radio and print advertisements for the Ecologizer DA/90 Series 2000 Air Treatment System, a portable household indoor air cleaning device developed for air contaminant problems.

The Commission's complaint in this matter charged Rush-Hampton Industries, Inc. with disseminating advertisements containing false, misleading and unsubstantiated representations regarding the performance capabilities of the Ecologizer CA/90 Series 2000 Air Treatment System. According to the complaint, Ecologizer advertisements falsely claimed that the air cleaning appliance "gets rid of" or eliminates formaldehyde gas, tobacco smoke, dust and pollen from the air people breathe under household living conditions. In fact, the complaint alleges, the Ecologizer Series 2000 can optimally remove no more than 5% of formaldehyde gas and no more than 15% of tobacco smoke from indoor air people breathe, as shown by the company's testing and independent tests. Moreover, the complaint alleges, the appliance cannot eliminate pollent or dust.

The complaint also alleges that Rush-Hampton falsely claimed that the Ecologizer recirculates or filters all the air in a 14 foot x 18 foot room every 33 minutes. In fact, the complaint alleges, tests show the appliance cannot recirculate or filter the air in a 14 foot x 18 foot room in less than an hour.

The complaint further alleges that Rush-Hampton represented to consumers that it had a reasonable basis for these performance claims, when, in fact, it did not.

The consent order contains provisions designed to remedy the advertising violations charged, as well as to prevent respondent from engaging in similar allegedly illegal acts and practices in the future.

Part I of the order prohibits Rush-Hampton, its successors and assigns, from representing, directly or by implication, that the Ecologizer CA/90 Series 2000 Air Treatment System removes substantially all formaldehyde gas, tobacco smoke, household dust or pollen from the air people breathe under household living conditions. Part I also prohibits future claims that the appliance removes most formaldehyde gas or tobacco smoke under household living conditions. Finally, in regard to the Series 2000 appliance, Rush-Hampton is prohibited from representing that the air cleaner recirculates or filters all the air in a 14 foot x 18 foot room in less than an hour. These provisions are intended to prohibit, in the future, the specific misrepresentations alleged in the complaint.

Part II of the consent order prohibits future performance misrepresentations in the sale or promotion of the Ecologizer Series 2000 air cleaner or any other air cleaning appliance or equipment. This provision requires that respondent not misrepresent, in any manner, the ability of an air cleaning appliance or equipment to clean or remove indoor air contaminants, the ability to clean or remove any quantity of contaminants, the conditions of use under which an appliance will perform, or the ability of any appliance to perform in rooms of specified sizes or within specified periods of time. For purposes of this section of the order, "indoor air contaminants" is defined to include formaldehyde gas, solvent gases, acetic acid, ammonia, other houshold gases, tobacco smoke, household dust and pollen.

Further, Part III of the consent order contains a requirement that future preformance claims for the Ecologizer Series 2000 and for any other air cleaning appliance or equipment be supported by a reasonable basis consisting of competent and reliable evidence substantiating the representation. In connection with future ad claims that an air cleaning appliance will perform under a set of conditions, including household living

conditions, Rush-Hampton is required to possess and rely upon competent and reliable scientific tests which either relate to those conditions or which have been extrapolated by generally accepted procedures to those conditions.

Finally, the order contains a three-year recordkeeping provision requiring the retention of materials which support future ad claims, as well as those which contradict or qualify the claims.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-2930 Filed 2-4-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 842 3181]

Young & Rubicam/Zemp, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a St. Petersburg, Fla. advertising agency, among other things, to cease, in connection with the advertising and sale of the Ecologizer CA/90 Series 2000 Air Treatment System, representing falsely through the use of terms such as "eliminates" or by other means, that the portable household air cleaning appliance removes substantially all or most formaldehyde gas and tobacco smoke from the air people breathe under household living conditions. The firm would also be barred from misrepresenting the ability of any such appliance or equipment to clean the air of formaldehyde gas or tobacco smoke; and from representing the performance characteristics for an air cleaning appliance unless it possesses and relies upon competent and reliable substantiating evidence for such claims. Additionally, the company would be required to maintain written records of materials that subtantiate, contradict or qualify performance claims for a period of three years.

DATE: Comments must be received on or before April 8, 1985.

ADDRESS: Comments should be directed to FTC/Office of the Secretary, Room 136, 6th and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Judith Wilkenfeld, FTC/B 411-5, Washington, D.C. 20580 (202) 376-8648.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 271, 15 U.S.C. 46 and 2.34 of the Commission's Rules of Practice (2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval by the Commission, has been placed on the public record for a period sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Household air cleaning appliances, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Young & Rubicam/Zemp, Inc., a corporation, and it now appearing that Young & Rubicam/Zemp, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Young & Rubicam/Zemp, Inc., by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Young & Rubicam/Zemp, Inc., is a corporation, organized, existing and doing business under and by viture of laws of the State of Florida, with its office and principal place of business located at 1213 16th Street North, St. Petersburg, Florida 33733.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect therto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed repondent that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commissiion pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, except as provided in paragraph 7 below, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. Except as provided in paragraph 7 below, the order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. No part or provision of this order shall become binding upon respondent until the effective date of a final order to

cease and desist against Rush-Hampton Industries, Inc., or its successors or assigns. If a final order against Rush-Hampton Industries, Inc. (Docket No. 9167) contains a provision less restrictive than the corresponding provision in Parts I–III of the attached order, then this order shall be reopened for the sole purpose of conforming said provision with the provision in the Rush-Hampton Industries, Inc. order. In the event that the complaint in Rush-Hampton Industries, Inc. (Docket No. 9167) is dismissed in whole, then the Commission, upon the application of respondent, shall set aside this order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, and is binding, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final and binding.

Order

Part I

It is ordered that respondent Young & Rubicam/Zemp, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division of other device, in connection with the advertising, offering for sale, sale or distribution of the Ecologizer CA/90 Series 2000 Air Treatment System, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, contrary to fact, that the Ecologizer CA/90 Series 2000 Air Treatment System removes substantially all formaldehyde gas or tobacco smoke from the air people breathe under household living conditions through the use of the word "eliminates" or other phrases that the reasonable consumer would interpret as "substantially all."

B. Representing, directly or by implication, contrary to fact, that the Ecologizer CA/90 Series 2000 Air Treatment System Cleans the air of or removes most formadehyde gas or tabacco smoke from the air people breathe under household living conditions.

Part II

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or throught any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Ecologizer CA/90 Series 2000 Air Treatment System or any other air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean the air of or remove formaldehyde gas or tobacco smoke.

Part III

A. It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Ecologizer CA/90 Series 2000 Air Treatment System or any other air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, the preformance characteristics of any such appliance or equipment unless respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable evidence which substantiates such representation.

B. To the extent the evidence of a reasonable basis consists of scientific or professional tests, experiments, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" for purposes of Part III(A) only if those tests, experiments, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

C. For purposes of Part III(A) of this order, the term "performance characteristics" means the cleaning, filtration, or removal ability of the appliance or equipment, with respect to formaldehyde gas or tobacco smoke, whether expressed in terms of the filtering media or mechanism, or in terms of the appliance itself.

Provided, however, that in circumstances where the scientific or professional tests, experiments, analysis, research, studies, or any other evidence based on the expertise of professionals in the relevant area was not directly or indirectly prepared, controlled, or conducted by respondent, it shall be an affirmative defense to an alleged violation of Part III of this Order for respondent to prove that it reasonably relied on the expert judgment of its client or of an independent third party in concluding that it has a reasonable basis in accordance with Part III of this Order. Such expert judgment shall be contained in a written document prepared by a person qualified by education or experience to render the opinion. Such opinion shall describe the contents of such evidence upon which the opinion is based.

Provided further that nothing in this Order shall be deemed to deny or limit respondent with respect to any right, defense, or affirmative defense to which respondent otherwise may be entitled by law in a compliance action or any other action, including any right, defense, or affirmative defense based upon the legal standards applicable to advertising agencies.

Part IV

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain written records:

1. Of all materials that were relied upon in disseminating any representation covered by this Order, insofar as the text of such representation is prepared, authorized, or approved by any person who is an officer or employee of respondent, or of any division, subdivision or subsidiary of respondent.

2. Of all test reports, studies, surveys, or demonstrations in its possession or control that contradict, qualify, or call into question any representation made by respondent that is covered by this Order.

Such records shall be retained by respondent for a period of three years from the date the representations to which they pertain were last disseminated, and may be inspected by the staff of the Commission upon reasonable notice.

Part V

It is further ordered that respondent shall forthwith distribute a copy of this

Order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation and placement of advertisements or other sales materials.

Part VI

It is further ordered that respondent notify the Commission at least thrity (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

Part VII

It is further ordered that respondent shall, within sixty (60) days after this order becomes final and binding, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has provisionally accepted an agreement containing a consent order to cease and desist from Young & Rubicam/Zemp, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns television, radio and print advertisements for the Ecologizer CA/90 Series 2000 Air Treatment System, a protable household indoor air cleaning device developed for air contaminant problems. Young & Rubicam/Zemp, Inc. is the advertising agency which created and disseminated the challenged ads for the manufacturer, Rush-Hampton Industries. The Commission issued a Part III complaint against Rush-Hampton Industries, Inc. on July 14, 1983.

The Commission's complaint in this matter charges Young & Rubicam/Zemp, Inc. with disseminating advertisements containing false, misleading and unsubstantiated representations regarding the performance capabilities of the Ecologizer CA/90 Series 2000 Air Treatment System. According to the complaint, Ecologizer advertisements falsely claimed that the air cleaning appliance "gets rid of" or eliminates formaldehyde gas and tobacco smoke from the air people breathe under household living conditions. In fact, the complaint alleges, the Ecologizer Series 2000 can optimally remove no more than 5% of formaldehye gas and no more than 15% of tobacco smoke from indoor air people breathe, as shown by the company's testing and independent tests. Moreover, the complaint alleges, the ad agency knew or should have know these claims were both false and unsubstantiated.

The consent order contains provisions designed to remedy the advertising violations charged, as well as to prevent respondent from engaging in similar allegedly illegal acts and practices in the future.

Part I of the order prohibits Young & Rubicam/Zemp, its successors and assigns, from representing, directly or by implication, that the Ecologizer CA/90 Series 2000 Air Treatment System removes substantially all formaldehyde gas or tobacco smoke from the air people breathe under household living conditions. Part I also prohibits future claims that the appliance removes most formaldehyde gas or tobacco smoke under household living conditions. These provisions are intended to prohibit, in the future, the specific misrepresentations alleged in the complaint.

Part II of the consent order prohibits future performance misrepresentations in the sale or promotion of the Ecologizer Series 2000 air cleaner or any other air cleaning appliance or equipment. This provision requires that respondent not misrepresent, in any manner, the ability of an air cleaning appliance or equipment to clean the air of or remove formaldehyde gas or tobacco smoke.

Further, Part III of the consent order contains a requirement that future performance claims for the Ecologizer Series 2000 and for any other air cleaning appliance or equipment be supported by a reasonable basis consisting of competent and reliable evidence substantiating the representation. The reasonable basis section contains an affirmative defense provision which permits respondent, under certain circumstances, to prove that it reasonably relied on the expert judgment of its client or of an independent third party in concluding that a reasonable basis exists.

Finally, the order contains a three-year recordkeeping provision requiring the retention of materials which support future ad claims, as well as those which contradict or qualify the claims.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-2931 Filed 2-4-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Implementation of Emergency Stumpage Rate Redeterminations for National Forest Timber Sales in Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rule.

SUMMARY: This proposed rule will implement section 4 of the Federal Timber Contract Payment Modification Act (98 Stat. 2213; 16 U.S.C. 619) which provides for emergency stumpage rate redeterminations of certain National Forest System timber sales in Alaska. The intended effect of this section of the Act and this proposed rule is to enable purchasers of short-term timber sale contracts in Alaska to be more competitive with other purchasers of National Forest timber.

DATE: Comments must be received by March 7, 1985.

ADDRESSES: Send written comments to R. Max Peterson, Chief (2400), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: David M. Spores, Timber Management Staff, (202) 447-4051.

The public may inspect all written submissions made pursuant to this notice during regular business hours in the office of the Director, Timber Management Staff, Room 3207, South Agriculture Building, 12th and Independence Ave., SW., Washington, D.C.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Federal Timber Contract Payment Modification Act provides that emergency stumpage rate redeterminations shall be made upon the written application of a purchaser of National Forest timber in Alaska. The contract must have been bid after January 1, 1974.

Forest Service timber sale contracts of more than 7 years in length currently provide that a general drop in the market, or other changes in economic conditions may reduce the value of timber subject to the contract enough to qualify for an emergency rate redetermination. Once this value, which is specified in the contract, is reached, the Forest Service, upon application of the purchaser, will redetermine the rates for timber. Sales less than 7 years in length generally do not include this provision.

Under existing contract provisions, one of the 50-year timber sales in Alaska received an emergency rate redetermination in 1981, and the other 50-year sale received one in 1982.

The new act establishes four prerequisites for the rate redeterminations. They are:

(1) The purchaser must make written application for rate redetermination; and,

(2) The contract has to have been bid after January 1, 1974; and,

(3) Some timber from the contract has to have been or will be scaled after January 1, 1981; and

(4) The contract must be held by a purchaser other than a holder of a 50-year timber sale contract in Alaska.

The proposed procedures for emergency rate redeterminations for National Forest System timber sales in Alaska will be codified in a new § 223.179 of 36 CFR Part 223. Additional direction will be provided through amendment to Chapter 2400—Timber Management of the Forest Service Manual.

Regulatory Impact

This action has been reviewed pursuant to Executive Order 12291; it has been determined that this proposal is not a major rule. It implements the requirements of the Federal Timber Contract Payment Modification Act which provide for emergency rate redeterminations for certain national forest timber sales in Alaska.

The only discretion available to the Secretary is in selecting administrative procedures to implement the emergency rate redetermination available under the Act. This rule will not have an annual effect on the economy of $100 million or more and will not result in a major increase in costs for consumers, individual industries, federal, state, or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this proposed rule would not have significant economic impact on a substantial number of small entities. Implementing this section of the Act will strengthen some small businesses in Alaska because the sales eligible for emergency rate redeterminations are held by small business timber operators.

This proposed rule will not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. Furthermore, the proposed rule will not result in additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) are not applicable.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting and recordkeeping requirements, and Timber.

PART 223—[AMENDED]

For the reasons set forth above, Part 223 of Chapter II of Title 36 of the Code of Federal Regulations is proposed to be amended as follows:

1. Revise the authority citation for Part 223 of Chapter II, Title 36 to read as follows:

Authority: Sec. 14, Pub. L. 94–588, 90 Stat. 2958; 16 U.S.C. 472a; Sec. 4, Pub. L. 98–478, 98 Stat. 2213; 16 U.S.C. 619, unless otherwise noted.

2. Add new § 223.179 of Subpart E to read as follows:

Subpart E—Federal Timber Contract Payment Modification Act.

* * * * *

§ 223.179 Emergency Rate Redeterminations in Alaska.

(a) *Scope and application.* Emergency stumpage rate redetermination of eligible contracts shall be made under current contract provisions except as modified by paragraph (c) upon written application from purchasers of national forest timber sales in Alaska satisfying the requirements of paragraph (b). Written application for such emergency rate redeterminations must be mailed or delivered to the Contracting Officer within 90 days after the publication of the final rule for these rate redeterminations.

(b) *Eligible contracts.* Holders of 50-year timber sale contracts in Alaska are not eligible for emergency rate redeterminations under the provisions of this section. All other holders of current timber sale contracts in Alaska bid between January 1, 1984, and October 16, 1984, are eligible for emergency rate redeterminations under this section.

(c) *Modification of existing contracts.* Existing terms of contracts eligible under paragraph (b), including those which require that the bid premium be added to all redetermined rates or be made part of such rates, may be modified, if necessary, to provide for rates that are competitive with other purchasers of national forest timber.

(d) *Effective date of new rates.* Rates established for stumpage as a result of the emergency rate redeterminations shall be effective for timber scaled from January 1, 1981, through October 15, 1989.

(e) *Refunds.* If the Contracting Officer determines that, as a result of an emergency rate redetermination, the credit balance of the timber sale account exceeds the changes for timber estimated to be cut in the next 60 calendar days, the Forest Service may refund in cash any portion of such excess that is attributable to the redetermined contract rates upon purchaser's request.

Dated: January 9, 1985.

John B. Crowell, Jr.,

Assistant Secretary for Natural Resources & Environment.

[FR Doc. 85–2738 Filed 2–4–85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 531 and 533

[Docket No. FE 84-02; Notice 2]

Passenger Automobile Average Fuel Economy Standards; Light Truck Average Fuel Economy Standards; Request for Comments; Extension of Period for Public Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments; extension of period for public comment.

SUMMARY: On December 10, 1984 (49 FR 48064), NHTSA published in the **Federal Register** a notice requesting comments to assist the agency in carrying out its rulemaking responsibilities concerning average fuel economy standards for passenger automobiles and light trucks. In response to a request from the Automobile Importers of America, the

comment period closing date is changed from February 8, 1985 to March 1, 1985.

DATE: Comments on the December 10, 1984 notice must be received on or before March 1, 1985.

ADDRESSES: Comments on the December 10, 1984 notice must refer to the docket and notice numbers set forth above, and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W. Washington, DC 20590. Submission containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590, and 7 additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shelton, Office of Market Incentives, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 755-9384.

SUPPLEMENTARY INFORMATION: On December 10, 1984 (49 FR 48064), NHTSA published in the **Federal Register** a notice requesting comments to assist the agency is carrying out its rulemaking responsibilities concerning average fuel economy standards for passenger automobiles and light trucks. Comments were to be provided by February 8, 1985. Subsequently, Ford Motor Company, in a letter dated January 18, 1985, notified NHTSA that, because of "the conflicting efforts associated with our response to EPA on the Supplemental Notice of Proposed Rulemaking regarding test procedure adjustments and the updates to our CAFE data base, Ford Motor Company will be unable to provide detailed comments by the requested date." Ford indicated that their material would not be ready for submittal until the week of February 25, 1985. Furthermore, in a letter dated January 24, the Automobile Importers of America Inc. (AIA) requested that the comment period be extended until March 8, 1985. AIA stated that "This extension of time is sought to develop and prepare meaningful comments." AIA also noted, "The original comment period spanned the major holiday period of Christmas—New Years as well as Inauguration day. Thus, the sixty days was significantly foreshortened, compelling the need for additional time."

NHTSA finds merit in the arguments offered by Ford and AIA. The comment closing date is therefore changed from February 8, 1985 to March 1, 1985. All comments received before the close of business on the comment closing date will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

List of Subjects in 49 CFR Part 531 and 533

Energy conservation, Gasoline, Imports, Motor vehicles.

(Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); Sec. 301 Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on January 31, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-2910 Filed 2-4-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Notice of Availability of a Draft Environmental Assessment on Proposed Hunting Regulations on Eastern Population of Woodcock

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule-related notice.

SUMMARY: The status of eastern region woodcock and considerations concerning hunting pressure on this population were reviewed at the "early seasons" regulations public hearing in Washington, D.C. on June 21, 1984 (49 FR 28026, July 9, 1984). In order to address existing concerns this notice advises the public that a draft Environmental Assessment on Proposed Hunting Regulations on Eastern Population of Woodcock is available for review, comments and suggestion. The title of this document is *Proposed Hunting Regulations on Eastern Population of Woodcock, 1985.*

DATE: Written comments are requested by March 1, 1985.

ADDRESS: Copies of this document can be obtained by contacting the U.S. Fish and Wildlife Service, Office of Migratory Bird Management, Washington, D.C. 20240 (phone 202-254-3207). Copies are available in Room 536, 1717 H Street, NW., Washington, D.C. Comments should be addressed to: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe (202) 254-3207.

Dated: January 31, 1985.

Robert A. Jantzen,

Director.

[FR Doc. 85-2888 Filed 2-4-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 24
Tuesday, February 5, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement Regarding the Management of Historic Properties on Lands Owned, Managed or Controlled by the U.S. Army in the State of Alaska

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with 172 Infantry Brigade, Department of the Army, and the Alaska State Historic Preservation Officer providing for management of historic properties found on lands owned, managed or controlled by the Department of the Army in the State of Alaska. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historic and cultural properties will be identified, evaluated and protected in order to meet the requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

DATE: *Comments Due:* March 7, 1985.

FOR FURTHER INFORMATION CONTACT: Additional information regarding this Programmatic Memorandum of Agreement is available from the Executive Director, Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden, Colorado 80401, telephone (303) 236–2682.

Dated: January 30, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85–2881 Filed 2–4–85; 8:45 am]

BILLING CODE 4310–01–M

CIVIL RIGHTS COMMISSION

Consultation/Hearing on Affirmative Action

Notice is hereby given pursuant to the provisions of the Civil Rights Act of 1983, Pub. L. 98–183, 97 Stat. 1304, that a public consultation/hearing of the U.S. Commission on Civil Rights will begin on March 6, 1985, at 8:30 a.m. in the South American Room of the Capital Hilton Hotel, 16th & K Streets, NW., Washington, D.C. It will also convene on March 7, 1985, beginning at 8:15 a.m.

The purpose of the consultation/hearing is to collect information within the jurisdiction of the Commission, particularly concerning (1) underrepresentation and affirmative action in employment and (2) minority and women's business set-asides.

The Commission is an independent, bipartisan factfinding agency authorized to study, collect, and disseminate information and to appraise the laws and policies of the Federal Government with respect to discrimination or denials of the equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

Dated at Washington, D.C., January 31, 1985.

Clarence M. Pendleton, Jr.,

Chairman.

[FR Doc. 85–2944 Filed 2–4–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 83–345R. Applicant: Cornell University, 229 Bard Hall, Ithaca, NY 14853. Instrument: Electrophoresis Apparatus and Rotating Prism. Original notice of this resubmitted application was published in the **Federal Register** of November 21, 1983.

Docket No. 84–167R. Applicant: University of California, Santa Barbara, CA 93106. Instrument: Magnetometer. Original notice of this resubmitted application was published in the **Federal Register** of May 8, 1984.

Docket No. 85–022. Applicant: Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, GA 30333. Instrument: Electrical Analyzer Instrument, Model #2485–011. Manufacturer: Clinicon, Inc., The Netherlands. Intended use: The article is intended to be used to identify the most active preparations of antigenic components from parasitic raw material. Multiple biochemical and immunological isolation techniques will be employed to isolate and characterize parasitic antigens and the highest diagnostic potential. Application received by Commissioner of Customs: November 6, 1984.

Docket No. 85–067. Applicant: Geophysical Institute, University of Alaska, Fairbanks, AK 99701. Instrument: Imaging Photon Detector System. Manufacturer: Hovemere Ltd., United Kingdom. Intended use: The instrument will be used to investigate the dynamics of the polar thermosphere. Part of the data source for this study comes from the observations of a local ground-based instrument which makes images of the airglow and aurora using a very high resolution interference spectrometer. The output of this spectrometer is most efficiently detected in the form of a two-dimensional image with this instrument. The instrument will also be used for postgraduate training in which students share in the research programs of the faculty staff. Application received by Commissioner of Customs: January 15, 1985.

Docket No. 85–069. Applicant: University of Wisconsin, Department of Chemistry, 1101 University Avenue, Madison, WI 53706. Instrument: FT–NMR Spectrometer, Model AM–500. Manufacturer: Bruker, West Germany.

Intended use: The instrument will be used in a wide variety of studies of various nuclei (e.g. ^{1}H, ^{2}H, ^{11}B, ^{13}C, ^{17}O, ^{23}Na, ^{29}Si, ^{31}P, ^{55}Mn, ^{59}Co, ^{77}Se and many others) to obtain information about the molecular structure and molecular dynamics of chemical compounds. The experiments will be conducted to obtain high resolution 1–D and 2–D (one-dimensional and two-dimensional) FT–NMR spectra of a wide variety of nuclei and over a wide range of temperatures. The sole purpose of the instrument is for teaching students and helping in the research of these students and their faculty advisors in various chemistry courses. Application received by Commissioner of Customs: January 15, 1985.

Docket No. 85–071. Applicant: Auburn University, Auburn, AL 36849. Instrument: Mass Spectrometer/Data System, Model MM7070 EHF and DS 11/250. Manufacturer: VG Instruments, United Kingdom. Intended use: Analysis of a wide variety of materials which will range from low molecular weight gases to rather nonvolatile inorganic and biological samples with molecular weights greater than 100 amu. Among the phenomena to be studied are:

(1) Structure determination of unknown organic and inorganic compounds including the determination of exact masses.

(2) The analysis of isotopic distribution (particularly ^{2}H and ^{13}C) in samples of biological importance and samples which have been exchanged over various catalysts.

(3) The investigation of various ion-molecule reactions.

(4) Exact mass determination on a number of steroid and steroid related samples of biological importance, and

(5) Determination of reaction mechanisms.

The instrument will also be used in chemistry courses to teach students the capabilities of modern instrumental techniques and provide students with "hands on" experience in instrumental techniques. Application received by Commissioner of Customs: January 15, 1985.

Docket No. 85–072. Applicant: The University of Texas Health Science Center at Dallas, Department of Pathology, 5323 Harry Hines Boulevard, Dallas, TX 75235. Instrument: Electron Microscope with Eucentric Side Entry Goniometer Stage, Model JEM–1200 EX/SEG–10 and Accessories. Manufacturer: JOEL, Ltd., Japan. Intended use: The instrument will be used to study the composition and structure of human and experimental animal biopsy specimens and body fluids. The specimens studies will be of biological origin primarily from patients suffering from diseases of the liver, kidney, heart, and from experimental animals in studies of ischemic and hypoxic cell death. Experiments will include studies on the ultrastructure and chemical composition (using x-ray microanalysis) of cells and extracellular spaces. Although the instrument will be used primarily for research it will also be used in the training of post-doctoral fellows requiring fine structural and analytical techniques in their research investigations, and by doctoral candidates in other disciplines of the basic sciences. Application received by Commissioner of Customs: January 15, 1985.

Docket No.: 85–073. Applicant: Dartmouth College, Department of Chemistry, Hanover, NH 03755. Instrument: FT-Spectrometer, Model DA3. Manufacturer: Bomem, Inc., Canada. Intended use: High resolution studies of the spectra of small to medium sized polyatomic gas phase molecules and molecular ions. The two experiments to be conducted will include (1) exploration of the high overtone spectra of simple hydrocarbons, such as cyclopropane, acetylene, benzene, and substituted methanes in the near infrared and visible portion of the spectrum and (2) generation of molecular ions such as H_3O^+, NH_4^+, etc., to study their fundamental infrared spectra, especially in wavelength regions unavailable to laser techniques. Application received by Commissioner of Customs: January 15, 1985.

Docket No.: 85–074. Applicant: College of the Holy Cross, Department of Chemistry, Worcester, MA 01610. Instrument: Flast Photolysis with 1000J Capacitor Bank, Model KN–100. Manufacturer: Applied Photophysics, Ltd., United Kingdom. Intended use: Studies of photogenerated cobalt and manganese carbonyl deficient compounds. The electronic spectra and the kinetics of decay of these transients will be examined. The studies will provide useful information about the eletronic structure and reaction pathways of the short-lived species. In addition, the instrument will be used in the course Chemistry 58 Physical Chemistry Laboratory to teach chemistry majors classical as well as modern experimental physical chemistry methods using a variety of different experiments. Application received by Commissioner of Customs: January 15, 1985.

Docket No.: 85–075. Applicant: Argonne National Laboratory, Materials Science and Technology Division, 9700 S. Cass Avenue, Argonne, IL 60439. Instrument: Electron Microscope, Model EM 420T with Accessories. Manufacturer: N.V. Philips Electronic Instruments, The Netherlands. Intended use: Basic research in the characterization of the morphology, crstallography, and structure of defects, interfaces, and phases present in metals, alloys, ceramics and related materials. These materials include but are not limited to: stainless steel experimental alloys of nickel, iron, chromium, niobium, vanadium, titanium, zirconium; ceramic oxides of all the above materials; silicon alloys and a variety of rare-earth compounds. The experiments to be conducted consist of diffraction contast analysis of the features present in a transmission image produced by passing an electron beam through thin sections of the materials. Subsequent interpretation of the resulting images and diffraction phenomenon allow the scientists to determine the specific nature of features being observed and their relationship to the macroscopic properties of solids. Application received by Commissioner of Customs: January 3, 1985.

(Catalog of Federal Domestic Assistance Program No. 11–105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–2860 Filed 2–4–85; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Institute of Technology, Subcommittee of the Air University Board of Visitors; Meeting

January 23, 1985.

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting at 9:00 am on 13 March in Room 2004 (ten seats available), Building 125, Wright-Patterson Air Force Base, Ohio.

The purpose of the meeting is to give the Subcommittee the opportunity to present to the Commandant, Air Force Institute of Technology, a report of findings and recommendations concerning the Institute's educational programs. The findings of the Subcommittee will also be reported to the Commander, Air University, Maxwell Air Force Base, Alabama at the next regularly scheduled meeting of the Air University Board of Visitors.

For further information on this meeting, contact Captain David

Muhleman, Air Force Institute of Technology, Directorate of Educational Plans and Programs, Wright-Patterson Air Force Base, Ohio 45433–6583, telephone (513) 255–5402.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–2906 Filed 2–4–85; 8:45 am]

BILLING CODE 3910-01-M

Air University Board of Visitors; Meeting

January 23, 1985.

The Air University Board of Visitors will hold an open meeting at 6:30 PM on 16 April 1985 in the Daedalian Room, Maxwell Officers' Club, Maxwell Air Force Base, Alabama.

The purpose of the meeting is to give the board an opportunity to present to the Commander, Air University, a report of the findings and recommendations concerning Air University educational programs.

For further information on this meeting, contact Dr. Dorothy D. Reed, Coordinator, Air University Board of Visitors, Headquarters, Air University, Maxwell Air Force Base, Alabama, 36112–5001, telephone (205) 293–5157.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–2907 Filed 2–4–85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Joint C ³ Interoperability Panel of the Naval Research Advisory Committee will meet on February 20, 1985, at The Pentagon, Washington, D.C., and on February 21, 1985, at TRW, 7600 Colshire Drive, McLean, Virginia. The agenda will include technical briefings from the individual military services on their respective command and control systems, requirements and infrastructure capability. The first session will commence at 8:15 A.M. and terminate at 4:15 P.M. on February 20. The second and final session will commence at 8:15 A.M. and terminate at 3:30 P.M. on February 21. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the quality of joint command and control systems, and assess future requirements and infrastructure capability. The entire meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact:

Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: February 2, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–3017 Filed 2–4–85; 9:21 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Training Program for Special Programs Staff and Leadership Personnel

AGENCY: Department of Education.

ACTION: Notice of proposed training priorities for fiscal year 1985.

SUMMARY: The Secretary of Education proposes priorities for training activities to be funded under the Training Program for Special Programs Staff and Leadership Personnel. The training priorities will assist applicants for training grants in developing proposals which address the most significant training needs of the Special Programs staff and leadership personnel. Training grant awards are made in order to improve the operation of the Special Programs projects.

DATE: Interested persons are invited to submit comments or suggestions for proposed training priorities on or before March 7, 1985.

ADDRESS: All written comments and suggestions should be sent to Jowava M. Leggett, Chief, Special Services Branch, Division of Student Services, P.O. Box 23772, L'Enfant Plaza Station, Washington, D.C. 20026–3772.

FOR FURTHER INFORMATION CONTACT: Jowava M. Leggett at the address provided above or call (202) 245–2165.

Proposed Training Priorities for Fiscal Year 1985

The Secretary proposes to give funding priority in FY 1985 to the following training activities:

(1) Workshops for new Special Programs project directors (less than two years in their current positions) to improve their skills in areas such as supervision, program administration including evaluation, and compliance with Federal regulations in order to prevent mismanagement or marginal results.

(2) Workshops which enhance the skills of Special Programs instructional staff in providing basic skills development and developing effective individualized instructional techniques.

(3) Workshops which provide Special Programs counselors and instructors with techniques and information on appropriate uses of standardized tests and student assessment procedures.

(4) Workshops to enhance the skills of project staff who provide services to one or more of the following types of individuals: the physically handicapped or learning disabled, the adult learner, and students from rural and other non-urban environments.

Establishing priorities for the Training Program will enable the Secretary to award grants to applicants that address the most significant training needs of the Special Programs staff and leadership personnel. Points will be awarded to those applications that address the needs that are consistent with the priorities established by the Secretary as authorized under 34 CFR 642.32(f) and 642.34 of the program regulations.

The Secretary will consider comments from the public on other training topics which are germane to the Special Programs for Students from Disadvantaged Backgrounds.

This Notice does not solicit application proposals or concept papers. The final priorities will be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. Final priorities will be announced in the form of an Application Notice in the **Federal Register**. That Notice will solicit grant applications and establish the closing date.

(20 U.S.C. 1070d, 1070d–1d)

(Catalog of Federal Domestic Assistance Number: 84.103 Training Program for Special Programs Staff and Leadership Personnel)

Dated: January 30, 1985.

Gary L. Jones,

Acting Secretary of Education.

[FR Doc. 85-2898 Filed 2-4-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management

Radioactive Waste Management System Preliminary Draft Project Decision Schedule; Correction

In FR Doc. 85-906, published on January 11, 1985 (50 FR 1616), the Department of Energy announced the issuance of the Radioactive Waste Management System Preliminary Draft Project Decision Schedule. An error was made in the **Federal Register** Notice with regard to the telephone number for requesting copies of the document from the Department of Energy, Office of Public Affairs. The correct telephone number is (202) 252-5575.

Issued in Washington, D.C., January 30, 1985.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 85-2916 Filed 2-4-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 8113-001]

BBB Power Associates, Inc.; Surrender of Preliminary Permit

January 31, 1985.

Take notice that BBB Power Associates, Inc., Permittee for Fish Creek Hydroelectric Project No. 8113, has requested that its Preliminary Permit be terminated. The Preliminary Permit was issued on August 10, 1984, and would have expired on July 31, 1986. The project would have been located on Fish Creek, near Lowell, in Idaho County, Idaho.

The Permittee filed the request on January 3, 1985, and the preliminary permit for Project No. 8113 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-2872 Filed 2-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8114-001]

BBB Power Associates, Inc.; Surrender of Preliminary Permit

January 31, 1985.

Take notice that BBB Power Associates, Inc., Permittee for Gedney Creek Hydroelectric Project No. 8114, has requested that its Preliminary Permit be terminated. The Preliminary Permit was issued on August 20, 1984, and would have expired on July 31, 1986. The project would have been located on Gedney Creek, near Lowell in Idaho County, Idaho.

The Permittee filed the request on January 3, 1985, and the preliminary permit for Project No. 8114 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-2873 Filed 2-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8115-001]

BBB Power Associates, Inc.; Surrender of Preliminary Permit

January 31, 1985.

Take notice that BBB Power Associates, Inc., Permittee for Meadow Creek Hydroelectric Project No. 8115, has requested that its Preliminary Permit be terminated. The Preliminary Permit was issued on July 18, 1984, and would have expired on June 30, 1986. The project would have been located on Meadow Creek, near Lowell in Idaho County, Idaho.

The Permittee filed the request on January 3, 1985, and the preliminary permit for Project No. 8115 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-2874 Filed 2-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP83-126-000, TA83-2-22-000]

Consolidated Gas Transmission Corp.; Meeting With Interested Parties Concerning Cutbacks

January 31, 1985.

Take notice that on February 12, 1985, at 10:00 a.m. at Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, Consolidated Gas Transmission Corporation will meet with its customers, interested State Commissions and agencies, and the Commission Staff concerning a possible cutback of gas purchases below minimum bill levels. Consolidated is holding the meetings pursuant to Article VI of the Stipulation and Agreement approved by the Commission in Docket Nos. RP83-126, TA83-2-22, and TA84-1-22, on September 17, 1984. 28 FERC ¶61,408 (1984).

All interested parties may attend.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-2875 Filed 2-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE80-11-004]

Southern California Edison Co.; Application for Exemption

January 31, 1985.

Take notice that Southern California Edison Company (SCEC) filed an application on December 10, 1985 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44FR58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986 and biennially thereafter, information on the costs of providing electric service as specified in Subparts, B, C, D, and E of Part 290 in favor of an alternative form of compliance. In its application for exemption SCEC states, in part, that it should not be required to file the specified data for the following reasons:

The FERC's reporting specifications produce data that are not used in California rate proceedings.

The California Public Utilities Commission requires retail rate case data filings that are adequate by themselves to fulfill the purposes of Section 133 of PURPA.

The information provided through the alternate PURPA filing procedure would be more timely and relevant for use in SCEC's retail rate case, more accessible to interested parties in California, and just as comprehensive as the data that would otherwise be filed under Part 290.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register.** Within the 45 day period, such person must also serve a copy of such comments on: Mr. Ronald Daniels, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-2876 Filed 2-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-45-000]

Department of Interior, Minerals Management Service, Outer Continental Shelf, Exxon Corp., OCS-G 2969 No. A-1 Well, FERC J.D. No. 80-23033; Amendment to Petition to Reopen and Vacate Well Category Determination

Issued: January 30, 1985.

On September 14, 1984, Exxon Corporation (Exxon) filed an amendment to its July 27, 1984 petition with the Federal Energy Regulatory Commission.[1] In its July 27, 1984 petition, Exxon petitioned the Commission to reopen and vacate the final well category determination for the OCS-G 2969, No. A-1 well (A-1 well) [2] and to permit Exxon to withdraw its application for determination under section 102(d) [3] of the Natural Gas Policy Act of 1978 (NGPA).[4]

Exxon now seeks to withdraw its request to vacate the final determination for the A-1 well and have its petition to reopen held in abeyance until the Commission disposes of the issues raised by Mobil Oil Exploration and Producing Southeast Incorporated's (MOEPSI) petition for Declaratory Order in Docket No. GP84-44-000.[5] On September 14, 1984, Exxon filed a motion to intervene in Docket No. GP84-44-000.

Exxon alleges that MOEPSI's petition raises similar questions of law and fact and disposition of MOEPSI's petition in MOEPSI's favor will render the issues in Exxon's petition moot. Exxon states that the Commission has no authority under the NGPA to reopen a well determination based on after-acquired geological data once a determination becomes final. Exxon also filed a separate motion to consolidate Docket Nos. GP84-44-000 and GP84-45-000 on September 14, 1984.

Any person may file a protest to Exxon's petition, or a petition to intervene, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, within 30 days after publication of this notice in the **Federal Register.** If you wish to become a party, you must file a petition to intervene. *See* Rules 211 and 214.[6]

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-2877 Filed 2-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8313-000, et al.]

Hydroelectric Applications (Ches-Mont Hydro Association, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: License (Under 5 MW).

b. Project No.: 8313-000.

c. Date Filed: May 18, 1984.

d. Applicant: Ches-Mont Hydro Association.

e. Name of Project: Black Rock Dam.

f. Location: On the Schuylkill River in Montgomery and Chester Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Peter A. McGrath, American Hydro Power Company, 4026 Chestnut Street, Philadelphia, Pennsylvania 19104.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) The exisitng 370-foot-long and approximately 9-foot-high timber crib-rock filled Black Rock Dam owned by the Philadelphia Electric Company, with 3.5-foot-high flashboards; (2) a reservoir with a surface area of 154 acres at water surface elevation of 89.4 feet mean sea level, on top of the flashboards; (3) a new intake structure at the eastern side of the dam; (4) a new powerhouse with 5 turbine-generator units with a total installed capacity of 1,497 kW; (5) a new 34-kV and 1,500-foot-long transmission line; and (6) other appurtenances. Applicant estimates an average annual generation of 8,030,000 kWh.

k. Purpose of Project: Project energy would be sold to the Philadelphia Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

2 a. Type of Application: Minor License.

b. Project No.: 6623-001.

c. Date Filed: July 31, 1984.

d. Applicant: E.R. Jacobson.

e. Name of Project: Bridal Veil.

f. Location: In San Miguel County on Bridal Veil Creek on lands managed by the Uncompahgre National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: E.R. Jacobson, P.O. Box 2162, Grand Junction, Colorado 81502.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would consist of: (1) Double Eagle catch basin at elevation 12,397 feet m.s.l., Lewis Lake at elevation 12,704 feet m.s.l., Blue Lake at elevation 12,202 m.s.l., and Mud Lake at elevation 12,255 feet m.s.l., with a total storage capacity of 6,276 acre-feet and surface area of 94.2 acres; (2) a system of existing intakes or siphons at each lake connected by a 11,611-foot-long system of steel penstocks from 18 inches to 8

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[1] Exxon's original petition was noticed at 49 FR 33,169 (August 21, 1984).

[2] The A-1 well is located in the Mississippi Canyon block 311 Field, offshore Louisiana.

[3] Exxon received an affirmative determination from the Minerals Management Service that gas produced from the A-1 well qualified as 102(d) gas.

[4] 15 U.S.C. 3301-3432 (1982).

[5] MOEPSI's petition for Declaratory Order was noticed at 49 FR 33,165 (August 21, 1984).

[6] 18 CFR 385.211 and 214 (1983).

inches in diameter which would be repaired or replaced and connected to; (3) an existing historic powerhouse 27 feet wide and 82 feet long to contain a rebuilt 350-kW turbine/generator with a proposed rates capacity of 500 kW; (4) a new 13.6-kV transmission line 4,700 feet long; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 4,380,000 kilowatt hours operating under a gross hydraulic head of 2,202 feet. Project power would be sold to the Colorado-Ute Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

3 a. Type of Application: Amendment of License.

b. Project No.: 2850–002.

c. Date Filed: September 26, 1984.

d. Applicant: Hampshire Paper Company.

e. Name of Project: Emeryville.

f. Location: On the Oswegatchie River in the Hamlet of Emeryville, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert J. Ferero, Hampshire Paper Company, RFD 3, Gouverneur, New York 13642.

i. Comment Date: March 15, 1985.

j. Description of Project: The license for Project No. 2850 consists of the following project works: (a) A timber and earth fill dam capped with reinforced concrete, 185 feet long and about 22 feet high with an overflow section approximately 17 feet long having a crest elevation of 584.2 feet (USGS datum) and surmounted by 2-foot-high flashboards; (b) a headpond with a storage capacity of 307 acre-feet at a mean surface elevation of 586.6 feet (USGS datum); (c) four headgates; (d) a headrack structure at the entrance of; (e) a steel reinforced wooden power flume 123 feet long, 21 feet wide, and 19 feet high; and (f) a powerhouse containing four generating units with a total rated capacity of 1,680 kW at a net head of 32 feet and a flow of 793 cfs.

The proposed amended project involves the installation of a new hydroelectric facility parallel to and adjacent to the existing powerhouse and flume. The proposed amendment would consist of: (a) Replacement of an existing coarse bar rack with fine bar racks and incorporation of a mechanical trash cleaner; (b) a new 30-foot-long, concrete headrace flume to be placed adjacent to the existing powerhouse flume requiring excavation of approximately 710 cubic yards of material; (c) a new powerhouse, which will be located adjacent to the existing flume, and will contain an installed generating capacity of 1,800 kW; (d) a new approximately 15-foot-wide, 125-foot-long tailrace; (e) a proposed electrical substation; and (f) appurtenant facilities.

The Applicant estimates that the proposed addition of the 1,800-kW generating unit will increase the average annual energy generation by approximately 7 GWh to a total of 15.6 GWh.

k. Purpose of Project: The project would continue to be operated to provide power for sale to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: B and C.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 8567–000.

c. Date Filed: August 31, 1983.

d. Applicant: Independence Electric Corporation.

e. Name of Project: Lock and Dam No. 10 Project.

f. Location: On the Kentucky River, in Madison and Clark Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: G. William Miller, Independence Electric Corporation, 919 18th Street, NW., Suite 750, Washington, D.C. 20006.

i. Comment Date: April 8, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers Dam No. 10 and Reservoir and would consist of: (1) A proposed forebay channel approximately 80 feet wide by 200 feet long; (2) a new reinforced concrete powerhouse, housing two turbine-generator units with a total installed capacity of 6,000 kW; (3) a proposed tailrace channel approximately 6 feet wide by 200 feet long; (4) a proposed 69-kV transmission line approximately 1,500 feet long; and (5) appurtenant facilities. Applicant estimates that the average annual energy would be 21,000 MWh.

k. Purpose of Project: The Applicant estimates that project energy would be sold to a nearby utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 8568–000.

c. Date Filed: August 31, 1984.

d. Applicant: Independence Electric Corporation.

e. Name of Project: Lock and Dam No. 12 Hydroelectric Project.

f. Location: On the Kentucky River in Estill County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: G. William Miller, Independence Electric Corporation, 919–18th Street, NW., Suite 750, Washington, D.C. 20006.

i. Comment Date: April 8, 1985.

j. Description of Project: The project would utilize the existing U.S. Army Corps of Engineers Dam No. 12 and Reservior and would consist of: (1) A proposed forebay channel approximately 80 feet wide by 100 feet long; (2) a new reinforced concrete powerhouse, housing two turbine-genertor units with a total installed capacitgy of 5,000 kW; (3) a proposed tailrace channel approximately 60 feet wide by 150 feet long; (4) a proposed 69-kV transmission line approximately one-half mile long; and (5) appurtenant facilities. Applicant estimates that the average annual energy would be 11,500 MWh.

k. Purpose of Project: The applicant anticipates that project energy will be sold to a nearby utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a prelimianry permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

6 a. Type of Application: Preliminary Permit.

b. Project No: 8718–000.

c. Date Filed: November 13, 1984.

d. Applicant: Dan J. Brutger.

e. Name of Project: Lewis Creek.

f. Location: In Helena National Forest, on Lewis Creek, in Park County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ted Doney, P.O. Box 1185, Helena, Montana 59624.

i. Comment Date: April 8, 1985.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high concrete diversion dam at elevation 6,700 feet; (2) a 13,000-foot-long, 14-inch-diameter steel penstock; (3) a powerhouse containing a single generating unit with a capacity of 295 kW and an average annual generation of 1,305,373 kWh; and (4) a 300-foot-long transmission line.

A prelimianry permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $20,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

7 a. Type of Application: License (Under 5 MW).

b. Project No: 8615–000.

c. Date Filed: September 26 1984.

d. Applicant: Fiske Hydro, Inc.

e. Name of Project: Fiske Mill.

f. Location: On the Ashuelot River in Cheshire County, New Hampshire.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Matthew J. Bonaccorsi, Timothy Buzzel & Associates, Methodist Hill Road, Lebanon, New Hampshire 03301.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 19-foot-high and 185-foot-long concrete capped dam with a spillway crest elevation of 226.8 feet mean sea level, owned by the Erving Paper Mill Company; (2) a new intake structure at the north abutment of the dam; (3) a new 20.5-foot by 13.5-foot arch steel canal, 80 feet long; (4) a new reinforced concrete powerhouse with 4 turbine-generator units with a total installed capacity of 810 kW; (5) a new 4.16-kV and 100-foot-long transmission line; and (6) other appurtenances.

k. Purpose of Project: Project energy would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

8 a. Type of Application: Preliminary Permit.

b. Project N.: 8634–000.

c. Date Filed: October 1, 1984.

d. Applicant: The City of New York.

e. Name of Project: Shandaken Tunnel Outlet.

f. Location: Esopus Creek in Ulster County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Honorable Joseph T. McGough, Jr., Commissioner, Department of Environmental Protection, City of New York, Municipal Building, Rm. 2358, New York, New York 10007.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 155-foot-high, 2,280-foot-long dam; (2) a reservoir with a surface area of 1,145 acres, a storage capacity of 60,000 acre-feet, and a normal water surface elevation 1,130 feet m.s.l.; (3) an existing 14-foot-diameter, 18-mile-long tunnel constructed in rock with concrete lining; (4) a new 10-foot-diameter, 1,250-foot-long concrete penstock; (5) a new power-house at the left bank of the Esopus Creek containing one generating unit with a capacity of 4,500 kW; (6) a new 100-foot-long, 18-foot-wide tailrace; (7) a new transmissio in line, 300 feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual generation would be 15,000,000 kWh. The existing dam is owned by the City of New York.

k. Purpose of Project: Project power would be sold to the New York Power Authority.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $86,000.

9 a. Type of Application: Preliminary Permit.

b. Project N.: 8851–000.

c. Date Filed: December 31, 1984.

d. Applicant: Michiana Hydro Electric Power Corporation.

e. Name of Project: Fort Wayne.

f. Location: In Allen County, Indiana on the Maumee River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contract Person: Charles Hayes, 1634 E. Jefferson Blvd., South Bend, Indiana 46617.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing dam 15 feet high and 350 feet long including spillway owned by the City of Fort Wayne; (2) a reservoir of negligible size and storage capacity; (3) an existing power-house 25 feet high and 30 feet long containing one proposed turbine/generator with a total rated capacity of 600 kW; (4) a new three phase transmission line 100 feet long; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 3,942,000 kWh operating under a net hydraulic head of 10 feet. The project power would be sold to the Indiana and Michigan Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $11,500.

10 a. Type of Application: Preliminary Permit.

b. Project N.: 8852–000.

c. Date Filed: December 31, 1984.

d. Applicant: Michiana Hydro Electric Power Corporation.

e. Name of Project: Cedarville.

f. Location: In Allen County, Indiana on the St. Joseph River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles Hayes, 1634 E. Jefferson Blvd., South Bend, Indiana 46617.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing earth dam 30 feet high and 700 feet long owned by the City of Fort Wayne; (2) an existing reservoir with a storage capacity of 1,500 acre-feet at elevation 776 feet m.s.l.; (3) a proposed powerhouse 25 feet wide and 50 feet long containing three turbine/generators with a total rated capacity of 600 kW; (4) a new three phase transmission line 400

feet long; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 3,942,000 kWh operating under a net hydraulic head of 15 feet. The project power would be sold to the Indiana and Michigan Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $11,500.

11a. Type of Application: Preliminary Permit.

b. Project No.: 8711–000.

c. Date Filed: November 7, 1984.

d. Applicant: Northwest Hydro-Electric.

e. Name of Project: Littlerock Creek.

f. Location: In Shoshone National Forest, on Littlerock Creek, in Park County, Wyoming.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. 791(a)–825(r).

h. Contact Person: Holly Brown, 105 South 6th East, Riverton, Wyoming 82501.

i. Comment Date: March 29, 1985.

j. Description of Project: The proposed project would consist of: (1) A rock or concrete divergence structure at elevation 6,200 feet; (2) a 9,300-foot-long, 24-inch-diameter penstock; (3) a powerhouse containing two generating units with a combined capacity of 1,500 kW and an average annual generation of 12,600,000 kWh; and (4) a 2¼-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $15,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

12a. Type of Application: Preliminary Permit.

b. Project No.: 8842–000.

c. Date Filed: December 24, 1984.

d. Applicant: Lawrence J. McMurtrey.

e. Name of Project: Jim Creek.

f. Location: On Jim Creek in Snohomish County, Washington, within Mt. Baker-Snoqualmie National Forest.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122—196th NE., Redmond, Washington 98052.

i. Comment Date: March 29, 1985.

j. Description of Project: The proposed project would consist of: (1) Two 36-inch-wide diversion troughs imbedded in the streambed at elevation 2,000 feet; (2) a 16,000-foot-long, 36-inch-diameter penstock; (3) a powerhouse at elevation 1,000 feet containing a generating unit with a rated capacity of 3.75 MW and an average annual output of 19.75 GWh; and (4) a 1-mile-long transmission line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 24-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. The estimated cost of permit activities is $40,000.

k. Purpose of Project: Power will be sold to utilities such as Puget Sound Power and Light or to consumers such as Intalco Aluminum Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

13a. Type of Application: Preliminary Permit.

b. Project No.: P–8808–000.

c. Date Filed: December 17, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Upper Pine Mountain Power Project.

f. Location: On Silver and Clover Creeks, near Oak Run, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, 2567 Hartnell Avenue, Redding, California 96002.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 8-foot-long intake structure at elevation 4,200 feet within the South Bank of Silver Creek; (2) a 4-foot-high, 8-foot-long intake structure at elevation 4,200 feet within the South Bank of Clover Creek; (3) a 15-inch-diameter, 18,000-foot-long diversion conduit; (4) a 21-inch-diameter, 2,000-foot-long diversion conduit; (5) a 24-inch-diameter, 26,000-foot-long steel penstock; (6) a powerhouse with a total installed capacity of 2,000 kW operating under a head of 1,260 feet; and (7) a 1,000-foot-long, 12-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 6.1 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $40,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 8681–000.

c. Date Filed: October 23, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Tucker Power Project.

f. Location: On Old Cow Creek in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, 2576 Hartnell Avenue, Redding, California 96002–2319.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high intake structure at elevation 4,390 feet; (2) a 54-inch-diameter, 3,700-foot-long diversion conduit; (3) a 51-inch-diameter, 1,500-foot-long penstock; (4) a powerhouse at elevation 3,840 feet, with a total installed capacity of 3,250 KW; and (5) a 60-KV, 21,500-foot-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

k. Purpose of Project: A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $95,000. No new roads would be constructed to conduct these studies.

The estimated 9.96 million KWh generated annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 8695–000.

c. Date Filed: October 30, 1984.

d. Applicant: Winooski Hydroelectric Company.

e. Name of Project: Winooski No. 9.

f. Location: Winooski River in Washington County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John L. Warshow, Winooski Hydroelectric Company, 26 State Street, Montpelier, Vermont 05602.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing 20-foot-high, 175-foot-long concrete dam; (2) a reservoir with a surface area of 7 acres, no usable storage capacity and a normal water surface elevation of 642 feet m.s.l.; (3) a new powerhouse with an open flume at the left bank containing one generating unit with a capacity of 230 kW and one generating unit with a capacity of 120 kW for a total capacity of 350 kW; (4) a new 40-foot-wide, 143-foot-long tailrace; (5) a new transmission line, 2,500-feet-long; and (6) appurtenant facilities. The Applicant estimates that the average annual generation would be 1,500,000 kWh. The existing dam is owned by Green Mountain Power Corporation, S. Burlington, Vermont.

k. Purpose of Project: Project power could be sold to Green Mountain Power Corporation.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 8743–000.

c. Date Filed: November 27, 1984.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: North Chuctanunda.

f. Location: On North Chuctanunda Creek in Montgomery County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Anderson, 64 Blanchard Road, Burlington, Massachusetts 01803.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 19-foot-high, 75-foot-wide cement stone gravity dam owned by Harrower Development Corp.; (2) an existing reservoir with a surface area of 1.4 million square feet, negligible storage capacity, and a maximum surface elevation of 657 feet msl; (3) a proposed 2-foot-diameter, 21,000-foot-long penstock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 500-kW; (5) a proposed 20-foot-long tailrace; and (6) a proposed 100-foot-long transmission line tying into the Niagara Mohawk system. The Applicant estimates a 2,500,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18-months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $16,500.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 8813–000.

c. Date filed: December 24, 1984.

d. Applicant: Independence Electric Corporation.

e. Name of Project: Coffeeville Hydro Project.

f. Location: On the Tombigbee River near Coffeeville, Clark and Choctaw Counties, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. G. William Miller, President, Independence Electric Corporation, 919 18th Street, NW., Suite 750, Washington, D.C. 20006.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Coffeeville Lock and Dam, an existing 850-foot-long and 300-foot-wide diversion channel, and would consist of: (1) A newpower house located on the north side of the river in the diversion channel housing six 5,000–kW generators for a total installed capacity of 30 MW; (2) a proposed 44–kW transmission line approximately 2 miles long interconnecting with Alabama Power Company's transmission system; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 105 GWh. All project energy would be sold to Alabama Power Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 8812–000.

c. Date Filed: December 24, 1984.

d. Applicant: Independence Electric Corporation.

e. Name of Project: Gainesville Hydro Project.

f. Location: On the Tombigbee River near Gainesville, Green and Sumter County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. G. William Miller, President, Independence Electric Corporation, 919 18th Street, NW., Suite 750, Washington, D.C. 20006.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Gainesville Lock and Dam, an existing 1,400-foot-long and 150-foot-wide diversion channel, and would consist of: (1) A new powerhouse located on the east side of the river in the diversion channel housing four 5–MW generators for a total installed capacity of 20 MW; (2) a proposed 44–kV transmission line approximately 12 miles long interconnecting with Alabama Power Company's transmission system; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 70 GWh. All project energy would be sold to Alabama Power Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A prelminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 8814–000.

c. Date Filed: December 24, 1984.

d. Applicant: Independence Electric Corporation.

e. Name of Project: W. B. Oliver Hydro Project.

f. Location: On the Black Warrior River near Tuscaloosa, Tuscaloosa County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. G. William Miller, President, Independence Electric Corporation, 919 18th Street NW., Suite 750, Washington, D.C. 20006.

i. Comment Date: March 29, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' W. B. Oliver Lock and Dam, an existing 1,100-foot-long and 150-foot-wide diversion channel, and would consist of: (1) A new powerhouse located on the north side of the river in the diversion channel housing three 5–MW generators for a total installed capacity of 15 MW; (2) a proposed 44–kV transmission line approximately 2 miles long interconnecting with Alabama Power Company's transmission system; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 60 GWh. All project energy would be sold to Alabama Power Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A prelminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

20 a. Type of Application: License (Under 5 MW).

b. Project No: 7883.001.

c. Date Filed: October 1, 1984.

d. Applicant: Powerhouse Systems.

e. Name of Project: Weston Dam.

f. Location: On the Upper Ammonoosuc River in Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(1)–825(r).

h. Contact Person: William Allin, Powerhouse Systems, Water Street, Lancaster, New Hampshire 03584.

i. Comment Date: March 29, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) The existing 15.5-foot-high and 210-foot-long stone and timber crib Weston Dam with a spillway crest evaluation of 863.1 feet mean sea level; (2) a reservoir with a surface area of 30 acres at a normal maximum elevation of 867.7 feet msl with existing flashboards installed; (3) a new intake structure and powerhouse at the north abutment with 2 new turbine-generator units with a total installed capacity of 350 kW and provisions for a future unit; (4) a new 5-kV and about 400-foot-long transmission line; and (5) other appurtenances. Applicant estimates an average annual generation of 1,725,000 kWH. Existing facilities are owned by the James River Company.

k. Purpose of Project: Project energy would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

21 a. Type of Application: Major License (5 MW or Less).

b. Project No: 8498–000.

c. Date Filed: August 6, 1984.

d. Applicant: Will and Vangie Ingram.

e. Name of Project: Ingram Warm Springs Ranch.

f. Location: On Warn Springs Creek, a tributary to the Salmon River, partially located within BLM lands, near Challis, in Custer County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Vernon F. Ravenscroft, Consulting Associates, Inc., P.O. Box 893, Boise, Idaho 83701.

i. Comment Date: April 8, 1985.

j. Description of Project: The proposed project would involve two power developments located on the Ingram Warm Springs Ranch.

The upper development would consist of: (1) A 6-foot-high earthern diversion structure on the Warm Springs Creek at elevation 5,630 feet; (2) a 20,000-foot-long, 5.5-foot-deep trapezoidal earthen canal; (3) a 10-foot-high, 42-foot-long concrete stilling basin: (4) a 750-foot-long, 42-inch-diameter steel penstock; (5) a concrete powerhouse at elevation 5,440 feet containing a single generating unit with an installed capacity of 1,100 kW at a head of 170 feet; (6) a tailrace discharging water into a second canal for the lower development; (7) a switchyard; and (8) a 500-foot-long, 25-kV transmission line.

The lower development would consist of: (1) A 23,600-foot-long, 5.5-foot-deep trapezoidal earthern canal; (2) a 10-foot-high, 42-foot-long concrete stilling basin; (3) a 9000-foot-long, 42-inch-diameter steel penstock; (4) a concrete powerhouse at elevation 5,085 feet containing a single generating unit with an installed capacity of 1,845 kW at a head of 320 feet; (5) a tailrace discharging water into an existing channel constructed by the US Army Corps of Engineers; (6) a switchyard; (7) a 50-foot-long, 25-kV transmission line.

Both the upper and lower power developments would be connected to an existing Salmon Rural Electric transmission line. The Applicant estimates that the total average annual production from both power developments would be 16.8 million kWh. The cost to construct the project, in 1984 dollars, would be approximately $4,417,000.

k. Purpose of Project: The project power will be sold to a nearby utility Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

22 a. Type of Application: Preliminary Permit.

b. Project No.: 8843–000.

c. Date Filed: December 24, 1984.

d. Applicant: Lawrence J. McMurtrey.

e. Name of Project: Foss River.

f. Location: On the Foss River and its tributaries in King County, Washington, within Mt. Baker—Snoqualmie National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122–196th NE., Redmond, Washington 98052.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would consist of: (1) Five 36-inch-wide diversion troughs imbedded in the streambed at elevation 2,000 feet; (2) a 25,000-foot-long, 26-inch-diameter penstock; (3) a powerhouse at elevation 1,200 feet containing a generating unit with a rated capacity of 1.45 MW and an average annual output of 10.2 GWh; and (4) a 9-mile-long transmission line.

A preliminary permit, if issued, does not authorize construction. Application seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. The estimated cost of permit activities is $20,000.

k. Purpose of Project: Power will be sold to utilities such as Puget Sound Power and Light or to consumers such as Intalco Aluminum Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

23 a. Type of Application: Preliminary Permit.

b. Project No.: 7060–001.

c. Date Filed: January 2, 1985.

d. Applicant: Greene County Electric Company.

e. Name of Project: Burgess Falls Dam Project.

f. Location: On the Falling Water River near Cookville, Putnam County, Tennessee.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Daniel E. Burgner, Route 10, Box 183A, Greeneville, Tennessee 37743.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 369-foot-long and 40-foot-high concrete dam; (2) an existing reservoir having a storage capacity of 250 acre-feet and a surface area of 25 acres at maximum surface elevation of 882.6 feet m.s.l.; (3) a new powerhouse housing one 100-kW generator and one 350-kW generator for a total installed capacity of 450 kW; (4) a new 26-kV transmission line approximately 3,000 feet long; and (5) appurtenant facilities. The proposed project energy would not be located on any Federal lands. All project energy generated would be sold to a local utility company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $5,000.

24 a. Type of Application: Preliminary Permit.

b. Project No.: 7012–001.

c. Dated Filed: January 2, 1985.

d. Applicant: Greene County Electric Company.

e. Name of Project: Old Factory Dam Project.

f. Location: On the Calfkiller River near Sparta, White County, Tennessee.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Daniel E. Burgner, Route 10, Box 183A, Greeneville, Tennessee 37743.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 430-foot-long and 16-foot-high concrete dam; (2) an existing reservoir having a storage capacity of 100 acre-feet and a surface area of 25 acres at maximum surface elevation of 839 feet m.s.l.; (3) a new powerhouse housing one 200-kW generator and one 300-kW generator for a total installed capacity of 500 kW; (4) a new 26-kV transmission line approximately 1,000 feet long; and (5) appurtenant facilities. The proposed project energy would not be located on any Federal lands. All project energy generated would be sold to a local utility company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $5,000.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent of file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular, application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit

exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license, or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate acton to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical

and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's respresentatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption mut be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days for the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 31, 1985.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85–2871 Filed 2–4–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–359–000]

American Electric and Power, Ltd.; Status as a Qualifying Small Power Production Facility

January 31, 1985.

Take notice that on February 17, 1984, American Electric and Power, Ltd. (Applicant), Suite 207, 2285 Schoenersville Road, Bethlehem, Pennsylvania 18017, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations.

The application states that the small power production facility will be located on the Delaware River in Easton, Northampton County, Pennsylvania. The facility will consist of a patent pending vessel moored in the Delaware River, utilizing river current to push paddle wheels extended from each side of the vessel. The paddle wheels are connected to a central shaft, producing mechanical energy which is then converted to electricity. The facility will not use any natural gas, oil or coal. The electric power production capacity will be between 5 and 25 kilowatts. There are no other small power production facilities using the same energy source and owned by Applicant, located within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

A notice was not previously issued in this proceeding. However, the application filed by American Electric and Power, Ltd. on February 17, 1984, was granted by operation of law pursuant to § 292.207(b)(5) of the Commission's regulations on May 17, 1984.

Any person believing that the facility fails to comply with any statements contained in the application for Commission certification or fails to comply with § 292.203(a) of the Commission regulations may, pursuant to § 292.207(d)(1) file a petition for revocation or the certification with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. All such petitions must be filed on or before March 6, 1985 and served on the Applicant. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85–2878 Filed 2–4–85; 8:45 am]

BILLIG CODE 6717–01–M

Oil Pipeline Tentative Valuation

February 1, 1985.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative valuation is under consideration for the common carrier by pipeline listed below:

1980 Basic Report

Valuation Docket No. PV—1468–000
Enterprise Petrochemical Company, P.O. Box 4324, Houston, Texas 77210

On or before March 11, 1985, persons other than those specifically designated in Section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under Section 19a(h) of the Act, thereby enabling it to

file a protest. The petition to intervene must be served on the company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in Section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer Oil Pipeline Board.

[FR Doc. 85-2845 Filed 2-4-85; 8:45 am]

BILLING CODE 6717-01-M

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 3]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the provisions of the Paperwork Act of 1980, Eximbank has submitted a proposed collection of information in the form of a survey to the Office of Management and Budget for Review.

Purpose: The proposed Annual Competitiveness Report Survey of Exporters and Bankers as authorized by 12 U.S.C. 635(b), Export-Import Bank of the U.S. Act of 1945, as amended, is to be completed by U.S. banks and exporters familiar with Eximbank programs as a means of evaluating the private sectors' view on the extent to which Eximbank has provided export credit programs competitive with the export credit programs offered by the major foreign OECD governments.

The collection of the information will enable Eximbank to assess and report to the U.S. Congress the private sector's view of its programs' competitiveness, as required by law.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—new.

(2) Number of forms submitted—one.

(3) Form number—EIB No. 85-3.

(4) Title of information collection—Annual Competitiveness Report Survey to Exporters and Bankers.

(5) Frequency of Use—Annual.

(6) Respondents—Commercial Banks and Exporters in the U.S.

(7) Estimated total number of responses—85.

(8) Estimated total number of hours need to fillout form—85.

Additional Information or Comments

Copies of the proposed survey may be obtained from Helene Wall, Agency Clearance officer (202) 566-8111. Comments and questions should be directed to Francine Picoult, Office of Management and Budget, Information and Regulatory Affairs, Room 3235, Washington, D.C. 20503, (202) 395-7231.

Dated: January 29, 1985.

Helene Wall,

Agency Clearance Officer.

[FR Doc. 85-2849 Filed 2-4-85; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007890-020.

Title: West Coast of South America Northbound Conference.

Parties:

Compania Chilena De Navigacion Interoceania, S.A.

Compania Sub Americana De Vapores, S.A.

Delta Steamship Lines, Inc.

Lineas Navieras Bolivianas, S.A.M.

Compania Peruana De Vapores

Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment would delete Transportes Navieros Equatorianos as a party to the agreement. The parties have requested a shortened review period and a waiver of the format requirements of the Commission's regulations.

Agreement No.: 213-010601-002.

Title: Agreement by and between Neptune Orient Lines Ltd. and Orient Overseas Container Line, Inc., made in Hong Kong on June 18, 1984.

Parties:

Neptune Orient Lines, Ltd.

Orient Overseas Container Line, Inc.

Synopsis: The proposed amendment would expand the scope of the agreement to include service via transshipment to ports and points in countries bordering the Persian Gulf and to ports and points in Paklistan, India and Sri Lanka. It would also increase the capacity of the vessels operated by the parties in the trade to 3300 TEUs and extends from 90 to 365 days the notice one party must give the other of intent to terminate the agreement and precludes such notice prior to the fourth anniversary of the agreement.

By Order of the Federal Maritime Commission.

Dated: January 30, 1985.

Francis C. Hurney,

Secretary.

[FR Doc. 85-2844 Filed 2-4-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 30, 1985.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Judith McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Proposal To Approve OMB Delegated Authority, the Extension Without Revision of the Following Reports

1. *Report title:* Notification pursuant to § 211.23(h) of Regulation K on acquisitions made by foreign banking organizations

Agency form number: FR 4002

OMB Docket number: 7100-0110

Frequency: On occasion

Reporters: Foreign banking organizations

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844 and 3106) and confidential treatment may be requested.

Foreign banking organizations (FBOs) must inform the Board of shares

acquired in companies engaged in activities in the U.S. and of direct and indirect U.S. activities commenced by a subsidiary of the FBO.

2. *Report title:* Statement Regarding Security Devices that do not meet the Minimum Requirements of Regulation P

Agency form number: FR 4003
OMB Docket number: 7100–0112
Frequency: On occasion
Reporters: State member banks
Small businesses are affected.

General description of report: This recordkeeping requirement is mandatory (12 U.S.C. 1882(b); no confidentiality issues arise since the information is mantained in the files of the state member banks.

Any state member bank not meeting the minimum standards for security devices, as outlined in Regulation P, must maintain in its files a record outlining the reasons for not meeting the standards.

3. *Report title:* Written Security Program for State Member Banks are Required by Regulation P.

Agency form number: FR 4004
OMB Docket number: 7100–0112
Frequency: One-time
Reporters: State member banks
Small businesses are affected.

General description of report: This recordkeeping requirement is mandatory (12 U.S.C. 1882(b)); no confidentiality issues arise because the records are maintained in the files of the state member banks.

All state member banks must maintain in their files a written security program outlining procedures to deter external crime and to assist in the apprehension of persons who commit these crimes

4. *Report title:* Annual Statement of Compliance with the Bank Protection Act of 1968

Agency form number: FR 4005
OMB Docket Number: 7100–0112
Frequency: Annually
Reporters: State member banks
Small businesses are affected.

General description of report: The annual statement is mandatory (12 U.S.C. 1882(b)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

State member banks are required by the Federal Reserve Board to file with the appropriate Federal Reserve Bank an annual statement of compliance with Regulation P.

5. *Report title:* Ongoing Intermittent Survey of Households

Agency form number: FR 3016
OMB Docket Number: 7100–1050
Frequency: Monthly if needed
Reporters: Individuals and Households
Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(i), 353 *et seq.*, and 461(b)). No issues arise either under the Freedom of Information Act (FOIA) or under the Privacy Act.

This information is used by the Federal Reserve Board and the Federal Open Market Committee to enhance interpretation of the monetary aggregates and effects of monetary policy. The Board also requires this information to fulfill its statutory responsibilities to administer consumer credit regulations.

Proposal To Approve, Under OMB Delegated Authority, the Extension, With Minor Revisions To Instructions, of the Following Report

1. *Report title:* Ownership of Demand Deposit Accounts of Individuals, Partnerships, and Corporations

Agency form number: FR 2591
OMB Docket Number: 7100–0082
Frequency: Quarterly
Reporters: Commercial Banks
Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report, which collects information on demand deposits in five categories, is used by the Federal Reserve to explain the implications of short-run variations in the money supply. The definition of financial businesses is the only revision on this proposal.

Proposal To Approve Under OMB Delegated Authority the Implementation of Two One-Time Surveys

1. *Report title:* 1985 Survey of Finance Companies

Agency form number: FR 3033p, FR 3033s
OMB Docket Number: 7100–To be assigned
Frequency: One-time
Reporters: Finance companies
Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, and 353 *et seq.*) and is given confidential treatment (5 U.S.C. 552(b)(4)).

The finance company survey has been conducted every five years to establish timely benchmark data for regularly published series on consumer and business credit and on major assets and liabilities of finance companies.

Board of Governors of the Federal Reserve System, January 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–2833 Filed 2–4–85; 8:45 am]

BILLING CODE 6210–01–M

CDB Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater onvenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1984.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CDB Corp.*, Atlanta, Georgia; to engage *de novo* directly in making extensions of credit for the company's

account to affiliated organizations. This activity would be conducted in Atlanta, Georgia.

2. *Roswell Bancshares, Inc.*, Atlanta, Georgia; to engage *de novo* directly in the activity of making extensions of credit for the company's account to affiliated organizations. This activity would be conducted in Atlanta, Georgia.

3. *TGB Corp.*, Atlanta, Georgia; to engage *de novo* directly in the activity of making extensions of credit for the company's account to affiliated organizations. This activity would be conducted in Atlanta, Georgia.

Board of Governors of the Federal Reserve System, January 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-2834 Filed 2-4-85; 8:45 am]

BILLING CODE 6210-01-M

MNB Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 27, 1985.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MNB Bancshares, Inc.*, Mesquite, Texas; to become bank holding company by acquiring 100 percent of the voting shares of Mesquite National Bank, Mesquite, Texas.

2. *United City Corporation*, Plano, Texas; to acquire 100 percent of the voting shares or assets of First National Bank in Desoto, Desoto, Texas.

3. *Woodson Bancshares, Inc.*, Woodson, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Woodson, Texas.

Board of Governors of the Federal Reserve System, January 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-2835 Filed 2-4-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement for a Project To Enhance the Preparation of Practitioners of Preventive Medicine Availability of Funds for Fiscal Year 1985

The Centers for Disease Control announces the availability of funds in Fiscal Year 1985 for a cooperative agreement with the Association of Teachers of Preventive Medicine for a project to improve the development and preparation of practitioners of preventive medicine workers and to enhance their contributions to public health practice. Catalog of Federal Domestic Assistance Number 13.283. This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

Assistance will be provided only to the Association of Teachers of Preventive Medicine for this project. This is not a formal request for applications. It is expected that $75,000 to $100,000 will be available during Fiscal Year 1985 to support this project. It is anticipated that the cooperative agreement will be funded for 12 months with a 2-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change.

Information may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262-6575 or FTS 236-6575.

Dated: January 28, 1985.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85-2905 Filed 2-4-85; 8:45 am]

BILLING CODE 4160-18-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA). Notice is given that Sections SP.00, SP.10 and SP.20 of Part S, as published in the **Federal Register** on August 7, 1979 (44 FR 46321-46323), are being amended to reflect the change in organizational title of the Division of International Operations, Office of SSA Program Service Centers (OPSC), Office of Central Operations (OCO) to the SSA International Program Service Center (IPSC), OPSC, OCO, to add to IPSC's functional statement the responsibility for administering international Social Security agreements and to add reference to disability insurance (DI) claims in the SSA Program Service Centers. The OCO material is amended as follows:

Section SP.00 *The Office of Central Operations*—(Mission):

In line 20, change ". . . the six SSA program service centers . . ." to ". . . the seven SSA program service centers . . ."

In lines 22 and 23, delete ". . ." Division of International Operations . . .

Section SP.10 *The Office of Central Operations*—(Organization):

F. The Office of SSA Program Service Centers (SPR).

2. Delete "The Division of International Operations (SPR5)." and substitute "The SSA International Program Service Center (SPR5) (located at SSA headquarters)."

3. Change ". . . (located at six geographical locations throughout the United States) . . ." to ". . . (located at six SSA field locations geographically dispersed throughout the United States) . . ."

Section SP.20 *The Office of Central Operations*—(Functions):

F. The Office of SSA Program Service Centers (SPR).

In line 4, after ". . . a network of . . ." change "six . . ." to "seven . . ."

In line 6, after ". . . (PSC's) . . ." insert ". . ., including the SSA

International Program Service Center, . . ."

In lines 10 and 11, change ". . . retirement and survivors insurance program . . ." to ". . . retirement, survivors and disability insurance program . . ."

In lines 14, 15, 16 and 17, delete "The Office directs similar operations for administration of the U.S. Social Security program in foreign countries."

2. Delete "The Division of International Operations (SPR5) . . ." and substitute "The SSA International Program Service Center (SPR5) . . ." Also, in line 10, after ". . . on related claims . . ." add "determines entitlement to benefits based on international Social Security agreements . . ." Add:

f. Directs the operational implementation and ongoing administration of international Social Security agreements.

3. SSA Program Service Centers (SPRF2, 3, 4, 5, 7, 9). a., c., and d. Whenever "RSI" appears in these three paragraphs, change to "RSI/DI."

Dated: January 22, 1985.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 85-2848 Filed 2-4-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice announces that representatives of the U.S. Fish and Wildlife Service will be in attendance at meetings of the Atlantic, Mississippi, Central, Pacific, and National Flyway Councils at the following times and locations:

DATE: March 17, 1985:

—Atlantic Flyway Council, 10:00 a.m.
—Mississippi Flyway Council, 9:00 a.m.
—Central Flyway Council, 8:30 a.m.
—Pacific Flyway Council, 8:30 a.m.
—National Waterfowl Council, 3:00 p.m.

ADDRESS: Council meetings will be held at the Shoreham Hotel, Washington, D.C. as follows:

Atlantic Flyway Council, Executive Room, Upper Lobby Level
Mississippi Flyway Council, Calvert Room, Upper Lobby Level
Central Flyway Council, Diplomat Room, Upper Lobby Level
Pacific Flyway Council, Embassy Room, Upper Lobby Level
National Waterfowl Council, Hampton Room, Upper Lobby Level

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, telephone (202) 254-3207.

SUPPLEMENTARY INFORMATION: Flyway Councils are organizations of State conservation agencies that share responsibility for migratory bird management with the U.S. Fish and Wildlife Service. The council meetings noted above are scheduled in conjunction with the 50th North American Wildlife and Natural Resources Conference to be held March 15-20, 1985, at the Shoreham Hotel, Washington, D.C. The U.S. Fish and Wildlife Service will be represented at the above meetings to facilitate discussions of various migratory bird management and research programs, many of which are conducted jointly with the Service and with the Canadian Wildlife Service.

Dated: January 28, 1985.

Don W. Minnich,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 85-2889 Filed 2-4-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[C-26914]

Coal Lease Offering by Sealed Bid; Colorado

U.S. Department of the Interior, Bureau of Land Management, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205. Notice is hereby given that certain coal resources in the lands hereinafter described in Routt County, Colorado will be offered for competitive lease by sealed bid. This offering is being made as a result of an emergency by-pass application filed by Colorado Yampa Coal Company in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, et seq.). The sale will be held at 2:00 p.m., March 5, 1985, in the Eleventh Floor Conference Room at the above address.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value determination of the tract. The minimum bid is $100 per acre. No bid less than $100 per acre will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale. Sealed bids must be submitted on or before 1:00 p.m., March 5, 1985, to the Colorado State Office, 1037 20th Street, Denver, Colorado 80202. Bids received after that time will not be considered.

Coal Offered

The coal resource to be offered is limited to coal recoverable by surface mining methods from the Wadge Seam in the following lands located approximately 13 miles southwest of Steamboat Springs, Colorado:

T. 4. N., R. 86 W., 6th P.M.
Sec. 9: NE¼SW¼SW¼ and W½SW¼ SW¼.

The 30-acre tract contains an estimated 121,180 tons of recoverable coal with the following analysis: Sub Bituminous, Btu 10,500/11,500; Sulfur 0.5%; Ash 12%.

Rental and Royalty

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal produced. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

Notice of Availability

Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and of the proposed coal lease are available at the Colorado State Office. Case file documents are also available at that office for public inspection. Coal resource information pertaining to this tract is also available for public inspection in the Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Evelyn W. Azelson,

Chief, Mineral Leasing Section.

[FR Doc. 85-2900 Filed 2-4-85; 8:45 am]

BILLING CODE 4310-JB-M

[I-20388 et al.]

Realty Action; Competitive Sale of Public Land in Blaine County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, I-20388, I-20389, I-20651, I-20671, Competitive Sale of Public Land in Blaine County, Idaho.

SUMMARY: The following described lands have been examined, and through

land use planning and public input have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976. Fair market value will be available no less than 30 days prior to the sale date. Only sealed bids will be accepted.

Tract No.	Case File No.	Legal Description	Acres
2	I-20388	T. 1 N., R. 18 E., sec. 33, SW¼SW¼.	40.00
51	I-20389	T. 1 S., R. 18 E., sec. 4, lots 1 and 2.	48.16
50	I-20651	T. 1 N., R. 18 E., sec. 27, SE¼SE¼.	40.00
52	I-20671	T. 1 S., R. 18 E., sec. 23, W½SE¼.	80.00

The lands when patented will be subject to the following reservations to the United States.

1. Ditches and canals.

2. Geothermal resources.

3. All valid, existing rights and reservations of record. The lands are hereby segregated from all appropriation under the public land laws including the mining laws until sold or this sale is suspended.

Sealed bids must be received in this office no later than 10:00 a.m. on May 24, 1985. Bids for less than the fair market value will not be accepted. A bid will constitute an application for conveyance of mineral interests of no known value.

A $50 nonreturnable filing fee for processing such conveyance, along with one fifth of the full bid price must accompany each bid. If parcel is not sold at this time the parcel will be offered the fourth Friday of each month at the same time and place until sold or sale is suspended.

DATE AND ADDRESS: The sale offering will be held on May 24, 1985 at 10:00 a.m. in the Shoshone District Office, 400 West F. Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale and conditions, bidding procedures, and other details can be obtained by contacting Mike Austin at (208) 886-2206 or writing to BLM, P.O. Box 2B, Shoshone, Idaho 83352.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Shoshone District Manager at the above address.

Dated: January 25, 1985.

Charles J. Haszier,

District Manager.

[FR Doc. 85-2902 Filed 2-4-85; 8:45 am]

BILLING CODE 4310-GG-M

[C-36695]

Realty Action—Exchange, Public Lands in Gunnison County, Colorado

In FR Doc. 84-2804, appearing on page 4154 in the issue of Thursday, February 2, 1984, make the following correction: In the middle column of the page, in the second line of the second description for "New Mexico Principal Meridian, T.49N., R.3W.," "N½NW¼" should read "N½NW¼SW¼".

BILLING CODE 1505-01-M

Minerals Management Service

Development Operations Coordination Document; Mobil Oil Exploration and Producing Southeast Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Oil Exploration and Producing Southeast Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4098, Block 24, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on January 25, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 25, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-2908 Filed 2-4-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Extend Concession Permit; Donza L. Morris

Pursuant to the provisions of section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Regional Director of the National Park Service, proposes to extend a concession permit with Donza L. Morris authorizing him to continue to provide overnight fish camp on Core Banks, auto/passenger service between Atlantic, North Carolina, and the Core Banks north of Drum Inlet and transportation service between the fish camp and Portsmouth Island for the public within Cape Lookout National Seashore for a period of one year from January 1, 1985, through December 31, 1985. A determination was made that a thirty (30) day response period was sufficient time since the National Park Service is currently in the process of developing a Statement of Requirements

(Prospectus) for a long-term concessions authorization to provide these services. The current permit provisions deny a preferential right to the existing concessioner.

This permit extension has been determined to be categorically exclued from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, Atlanta, Georgia, for information as to the requirements of the proposed permit.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 85-2903 Filed 2-4-85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 26, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by February 29, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Jefferson County

Birmingham, *Downtown Birmingham Historic District (Boundary Increase)*, Roughly bounded by 1st and 4th Ave., 20th and 25th Sts.

COLORADO

La Plata County

Durango vicinity, *Durango Rock Shelters Archeology Site.*

CONNECTICUT

Fairfield County

Bridgeport, *East Main Street Historic District*, Bounded by Walters and Nichols Sts. from 371—377, 741—747, 388—394 and to 774 East Main Sts.

Bridgeport, *United Illuminating Company Building*, 1115—1119 Broad St.

Stamford, *Downtown Stamford Historic District (Boundary Increase)*, Bounded by Atlantic, Main, Bank, Bedford, Summer between Broad and Main Sts. and Summer Pl.

Litchfield County

Barkhamsted vicinity, *Union Church/St. Paul's Church*, Riverton Rd.

Plymouth, *East Plymouth Historic District*, E. Plymouth and Marsh Rd.

Winchester vicinity, *Winsted Hosiery Mill*, Whiting at Holabird St.

Middlesex County

Westbrook and Deep River, *Doane's Sawmill/Deep River Manufacturing Company*, Horse Hill and Winthrop Rds.

DELAWARE

New Castle County

Wilmington, *Howard High School*, 13th and Poplar Sts.

Wilmington, *Lower Market Street Historic District*, Bounded by 2nd, 5th, King and Shipley Sts.

Wilmington, *Talley, William, House*, 1813 Foulk Rd.

FLORIDA

Dade County

Miami, *Florida East Coast Railway Locomotive #153*, 12400 SW 152nd St.

Volusia County

Ormond Beach, *Lippincott Mansion*, 150 S. Beach St.

ILLINOIS

Lake County

North Chicago, *Dewey House*, Veterans Administration Medical Center

MASSACHUSETTS

Bristol County

Taunton, *Lawrence, William, House (Taunton MRA)*, 101 Somerset Ave.

Taunton, *Neck of Land (Taunton MRA)*, Summer St.

Taunton, *Taunton Green Historic District (Taunton MRA)*, Bounded by Main St., Broadway N. & E. Taunton Green and Courthouse Complex.

Taunton, *Taunton State Hospital (Taunton MRA)*, 60 Hodges Ave.

Taunton, *Woodward, William, House (Taunton MRA)*, 117 Arlinton St.

Suffolk County

Boston, *Bigelow School*, 350 W. 4th St.

Boston, *Dimock Community Health Center Complex*, 41 and 55 Dimock St.

Boston *Dorchester Pottery Works*, 101–105 Victory Rd.

Worcester County

Clinton, *Downtown Clinton Historic District*, Roughly bounded by Union and Prospects Sts. on High and Church Sts.

MISSOURI

St. Louis (Independent City)

Scruggs-Vandervoort-Barney Warehouse, 917 Locust St.

NEW YORK

Columbia County

Canaan, *Edwards, Uriah, House*, NY 22 and Miller Rd. Stuyvesant vicinity, *Scott, R. and W., Ice Company Powerhouse and Ice House Site*, River Rd.

Dutchess County

Millerton vicinity, *Clark, Ezra, House*, Mill Rd.

NORTH CAROLINA

Robeson County

Lumberton, *Lumberton N.C. Post Office*, 606 N. Elm St.

Union County

Monroe, *Monroe N.C. Post Office*, 407 N. Main St.

NORTH DAKOTA

Morton County

Mandan, *Mandon Commercial Historic Distoic*, Roughly bounded by Main and First Sts. Between 1st Ave. NE and 4th Ave. NW.

OKLAHOMA

Custer County

Custer, *Broadway Hotel (Custer Commercial Buildings MRA)*, Off OK 33

Custer, *First National Bank of Custer City (Custer Commerical Buildings MRA)*, Off OK 33

Custer, *Pyeatt's J.H., General Store (Custer Commercial Buildings MRA)*, Off OK 33

PUERTO RICO

Aguadilla County

Anasco, *Plaza de Recreo de Anasco (Plazas of Puerto Rico TR)*, San Antonio Ibanez, San Juan and 65th Infantry Sts.

Arecibo County

Arecibo, *Plaza Munoz Rivera (Plazas of Puerto Rico TR)*

Utuado, *Plaza San Miguel/Plaza Munoz Rivera (Plazas of Puerto Rico TR)* Dr. Basora, Betances, Barcelo and Eugenio Sanchez Lopez Sts.

Guayama County

Caguas, *Parque Palmer (Plazas of Puerto Rico TR)*

Guayama, *Plaza de Recreo de Guayama (Plazas of Puerto Rico TR)*

Humacao County

Humacao, *Plaza Munoz Rivera (Plazas of Puerto Rico TR)*

Mayaguez County

San German, *Plaza Mariano Quinones and Plaza Santo Domingo (Plazas of Puerto Rico TR)*, Dr. Veve, Jose Julian Acosta and Ruiz Belvis Sts.

Ponce County

Ponce, *Plaza Las Delicias/Plaza Degetau (Plazas of Puerto Rico TR)*, Comercio, Concordia, Atocha and Reina Sts.

San Juan County

Plaza de Recreo de Rio Piedras/Parque de la Convalescencia (Plazas of Puerto Rico TR)

WASHINGTON

Spokane County

Spokane, *Spokane City Hall Building*, N. 221 Wall St. & W. 711 Spokane Falls Blvd.

Thurston County

Olympia, *Meyer House*, 1136 E. Bay Dr.

[FR Doc. 85-2846 Filed 2-4-85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places and National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The annual supplemental listing of properties added to or determined eligible for the National Register of Historic Places between October 1, 1983 and September 30, 1984 will be published in the **Federal Register** on a Tuesday in late February or early March 1985. The annual supplemental listing of all natural landmarks designated by the Secretary of the Interior between October 1, 1983 and September 30, 1984 will be published on the same day.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Cable, Interagency Resources Division, National Park Service, U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240 (202/343-9508).

Lawrence E. Aten,

Chief, Interagency Resources Division, National Park Service.

[FR Doc. 85-2847 Filed 2-4-85; 8:45 am]

BILLING CODE 4310-70-M

United States World Heritage Nominations 1985

AGENCY: National Park Service, Department of the Interior.

ACTION: Public notice.

SUMMARY: The Department of the Interior, through the National Park Service, announces the nomination of Glacier National Park and Chaco Culture National Historical Park to the World Heritage List. The nominations are the result of Interior's annual World Heritage nomination process, which was initiated through a February 23, 1984, **Federal Register** notice (49 FR 6805). The Department earlier announced the identification of both sites as proposed U.S. World Heritage nominations (49 FR 33470). The nominations are being submitted to the Secretariat of the World Heritage Committee for consideration through a process that could lead to their inscription on the World Heritage List in fall 1985.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Wright, Associate Director, Planning and Development, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 82 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world. The Convention complements each participating nation's heritage conservation programs, and provides for:

(a) The establishment of a 21-member nation World Heritage Committee to further the goals of the Convention and to approve properties for inclusion on the World Heritage Lits;

(b) The development and maintenance of a World Heritage List to be comprised of natural and cultural properties of outstanding universal value;

(c) The preparation of a List of World Heritage in Danger;

(d) The establishment of a World Heritage Fund, with a primary function to assist participating countries in preserving and protecting endangered World Heritage properties;

(e) The provision of technical assistance to participating countries, upon request; and

(f) The promotion and enhancement of public knowledge and understanding of the vital importance of heritage conservation at the international level.

Participating nations identify and nominate their sites for inclusion on the World Heritage List, which currently includes 188 cultural and natural properties. The World Heritage Committee judges all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, presentation, and rehabilitation of World Heritage properties situated within its borders.

The Federal Interagency Panel for World Heritage makes recommendations on proposed U.S. World Heritage nominations and related matters. The Panel includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, and the U.S. Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; the Department of the Commerce; the Department of the Agriculture; the Department of State; and the U.S. Information Agency.

In the United States, the Interior Department is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515; 16 U.S.C. 470a-1, a-2). On May 6, 1982, the Interior Department published in the **Federal Register** (47 FR 23392) the final rules which are used to carry out this legislative mandate (36 CFR Part 73). The rules contain futher information on the Convention and its implementation in the United States.

United States World Heritage Nominations: 1985

The Interior Department, in cooperation with the Federal Interagency Panel for World Heritage, has selected the following properties as United States nominations to the World Heritage Committee for inscription on the World Heritage List.

I. Cultural Property

Developed Agriculture. Chaco Culture National Historical Park, New Mexico. (36°4'N, 108°0'W) Bears testimony to a complex prehistoric culture that administered a socioeconomic network of widespread outlaying communities linked by roads. No system of this character was developed elsewhere in North America by socially and politically equivalent societies. The people responsible for this accomplishment are known as the Chaco Anasazi. Chaco Canyon is a broad canyon that contains approximately 2,400 sites including 13 major pueblo ruins. These major ruins consist of 1-5 story buildings, the largest of which contains up to 650 rooms. The development of the Chaco phenomenon began as early as AD 900-950 and enjoyed success until its collapse, resulting in the ultimate extinction of the Chaco Anasazi sometime after AD 1150. *Criteria:* (iii) Bears a unique testimony to a civilization which has disappeared.

II. Natural Property

Rocky Mountain. Glacier National Park, Montana. (48°40'; 113°50'W). With mountain peaks exceeding 10,000 feet, this site includes nearly 50 glaciers, many lakes and streams and a wide variety of wild flowers and wildlife, including bighorn sheep, bald eagles, and grizzly bears. The area has been designated as a Biosphere Reserve. *Criteria:* (i) An outstanding example of the earth's evolutionary history and (ii) an outstanding example of significant biological evolution and diversity.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks

January 18, 1985.

[FR Doc. 85-2841 Filed 2-4-85; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Northwestern States Portland Cement Co. on Behalf of Portland Cement Association

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), Northwestern States Portland Cement Company on behalf of Portland Cement Association ("PCA") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties involved and (2) the nature and objectives of PCA. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to PCA, and its general areas of planned activities, are given below.

PCA is an Illinois not-for-profit corporation whose members are:

Aetna Cement Corporation
Alaska Basic Industries
Arkansas Cement Corporation
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Atlantic Cement Company, Inc.
Blue Circle Inc.
CalMat Co.
Capitol Aggregates, Inc.
Centex/Nevada/Texas
Cianbro Corporation
Davenport Cement Company
General Portland Inc.
Genstar Cement Company
Gifford-Hill & Company, Inc.
Ideal Basic Industries, Cement Division
Independent Cement Corporation
Lehigh Portland Cement Corporation
Lone Star Industries, Inc.
Louisville Cement Company
The Monarch Cement Company
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Rinker Portland Cement Corporation
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin Cement, Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Company
Canada Cement LaFarge Ltd.
Ciment Quebec, Inc.
Federal White Cement Ltd.
Genstar Cement Limited
Lake Ontario Cement Limited
Miron Inc.
North Star Cement Limited
St. Lawrence Cement, Inc.
St. Marys Cement Limited

In addition, a number of equipment suppliers are involved as "Participating Associates" together with PCA members. These Participating Associates presently include the following firms:

Holderbank Consulting, Ltd.
Humboldt Wedag Company
Centennial Engineering, Inc.
Allis-Chalmers Corp.
Bendy Engineering, M.K./H.K. Ferguson
F. L. Smidth and Company
Claudius Peters, Inc.
Polysius Corp.
The Fuller Company

PCA has as its purpose to improve and extend the uses of cement and concrete. In connection therewith, PCA is involved in a wide range of research activities relating to cement and concrete. These research activities are conducted at PCA's laboratories in Skokie, Illinois, as well as at other locations, and include (without limitation) the following:

—Investigations into the fire resisteance of concrete elements and structures containing concrete elements
—The development of engineering and design criteria for improving the fire resistive quality of concrete elements and structures containing concrete elements
—The development of new uses for cement and concrete (such as a soil cement and polyethylene composite liner for hazardous waste sites)
—The improvement of existing uses for cement and concrete (such as improved designs for concrete bridges)
—The development of improved techniques for concrete construction (such as an economically viable method for installing concrete floors in single family residential housing)
—The development of mechanical, electrical, chemical, and analytical tools for examining cement clinker, cement, and concrete
—The development of mechanical, electrical chemical, and analytical tools for identifying the reason or reasons for concrete failure
—The analysis of specific instances of poor performance in cement or failure in concrete
—Investigations into the chemistry of cement and the chemical interaction between cement and other ingredients in concrete (including water, aggregates, fly ash, and other mixtures)
—Investigations into the manufacturing process for cement and possible changes thereto which would have the effect of improving product quality, lowering production costs, facilitating compliance with environmental laws and regulations, or otherwise producing benefits for concrete manufacturers
—The development of new and improved types of cement
—The analysis and dissemination of engineering and scientific advances made within and outside of PCA which relate to cement and concrete

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-2870 Filed 2-4-85; 8:45 am]

BILLING CODE 4410-09-M

Drug Enforcement Administration

[Docket No. 84-46]

Jude R. Hayes, M.D., Ivanhoe, CA, Porterville, CA, Tamuning, Guam; Hearing

Notice is hereby given that on October 2, 1984, the Drug Enforcement Administration, Department of Justice, issued to Jude R. Hayes, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificates of Registration, AH9124568, AJ2102046 and AH1565766, as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Thursday, February 14, 1985, in the U.S. Tax Court Courtroom,

Room 2041, Federal Building, 450 Golden Gate Avenue, San Francisco, California.

Dated: January 30, 1985.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-2837 Filed 2-4-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-27]

Oscar J. Jackson, M.D., San Francisco, CA; Hearing

Notice is hereby given that on July 5, 1984, the Drug Enforcement Administration, Department of Justice, issued to Oscar J. Jackson, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application for registration, executed on September 29, 1983, for registration as a practitioner in Schedules IV and V under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, February 12, 1985, in the U.S. Tax Court Courtroom, Room 2041, Federal Building, 450 Golden Gate Avenue, San Francisco, California.

Dated: January 30, 1985.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-2838 Filed 2-4-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-37]

Donald S. Kavanagh, D.D.S., Martinez, CA; Hearing

Notice is hereby given that on August 31, 1984, the Drug Enforcement Administration, Department of Justice, issued to Donald S. Kavanagh, Jr., D.D.S., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AK1458795, and deny his application, executed on November 28, 1983, for registration as a practioner under 21 U.S.C. 823(f)

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Wednesday, February 13, 1985, in the U.S. Tax Court Courtroom, Room 2041, Federal Building, 450 Golden Gate Avenue, San Francisco, California.

Dated: January 30, 1985.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-2839 Filed 2-4-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill our the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration, 1984 Summer Youth Employment and Training Program Data, and 1985 Projected Allocations
No forms
Annually
State or local governments
54 respondents; 216 hours; no form

The Employment and Training Administration directed by the Senate Appropriations Committee Report and the 1985 Department of Labor Appropriations Act, should collect information from 54 State offices on 1984 summer allocations and individuals served (by State and service delivery area) as well as 1985 summer projections for the Summer Youth Program. ETA will use this information to modify summer 1985 allocations.

Extension

Mine Safety and Health Administration
Impoundments and Refuse Pile Engineering Plans and Revisions
1219-0060
On occasion
Businesses or other for profit; small businesses or organizations
90 respondents; 78,150 hours

Requires coal mine operators to submit engineering plans and revisions to existing plans for construction of refuse piles and impoundment structures to MSHA for approval.

Record of Preshift and Onshift Inspections of Slope and Shaft Areas
1219-0062
Each Shift
Businesses and other for profit; small businesses or organizations
40 respondents; 18,040 hours

Requires coal mine operators to conduct inspections, including tests for methane and oxygen deficiency, or slope and shaft areas for hazardous conditions prior to and during each shift. Records are required to be kept of the results of the inspections and tests.

Revision

Employment and Training Administration Application Card, Applicant/Job Order Transaction 1205–0001; 511, 511C, 516, 516P

Other (as needed)

Individuals; State or local governments

8,752,049 responses; 1,839,932 burden hours; 4 forms

The Application Card is the basic operating document used in State public employment service and WIN local offices for new and partial applications for individuals seeking assistance in finding employment or employability development services. The ETA 516 and 516P are the automated transmittal forms of the ETA 511 record of service section.

Signed at Washington, D.C. this 31st day of January 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–2917 Filed 2–4–85; 8:45 am]

BILLING CODE 4510–30–M

Office of Pension and Welfare Benefit Programs

[Application No. D–5443]

Withdrawal of a Proposed Exemption; Intercontinental Monetary Corporation Pension and Profit Sharing Plans (the Plans), Located in New York, NY

In the **Federal Register** dated December 14, 1984 (49 FR 48823), the Department published a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned an application filed on behalf of the Plans.

The applicant's representative notified the Department on January 22, 1985 that an exemption for the transactions described in the above cited notice is not desired at the current time. Accordingly, the representative requested that the application for exemption be withdrawn from consideration by the Department.

Signed at Washington, D.C., this 31st day of January 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Programs Benefit, U.S. Department of Labor.

[FR Doc. 85–2911 Filed 2–4–85; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 85–25; Exemption Application No. D–4683 et al.]

Grant of Individual Exemptions; the Royal Bank of Canada, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plant No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Royal Bank of Canada (Royal Bank) Located in Montreal, Quebec, Canada

[Prohibited Transaction Exemption 85–25; Exemption Application No. D–4683]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, retroactive to June 15, 1981, to the execution by Royal Bank of a letter of credit agreement providing for and the actual issuance, maintenance in effect and performance or honoring of a letter of credit in conjunction with a private financing agreement where Royal Bank may have had or may in the future have a party in interest relationship with one or more or the several investor employee benefit plans.

Effective Date: This exemption is effective June 15, 1981.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 4, 1984 at 49 FR 47445.

For Further Information Contact: Mr. Paul R. Antsen of the Department, telephone (202) 523–6915. (This is not a toll-free number.)

J.H. Kleinfelder & Associates Employee Profit Sharing Plan (the Plan) Located in Walnut Creek, California

[Prohibited Transaction Exemption 85–26; Exemption Application No. D–5088]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a lease, effective July 1, 1984, by the Plan of certain improved real property to J.H. Keleinfelder & Associates, the sponsor of the Plan, provided that the terms of such lease are at least equivalent to those which the Plan would receive in an Arm's length transaction with an unrelated party.

Effective Date: This exemption is effective July 1, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 26, 1984 at 49 FR 43126.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Star-Mark, Inc., Profit Sharing Plan and Trust; and Star-Mark, Inc., Defined Benefit Plan and Trust (the Plans) Located in Sioux Falls, South Dakota

[Prohibited Transaction Exemption 85-27; Exemption Application No. D-5398 and D-5399]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (1) (A) through (E) of the Code, shall not apply to: (1) the purchase of certain leases of equipment (the Leases) by the Plans from Star-Mark, Inc. (the Employer), the sponsor of the Plans; (2) the repurchase by the Employer or its shareholders (the Shareholders) of any Leases in default; (3) the indemnification of the Plans by the Employer and its Shareholders against any loss relating to the Leases; and (4) the possible repurchase by the Employer or its Shareholders of the leased equipment at the end of the term of a Lease, provided that the following conditions are met:

A. Any sale of Leases to the Plans will be on terms at least as favorable to the Plans as an arm's length transaction with an unrelated third party.

B. The acquisition of a Lease from the Employer shall not cause either Plan to hold: (1) More than 25% of that Plan's assets in the Leases; (2) more than 3% of that Plan's assets in a single Lease; and (3) more than 10% of that Plan's assets in Leases of any one lessee.

C. Upon default by a leasee on any payment due under a Lease, the Employer and its Shareholders agree to indemnify the Plan holding that Lease against any loss resulting from such default and also agree to repurchase such Lease at full face value, without discount, and to repurchase the equipment underlying the Lease at the present value of that equipment based on its value at the end of the Lease. A Lease shall be deemed to be in default for purposes of this section if: (1) A payment due under the terms and conditions of the Lease is past due for a period of 45 days; (2) a lessee defaults in the performance of any other term or condition of the Lease for a period of 45 days; or (3) a lessee ceases doing business or becomes insolvent.

D. The Plans receive adequate security for the equipment underlying the Lease. For purposes of this exemption, the term adequate security means that the equipment is secured by a perfected security interest in the leased equipment, so that if there is a default on a Lease and the security is foreclosed upon or otherwise disposed of, the value liquidity of the security is such that it may reasonably be anticipated that the Plan holding the Lease will experience no loss.

E. Insurance against loss or damage to the leased equipment from fire or other hazards will be procured and maintained by the lessee, and the proceeds from such insurance will be assigned to the Plans.

Temporary Nature of Exemption: This exemption is temporary in nature and will expire five years after the date of grant with respect to the purchase by the Plans of Leases.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 4, 1984 at 49 FR 47450.

For Further Information Contract: Mr. David Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Armstrong Rubber Company Pension Plan Located in New Haven, Connecticut

[Prohibited Transaction Exemption 85-28; Exemption Application No. D-5586]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a $1,000,000 Series B note (the B Note) to Armstrong Rubber Company, the sponsor of the Plan, provided that the sales price is not less than the fair market value of the B Note at the time the sale is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 4, 1984 at 49 FR 47453.

For Further Information Contact: Mr. David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Employee Retirement Plan of Doubleday & Company, Inc. and Associated Companies (the Plan) Located in New York, New York

[Prohibited Transaction Exemption 85-29; Exemption Application No. D-5638]

Exemption

The restrictions of sections 406(a), 406(b) (1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the continuation, beyond June 30, 1984, of a guaranty made to the Plan by Doubleday Broadcasting Company, Inc., a party in interest with respect to the Plan, in order to secure the obligation of Christian Broadcasting Network (CBN), under a lease by the Plan to CBN, provided that the terms and conditions of such guaranty are at least as favorable to the Plan as those obtainable by the Plan in a similar transaction with an unrelated party.

Written Comments and Hearing Requests: Three written comments were received by the Department and all were answered by the Department via telephone. None of the comments, however, addressed the transaction which is the subject of the exemption. The Department received no requests for a public hearing.

Effective Date: This exemption is effective July 1, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 4, 1984, at 49 FR 47456.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

Rumph Chiropractic Clinic, P.C. Employees' Pension Plan and Trust (the Plan) Located in Waterford, Michigan

[Prohibited Transaction Exemptions 85-30; Exemption Application No. D-5687]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of an unimproved parcel of real property, as described in the notice of proposed exemption (the Notice), by the Plan to a partnership, as described in the Notice, provided that the sales price of the property is not less than its fair market value at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on December 4, 1984 at 49 FR 47458.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

RWL Radiological Consultants, Inc., Pension Plan and RWL Radiological Consultants, Inc., Retirement Plan (collectively, the Plans), Located in Texarkana, Arkansas

[Prohibited Transaction Exemption 85–31; Exemption Application Nos. S–5707 and D–5708]

Exemption

The restrictions of section 406(a), 406 (b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of certain real property (the Property) by the Plans to Dr. Ray W. Leavelle, a party in interest with respect to the Plans, for cash in an amount which is the greater of (1) the fair market value of the Property on the date of sale, or (2) the total cost of the acquisition and the holding of the Property by the Plans through the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 23, 1984 at 49 FR 46220.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 31st day of January, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–2912 Filed 2–4–85; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted 30 days from the date of notice.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 (202) 786–0233 or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW. Room 3208, Washington, D.C. 20503, (202) 395–6880.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, (202) 786–0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form: (2) the agency form number if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension of the Expiration Date of Currently Approved Policy
Title: NEH Program Income Policy
Form Number: 3136–0070
Frequency of Collection: End of grant period and annually
Respondents: Grantees who earn income generated from NEH funded project activities
Use: Monitor information on Program Income and how Federal share of such is used
Estimated Number of Respondents: 300
Estimated Hours of Respondents to Provide Information: 1

Victor J. Loughnan,

Director of Administration.

[FR Doc. 85–2885 Filed 2–4–85; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biochemistry; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, The National Science Foundation announces the following meeting.

Name: Advisory Panel for Biochemistry.

Date: Thursday and Friday, February 21 and 22, 1985, from 9:00 am to 5:00 pm.

Place: Room 628, National Science Foundation, 1800 G Street, NW Washington, DC 20550.

Type of meeting: Closed.

Contact person: Arnold Revzin, Program Director, Biochemistry Program, Room 329–D, Telephone: (202) 357–7945.

Purpose of advisory panel: To provide advice and recommendations concerning support for Biochemistry research proposals.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries;

and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Rebecca Winkler,

Committee Management Officer.

January 31, 1985.

[FR Doc. 85-2868 Filed 2-4-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Biophysics Program; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 94-463, The National Science Foundation announces the following meeting.

Name: Advisory Panel for Biophysics Program.

Date and time: Thursday and Friday, February 21 and 22, 1985, from 9:00 A.M. to 5:00 P.M.

Place: Room 1242A, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.

Type of meeting: Closed.

Contact: Dr. Arthur Kowalsky, Program Director, Biophysics Program, Room 329 Phone: (202) 357-7777.

Purpose of advisory panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Rebecca Winkler,

Committee Management Officer.

January 31, 1985.

[FR Doc. 85-2867 Filed 2-4-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-244]

Rochester Gas and Electric Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-18, issued to Rochester Gas and Electric Corporation, for operation of the R. E. Ginna Nuclear Power Plant (Ginna).

The amendment would improve the efficiency of refueling outage work and improve personnel safety. The change would allow use of a temporary closure plate in place of the equipment hatch or equipment door during refueling. At the time the plant was constructed, the magnitude and types of outage maintenance activities inside containment were not anticipated. As a result, a need exists during outages for many temporary services inside containment to support plant modifications, inservice inspections, equipment maintenance and overhauls and significant steam generator work. The services required include electrical cables for communication, closed circuit TV, steam generator tube eddy current testing, steam generator sleeving and power for additional welding machines. Fluid lines are required for high pressure water lancing of the steam generators and for air supplies.

Current practice has been to run the temporary services through an open personnel door within the equipment door or to attach a special closure to the personnel door with appropriately sealed penetrations. The first option dictates that refueling and some maintenance work not be performed concurrently which lengthens the outage and increases the cost to the company.

The second option reduces the containment egress paths to one, an undesirable situation for personnel safety. The preferred method for decreasing outage time and increasing personnel safety is to use a specially fabricated closure plate in place of the equipment door. The closure plate would have sealed penetrations for the temporary services and a personnel door that would provide emergency egress.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a signficant reduction in a margin of safety.

Based on the above information, we conclude that the safety function of the component being replaced during refueling operations would be fulfilled by the proposed temporary closure plate. The design of the temporary closure plate assures that releases of radioactive material within the containment will be restricted from leaking to the environment. Therefore, the proposed change would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Accordingly, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By March 7, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a

request for a hearing or petition for leave to intervene is filed by the above date the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street, NW. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John A. Zwolinski: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harry H. Voight, Esquire, LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue, NW., Suite 1100, Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, D.C. and at the Rochester Public Library, 115 South Avenue, Rochester, N.Y. 14604.

Dated at Bethesda, Maryland, this 31st day of January 1985.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 85-2980 Filed 2-4-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Technical, Non-Substantial Amendments

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of Technical, Non-Substantial Amendments.

SUMMARY: On January 9, 1985, the Northwest Power Planning Council amended portions of its Northwest Conservation and Electric Power Plan (Power Plan) to make technical, non-substantial corrections. This notice describes those amendments.

FOR FURTHER INFORMATION CONTACT: Tom Foley, Manager of Conservation and Resources, at Suite 1100, 850 SW. Broadway, Portland, Oregon 97205 (Toll-free 1-800-222-3355 in Montana, Idaho, and Washington; toll-free 1-800-452-2324 in Oregon; or 503-222-5161).

SUPPLEMENTARY INFORMATION: The Pacific Northwest Electric Power and Conservation Planning Act, Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 (the Act) allows the Council to amend the Power Plan from time to time. The technical, non-substantial amendments announced

in this notice were adopted in accordance with the Act by recorded vote of the Council at its regularly-scheduled meeting in Portland, Oregon, on January 9, 1985.

The amendments correct two technical, non-substantial errors in the Plan's electric space heating performance standards (standards) for new single-family residences (Vol. I, Ch. 10, p. 10–9). The Council's staff recently discovered a data entry error committed in 1983 while performing analysis leading to adoption of the Plan. Correcting that error consistent with the Council's desire that the cost of no individual component exceed 4 cents per kilowatt-hour necessitated changing the Plan's performance standard for new single-family residences in climate zone 2 from 2.6 kilowatt-hours per square foot per year to 3.2 kilowatt-hours per square foot per year. Also, correcting the data entry error required corresponding corrections to Appendices J and K of the Plan. Specifically, the wall specification for a well-insulated single-family dwelling as set out in the suggested Alternative Component Packages for Climate Zone 2 (Table J6–1b) was changed from R–31 to R–25, and the maximum total areas of glazing for the passive solar and heat pump alternatives were changed to 19 percent. In addition, the Technical Potential for Energy Conservation in New Single-Family Buildings (Table K–15) was changed as follows to correct the unit costs of 2 steps of increasing a wall's insulation:

- for R–11 to R–19, change from $396 to $296; and
- for R–19 to R–27, change from $382 to $500.

The second change to the standards corrects a typographical error made during printing of the Plan. The performance standard for new single-family residences in climate zone 3 should be 3.2 kilowatt-hours per square foot per year, not 3.1 kilowatt-hours per square foot per year.

Accordingly, the table on page 10–9 of Volume I of the Plan is amended to read:

Building type	Climate zone* (kWh/sq ft/yr) 1	(kWh/sq ft/yr) 2	(kWh/sq ft/yr) 3
Single-Family	2.0	3.2	3.2
Multi-Family	1.2	2.3	2.8

Table J6-1b on page J–49, Appendix J, Volume II of the Plan is amended to read:

TABLE J6–1B.—ALTERNATIVE COMPONENT PACKAGES FOR CLIMATE ZONE 2—6,001 TO 8,000 HEATING DEGREE DAYS AT 65 °F Single-Family Dwellings (R–3 Occupancy)

Component	Package: Well insulated A	Sun tempered B	Passive solar C	Heat pump D
Building envelope insulation minimums:				
Ceiling	R-38	R-38	R-38	R-38
Wall	R-25	R-25	R-25	R-19
Slab floor perimeter	R-12	R-12	R-12	R-12
Floor over unconditioned space.	R-30	R-30	R-19	R-19
Exterior doors				
(DISI No.)	2.0	2.0	2.0	6.5
(EDII No.)				6.5
Glazing:				
Maximum U value	.37	.37	.37	.47
Maximum total area[1]	15%	15%	19%	19%
Minimum effective solar glazing area[2].	No	8%	10%	No requirement
Thermal mass[3]	Requirement not required.	Not required	Required	Not required
Space conditioning system				
Heating system type	No special requirement.	No special requirement.	No special requirement.	High-performance heat pump (S.P.F. = 2.0)[4]
Infiltration control package (see table J6–3).	B	B	B	A

[1] Percent of conditioned floor area.
[2] See Section 601B for calculation.
[3] See Section 601C for calculation.
[4] See Equation 7 for calculation.

Similarly, Table K–15 on page K–12, Appendix K, Volume II of the Plan is amended to read:

TABLE K–15.—TECHNICAL POTENTIAL FOR ENERGY CONSERVATION IN NEW SINGLE-FAMILY BUILDINGS

Resource description	Unit cost (1960 dollars)	Life years	Climate zone: Energy (kWh/unit) 1	Energy (kWh/unit) 2	Energy (kWh/unit) 3
Insulate roof:					
R19 to R30	176	30	729	1,097	1,266
R30 to R38	137	30	239	363	427
R38 to R49	176	30	156	262	313
R49 to R60	176	30	106	179	215
Infiltration:					
.6–.4	381	30	1,096	1,650	1,927
.4–.2	635	30	941	1,471	1,745
Insulate floors:					
R11 to R19	200	30	422	637	750
R19 to R30	301	30	290	480	571
R30 to R42	552	30	171	312	380
Insulate glass:					
1–2	302	30	2,048	3,005	3,499
2–3	346	30	584	875	1,048
3–4	495	30	200	347	419
2–3 (Casement; awnings)	631	30	584	875	1,046
Insulate walls:					
R11 to R19	296	30	860	1,264	1,480
R19 to R27	500	30	365	554	653
R27 to R31	150	30	127	190	229
R31 to R38	569	30	72	136	168
Doors: R2 to R13	67	30	474	702	814

Edward Sheets,

Executive Director.

[FR. Doc. 85–2901 Filed 2–4–85; 8:45 am]

BILLING CODE 0000–00–M

POSTAL RATE COMMISSION

[Order No. 603; Docket No. A85–15]

Chester Depot, Vermont 05144 (Shirley M. Holley, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule

Issued: January 29, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Docket Number: A85–15.

Name of Affected Post Office: Chester Depot, Vermont 05144.

Name(s) of Petitioner(s): Shirley M. Holley.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: December 28, 1984.

Categories of Issues Apparently Raised:

1. Effect on the service (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule (39 U.S.C. 404(b)(5)) the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

December 28, 1984—Filing of Petition
January 29, 1985—Notice and Order of Filing of Appeal
February 11, 1985—Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)]
February 21, 1985—Petitioner's Initial Brief [*see* CFR 3001.115(b)]
March 13, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)]
March 28, 1985—(1) Petitioner's Reply Brief should petitioner choose to file one [*see* CFR 3001.115(d)].
April 4, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its direction, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
April 27, 1985—Expiration of 120–day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85–2904 Filed 2–4–85; 8:45 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; American Stock Exchange, Inc., Order Approving Proposed Rule Change

[Release No. 21694; SR–Amex–84–34]

January 28, 1985.

The American Stock Exchange, Inc. ("Amex") 86 Trinity Place, New York, NY, 10006, submitted on November 19, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to permit the sales personnel of a member organization who solicit or accept customer orders for options on debt securities to qualify for such sales activity by passing the Amex's Interest Rate Options Qualification Examination.[1] In addition, Rule 922, as amended, provides that debt options trading within a branch office may be supervised by any qualified Debt Registered Options Principal within the member organization designated to supervise branch activity.[2]

Notice of the proposed rule change, together with its terms of substance, was given by the issuance of a Commission release (Securities Exchange act Release No. 21544, December 6, 1984) and by publication in the **Federal Register** (49 FR 48400, December 12, 1984). No comments were received regarding the proposed rule change.

The Commission finds that the proposed rule change in consistent with the requirements to the Act and the rules and regulations thereunder applicable to an exchange and, in particular, the requiements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[1] According to the Amex, institutional investors account for the vast majority of trading in interest rate options.

[2] Although a particular branch office manager may not be qualified as Debt Registered Options Principal, the member organization must continue, of course, to praovide adequate, effective supervision of all sales personnel, wherever they are located.

John Wheeler,

Secretary.

[FR Doc. 85–2836 Filed 2–4–85; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

New

Attorney Supplement to SF 171
No. 270–277

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance the Commission's Attorney Supplement to Standard Form 171.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231. Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: January 29, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–2890 Filed 2–4–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21687; SR–BSE–84–9]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

January 25, 1985.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 3, 1984, the Boston Stock Exchange, Inc. ("BSE"), One Boston Place, Boston, Massachusetts, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change extends the BSE's pilot program established for execution of standard odd-lot market orders until March 31, 1985.[1] Under the

[1] The Commission initially approved the adoption of a nine month pilot program (SR–BSE–83–14) in Securities Exchange Act Release No. 20399, November 18, 1983; 48 FR 54151, November 30, 1983, for the execution of standard odd-lot market orders in the AT&T divestiture issues, including American Information Technologies Corporation, American Telephone & Telegraph Co., Bell Atlantic Corporation, Bell South Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation, and U.S. West, Inc. The Commission subsequently approved the expansion of the pilot program established for execution of

Continued

procedures, standard odd-lot orders received prior to the opening will be executed at the consolidated opening price. In addition, the BSE's procedures provide that any customer or his representative may request and be provided an execution based upon the opening in the primary market. An odd-lot differential may be charged on these orders.[2]

Standard odd-lot market orders received after the opening in all BSE issues will receive an execution price based on the best consolidated quotation in the stock at the time such order is received by the specialist. No odd-lot differential will be charged on these orders. The BSE states that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will facilitate execution of standard odd-lot market orders.

Interested persons are invited to submit written data, views and agruments concerning the proposed rule change within 21 days from the date of publication of the submission in the Federal Register. Persons desiring to make written comments should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–BSE–

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the BSE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that an additional extension to March 31, 1985, is appropriate to permit the BSE Market Performance Committee to gather more empirical data relating to the effect which the procedures have on the pricing of odd-lot orders.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–2892 Filed 2–4–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21693 SR–Amex–84–36]

Self-Regulatory Organization; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

January 28, 1985.

The American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, New York 10006, submitted on November 28, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to expand its Post Execution Reporting (PER) system[1] to increase the limits on PER orders from 300 shares to 1,000 shares for market orders and from 500 shares to 1,000 shares for marketable limit orders. Under the proposed rule change, away-from-the-market limit orders up to 10,000 shares also would be permitted. Amex intends to implement the proposed rule change upon approval by the Commission. However, with regard to market orders, Amex initially would increase the eligible order size to up to 500 shares and, at some time within the following six months, upon the determination of the Chairman of the Exchange, to up to 1,000 shares.

Notice of the proposed rule change together with its substantive terms was given by the issuance of a Commission Release (Securities Exchange Act Release No. 21543, December 6, 1984) 28, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5) and section 11A(a)(1)(B) and the rules and regulations thereunder in that it will foster cooperation and coordination with persons engaged in facilitating transactions in securities, and will result in more efficient and effective market operations.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–2893 Filed 2–4–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–21685; File No. SR–NASD–84–31]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.; Relating to NASDAQ Qualification Requirements for American Depositary Receipts ("ADR's")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1984, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association proposes to amend Schedule D of its By-Laws to provide that for an American Depository Receipt ("ADR") registered under section 12(g) of the Act to be included in NASDAQ, at least 100,000 ADRs must have been registered with the Commission.

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standard odd-lot market orders to purchase or sell shares in AT&T to include all BSE issues on a two-month pilot basis. *See* Securities Exchange Act Release No. 21300, September 10, 1984; 49 FR 36185, September 14, 1984 (File No. SR–BSE–84–2).

[2] In instances in which quotation information is not available (e.g. when the quotation is in a non-firm mode) standard odd-lot market orders will be executed on the last consolidated round-lot sale. An odd-lot differential may be charged on these orders.

[1] The PER system provides a means for Amex member firms to send equity market and marketable limit orders directly to the specialist's post and receive back execution reports through their wire systems. According to Amex, the system was implemented to increase the capacity of the floor to handle order flow by facilitating the transmission, execution, and reporting of small routine orders. At its inception in 1977, PER processed odd-lot and 100 share market orders. In response to the operational needs of member firms and the capacities of competitive automated systems at other exchanges, PER was expanded in 1980 and again in 1983, to the current level of 300 share market and 500 share marketable limit orders.

II. Self-Regulatory Organization's Statement Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendment to Schedule D establishes a public float criteria for American Depositary Receipts ("ADR's") registered pursuant to Section 12(g) of the Act. The need for such a standard arises from amendments to Exchange Act Rule 12g3-2 ("the Rule") adopted by the Commission in Exchange Act Release 34-20264 (October 6, 1983), 48 FR 46738. As amended, the Rule provides that the exemption from registration under Section 12(g) of the Act contained in the Rule is not available to the securities of any foreign issuer included in NASDAQ after the effectiveness of the amendments to the Rule. Under the provisions of Schedule D, securities of foreign issuers registered under section 12 are treated as domestic securities and must therefore meet the public float requirements in Section B of Part II of Schedule D.[1] Given the nature of ADR's as American derivatives of securities traded overseas, there is a need for a separate qualification standard relating to the float of ADR's independent of the foreign stock represented by the ADR's and thus more accurately reflecting the market in the United States served by NASDAQ. A subcommittee of foreign securities traders established by the Association's Trading Committee examined this issue and determined that the levels specified in the proposed rule change would be an appropriate minimum standard for ADR float.

This proposed rule change is consistent with the Association's statutory obligations under section 15(A)(b)(11) which requires that the rules of the Association promote orderly procedures for collecting and distributing and publishing quotations relating to securities sold otherwise than on a national securities exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not foresee any impact on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period as the Commission may designate up to 120 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C., and at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 24, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-2894-85; 8:45 am]

BILLING CODE 8010-01-M

[1] There is no public float requirement for foreign issues included in NASDAQ pursuant to section C of Part II.

[Release No. 21688; SR-NYSE-84-27]

Self-Regulatory Organization; New York Stock Exchange, Inc., Order Approving Proposed Rule Change

January 25, 1985.

The New York Stock Exchange, Inc. ("NYSE") 11 Wall Street New York, New York, 10005, submitted on July 11, 1984. Copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to adopt new Rule 476A ("Imposition of Fines For Minor Violations(s) of Rules"). The Rule would authorize the Exchange, in lieu of commencing a disciplinary proceeding before a Hearing Panel, to impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person or registered or non-registered employee of a member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature. Under the new Rule, the Exchange will serve a written statement on the person against whom a fine is imposed, setting forth the rule violated, the act or omission constituting the violation, the fine imposed, and the date that the determination becomes final and the fine must be paid or that such determination must be contested. If the person against whom a fine is imposed pursuant to the Rule choses not to contest the matter and pays the fine, he waives his right to a disciplinary proceeding under NYSE Rule 476 and any review of the matter by a Hearing Panel or the NYSE Board of Directors.

Alternatively, under the Rule any person may choose to contest the fine by submitting a written answer, at which point the matter shall become a "disciplinary proceeding" subject to the provisions of Rule 476. Under the Rule, in any such disciplinary proceeding, if the Hearing Panel determines that the person charged is guilty of the rule violation(s) charged, the Panel shall (1) be free to impose any one or more of the disciplinary sanctions provided in Rule 476, and (2) determine whether the rule violation(s) is minor in nature. The Rule provides that the Exchange will not publicize any matter in which a fine is imposed under Rule 476A or where a person contests a fine imposed under the Rule and is found guilty of a minor

violation by the Hearing Panel, except as required by Rule 19d–1 the Act.[1] If, in a contested case, however, it is determined by the Hearing Panel or the Board that the rule violation was not minor in nature, there will be full public disclosure by the Exchange. The Exchange specifically provides in paragraph (e) of the Rule that imposition of a fine pursuant to the Rule is not mandatory; in addition, the Exchange has the option, whenever it determines that any violation is not minor in nature, to proceed under Rule 476 rather than under Rule 476A.[2]

Notice of the proposed rule change and its substantive terms was given by the issuance of a Commission release (Securities Exchange Act Release No. 21327, September 14, 1984) and by publication in the **Federal Register** (49 FR 37201, September 21, 1984). All written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule change were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552) were made available to the public at the Commission's Public Reference Room.

The Commission received one comment on the proposed rule change. Specifically, the Securities Industry Association ("SIA")[3] opposed the proposed rule change because, in its view, the new Rule will supplant entirely the informal disciplinary procedures presently utilized by the NYSE and would result in the imposition of numerous fines. The SIA suggested that instances of technical or minor misconduct are best handled by the informal disciplinary mechanism now in place.

The Commission believes that Rule 476A would more efficiently and effectively encourage full compliance with Exchange rules by NYSE members, member organizations, approved persons and registered and non-registered employees of member organizations than is possible under the current NYSE disciplinary system. As noted in the Exchange's filing with the Commission, at the present time, when the NYSE staff discovers a technical, inadvertent, or otherwise minor rule violation, the Exchange's only practical response is to issue verbal or written cautions to the person(s) involved, focusing attention on the necessity of fully complying with all Exchange rules and requirements and warning against future violations. The Commission and the Exchange staff have been aware that such verbal and written admonitions may not successfully deter such minor rule violations. The NYSE, however, has noted in its filing that currently the only alternative under existing Rule 476—the commencement of formal disciplinary proceedings before a Hearing Panel—would, in many cases, be too time consuming and carry too severe a penalty for such minor violations. Accordingly, the NYSE has determined to fill this "regulatory gap" by allowing the Exchange to impose a fine for a rule violation which the Exchange determines to be minor, but which it believes requires the imposition of a meaningful sanction. The NYSE anticipates that the imposition of a fine on a discretionary basis may constitute a more effective deterrent than would a verbal or written caution, while not imposing either the severe penalties or the attendant publicity of a disciplinary hearing. At the same time, the freedom of the person charged to contest the fines and seek a full hearing on the charges in accordance with established procedures provides that person with appropriate procedural protections.

The SIA also contended in its letter that a $5,000 fine imposed on a member or member organization would be excessively severe, particularly because "the expected use of new Rule 476A, could result in the imposition of numerous fines." The Commission believes that a $5,000 penalty does not appear to be unduly burdensome because it would constitute a maximum penalty to be imposed only on a member organization and only after two previous offenses.[4] Moreover, multiple fines only would result if a member firm repeatedly violated one of the enumerated rules. In addition, the Rule specifically makes the distinction that individual members, in contrast to member organizations, are to be fined a maximum penalty of $2,500 only after two violations of the Rule.

The SIA also commented that Rule 476A may adversely affect member organizations with respect to state regulatory authorities, arguing that the new Rule would be detrimental because, even though a penalty might not be publicized under Exchange rules, state law may require that these penalties be reported. The SIA pointed out that Form BD,[5] the broker-dealer registration form utilized by the states as well as the Commission, requires the broker-dealer applicant to report whether it has been censured or fined by an SRO. The SIA has voiced concern that some states will specifically require Rule 476A fines to be reported and may possibly commence action against the broker-dealer in disregard of the minor nature of the violation.

The Commission recognizes that the new Rule might result in the reporting on the state level of certain penalties which currently are not required to be reported because they are now subject merely to verbal or written cautions. The Commission believes, however, that such concerns should not play an important role in a determination as to

[1] Rule 19d–1, which was adopted in 1977 pursuant to Section 19(d)(1) of the Act, requires self-regulatory organizations ("SROs") to report to the Commission notice of final disciplinary actions and prescribes the content of such notices. Paragraph (c) of Rule 19d–1 requires any SRO that takes any "final disciplinary action" with respect to any person to file promptly a notice thereof with the Commission. Recently, paragraph 19d–1(c) was amended to allow SROs to submit plans for Commission approval specifying minor rule violations (with sanctions not exceeding $2,500) that would be subject to abbreviated periodic reporting of minor rule violations. *See* Securities Exchange Act Release No. 21013, (June 1, 1984); 49 FR 23828 (June 8, 1984)

[2] The NYSE has indicated that it will prepare periodically, and announce to its members and member organizations, a list of Exchange rules covered by Rule 476A, as well as the fines that may be imposed for violations of those rules. The NYSE already has submitted the following list of Exchange rules covered by Rule 476A: (1) Rule 15(c) (requirement to issue Intermarket Trading System ("ITS") pre-opening notifications); (2) Rule 15A (requirement to comply with ITS block-trade policy); (3) Rule 79A.30 (requirement to obtain floor official approval for trades at wide variations from the last sale price); (4) Rule 123A.40 (requirement to obtain floor official approval for election of stop orders); (5) Rule 440B (short sale rule violations); (6) Rule 104.12 (Specialist investment account rule violations); (7) Rule 107.10 (Registered competitive Market Maker stabilization requirement violations); (8) Rule 112(d) (competitive trader stabilization requirement Violations); (9) record retention rule violations (Rules 117, 121, 123, 123A.20, 410); (10) reporting rule violations (Rule 97, 104A.50, 107.30, 112A.10); (11) violations of NYSE policies regarding procedures to be followed in delayed opening situations; and (12) Rule 134(c) and (e) (requirement to comply with specified questioned trade procedures and time periods). The NYSE has stated that any modifications to this list will be filed with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act.

Under the Rule, Member organizations will be fined $1,000 for a first violation, $2,500 for a second violation, and $5,000 for all subsequent violations, within a rolling 12-month period. Individual members will be charged $500 for a first time violation, $1,000 for a second violation, and $2,500 for subsequent violations within the 12-month period.

[3] See letter from William R. Harman, Chairman, Federal Regulation Committee, SIA, to Shirley E. Hollis, Acting Secretary, SEC, dated December 6, 1984.

[4] Under the new Rule, the NYSE could still issue verbal or written cautions where appropriate in the opinion of the Exchange, and, as such, the implementation of the Rule would not replace entirely the informal disciplinary procedures currently in existence.

[5] 15 CFR 249.501.

whether to adopt a Rule which may significantly strengthen the NYSE's disciplinary procedures, and that each state must assess its reporting requirements in its own best interests. As a practical matter, however, the Commission anticipates that, even if states require minor fines to be reported, state regulators would allocate their investigatory and prosecutorial resources in accordance with the minor nature of the violations.

The Commission believes that Rule 476A is consistent with, and furthers the purposes of, the statutory enforcement responsibilities of an SRO. Section 6(b)(1) of the Act requires that an exchange have the capacity to enforce compliance by its members and associated persons with provisions of the Act, the rules thereunder and the rules of the exchange, and Section 6(b)(6) of the Act provides that appropriate disciplinary procedures be established to exact such compliance. Indeed, these provisions are reinforced by section 19(g)(1)(A) of the Act which requires each SRO to enforce compliance by its members and associated persons with its rules, as well as Commission rules and regulations.[6]

Accordingly, an exchange's ability to enforce effectively compliance by its members and member organizations with Commission and exchange rules is central to its self-regulatory functions. In this regard, the Commission believes that the fine schedule provided by Rule 476A will more effectively deter violations of NYSE rules than the current system of verbal and written cautions. The Commission finds, therefore, that the NYSE's decision to implement a fine system for rule violations which the Exchange determines to be minor in nature is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of sections 6(b)(1), 6(b)(6), and 19(g)(1)(A) of the Act, by permitting Exchange members and associated persons to be appropriately disciplined for minor violations. In addition, by providing effective means of contesting a fine, Rule 476A is consistent with section 6(b)(7), which requires that the rules of the Exchange provide a "fair procedure" for the disciplining of members and associated persons. The new Rule also is consistent with section 6(d)(1) in requiring that the Exchange issue a written statement, indicating the specific rule that has been violated, the act or omission constituting the violation, the fine to be imposed, and the date by which the fine must be paid, as well as by providing the aggrieved person with the opportunity to submit a written response contesting the Exchange's determination to impose the fine.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-2891 Filed 2-4-85; 8:45 am]

BILLING CODE 8010-01-M

[6] In addition, section 6(b)(7) mandates that exchange rules provide a "fair procedure" for the disciplining of members and associated persons. Section 6(d)(1) of the Act specifies certain procedural safeguards that must be incorporated into any such proceeding.

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits filed under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended January 25, 1985

Subpart Q Applications

The due date for answers, conforming application or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order or in appropriate cases a final order without further proceedings: (See, 14 CFR 302.1701 et. seq.).

Date filed	Docket No.	Description
Jan. 23, 1985	42796	Key Airlines, Inc., c/o Theodore I. Seamon, Seamon, Wasko & Ozment, 1211 Connecticut Avenue NW., Suite 300, Washington, D.C. 20036. Application of Key Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests that its certificate for foreign charter air transportation be amended to authorize foreign charter air transportation of persons, property and mail between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and on the other: American Samoa, Guam, Johnson Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing; and Points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India Conforming Applications, Motions to Modify Scope and Answers may be filed by February 20, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services.

[FR Doc. 85-2896 Filed 2-4-85; 8:45 am]

BILLING CODE 4910-62-M

[Order 85-1-31; Dockets 42591 and 42592]

Application of Trans International Airlines for Certificate Authority Under Subpart Q; Order To Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-1-31) Dockets 42591 and 42592.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order amending Trans International Airlines' certificates to engage in interstate, overseas and foreign charter air transportation of property and mail to include passengers.

DATES: Persons wishing to file objections should do so no later than February 15, 1985.

ADDRESSES: Responses should be filed in Dockets 42591 and 42592 and

addressed to the Office of Documentary Services, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 426–7631.

Dated: January 28, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–2895 Filed 2–4–85; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: "Crissair Inc."

AGENCY: Customs Service, Treasury.

ACTION: Notice of application for recordation of trade name

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "CRISSAIR INC." used by Crissair Inc., a corporation organized under the laws of the State of California, located at 38905 Tenth Street East, Palmdale, California 93550.

The application states that the trade name is used for the following merchandise manufactured in the United States: hydraulic, fuel, and pneumatic system components (such as valves and actuators) for both military and civilian aircraft and helicopters.

Before final action is taken on the application, consideration will be given to any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before April 8, 1985.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–5765).

Dated: January 30, 1985.

Edward T. Rossi,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 85–2886 Filed 2–4–85; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

[Delegation Order No. 85–2]

Delegation of Authority; Director of the Office of Television and Film Service

Pursuant to the authority vested in me as Director of this Agency by Reorganization Plan No. 2 of 1977, by Executive Order No. 12048 of March 27, 1978 and by Executive Order No. 12388 of October 14, 1982, I hereby delegate to the Director of the Office of Television and Film Service, the following described authority:

1. The authority to direct television broadcasting, including the management of broadcasting studios and television transmission and relay facilities or stations within the United States and in foreign countries, as well as the acquisition by lease or otherwise of satellite circuits.

2. The authority to acquire or to produce program relevant audio-visual materials. The authority to acquire these materials from individuals or organizations outside the Agency shall be exercised by means of requisitions issued in accordance with paragraph 9 hereof.

3. The authority to make arrangements domestically and in foreign countries for the collection of news and information on current affairs; to analyze and to make preparation for the broadcasting thereof.

4. The authority for technical aspects of the planning, preparation of specifications, and construction of television transmission and relay stations within the United States and in foreign countries, and audio-visual studios within the United States.

5. The authority to implement any international audio-visual or television regulations, executive agreements or treaties reached with foreign countries or international organizations to the extent involving the exercise of authorities granted under other paragraphs of this Order or to the extent specifically authorized by the Director.

6. The authority to prepare for and to participate in conferences or negotiations with foreign governments or international organizations on audio-visual materials or television broadcasting, in association with other elements of the Agency as may be appropriate. The assistance and participation of representatives of the Office of the General Counsel shall be considered necessary in all negotiations of consequence.

7. The authority to exercise any authority or to discharge any responsibility arising out of any existing inter-agency agreement between the United States Information Agency and the Department of State, or between wither of the foregoing and any other agency or department, or component thereof, which agreement was concluded under functions delegated or transferred to the Director or to the Agency and is related to authorities granted herein.

8. The authority to enter into inter-agency agreements to further the discharge of responsibilities set forth herein.

9. The authority to issue requisitions for personal property, services (including construction) and real property to be acquired by the Chief Procurement Executive of the Agency. This Order does not include the authority to make contracts or grants.

10. The authority to assign or to authorize the assignment for service to or in cooperation with a foreign government of any person in the employ or service of the United States having special scientific or other technical or professional qualifications in the field of television broadcasting or the production of audio-visual materials with the approval of the government agency in which such person is employed or serving. No such person shall be assigned for such services until (1) the Director of the Office of Television and Film Service finds that such assignment is necessary in the national interest of the United States, or (2) the foreign government agrees to reimburse the United States in an amount equal to the compensation, travel expenses and allowances payable to such person during the assignment in accordance with the provisions of Section 302 of the United States Information and Exchange Act of 1948, as amended, or (3) the foreign government shall have made an advance of funds, property or services as provided in Section 902 of the Act. This delegated authority does not extend to the assignment of such personnel for service relating to the organizations, training, development or combat equipment of the armed forces of a foreign government.

11. Except as otherwise limited by law, the authority to exercise any authority delegated directly by the Director or Chief Procurement Executive of the Agency to any subordinate officer or employee of the Director of the Office of Television and Film Service.

12. Except with respect to the powers granted in paragraph 11, the authority to redelegate any authority granted herein together with the power of further redelegation.

13. Notwithstanding any other provision of this Order, the Director may at any time exervice any function granted herein.

14. All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order, are hereby confirmed and ratified, and shall remain in full force and effect as if taken udner this Order, unless or until rescinded, amended or suspended.

This Order shall be effective immediately.

Dated: January 28, 1985.

Charles Z. Wick,

Director.

FR Doc. 85-2909 Filed 2-4-85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 24
Tuesday, February 5, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

Commission Meeting

TIME AND DATE: 9:30 a.m., Wednesday, February 6, 1985.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Topical Drugs: Coverage Under PPPA. The staff will brief the Commission on its findings with respect to the involvement of topical prescription drugs in childhood injuries.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207, 301–492–6800.

February 1, 1985.

[FR Doc. 85–2991 Filed 2–1–85; 3:54 pm]

BILLING CODE 6355-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, February 11, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of check equipment within the Federal Reserve System.
2. Proposals regarding the furniture and equipment budget for the Los Angeles Branch of the Federal Reserve Bank of San Francisco.
3. Implementation of the Board's Program Improvement Project. (This item originally announced for a closed meeting on January 30, 1985.)
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–2976 Filed 2–1–85; 3:14 pm]

BILLING CODE 6210-01-M

3

LEGAL SERVICES CORPORATION

Operations and Regulations Committee

TIME AND DATE: Meeting will commence at 9:00 a.m. and continue until all official business is completed Wednesday, February 13, 1985.

PLACE: Sheraton Skyport, Memphis International Airport Building, Memphis, Tennessee.

STATUS OF MEETING: Open.

MATTERS TO CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes.

—December 19, 1984

3. Report from the Office of General Counsel.

—45 CFR 1601 (By-laws)
—45 CFR 1612 (Lobbying)
—45 CFR 1614 (Private Attorney Involvement)
—45 CFR 1620 (Priorities)
—45 CFR 1622 (Sunshine Act)

4. Discussion of Comments on Above Cited Regulations.
5. Recommendations to full Board on Above Cited Regulations.
6. Other Regulations Adopted after April 27, 1984.

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office (202) 272–4040.

Dated: February 1, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85–2997 Filed 2–1–85; 4:03 pm]

BILLING CODE 6820-33-M

4

LEGAL SERVICES CORPORATION

Special Committee on Presidential Search

TIME AND DATE: Meeting will commence at 2:00 p.m. and continue until all official business is completed Wednesday, February 13, 1985.

PLACE: Sheraton Skyport, Memphis International Airport Building, Memphis, Tennessee.

STATUS OF MEETING: Closed to discuss matters related to Presidential Search as authorized under The Government in the Sunshine Act (5 U.S.C. 552b(c) (2), (6) and (9)(B)) and 45 CFR 1622.5 (a), (e) and (g) and 1622.6(b).

MATTERS TO BE CONSIDERED: Matters related to Presidential Search (closed).

CONTACT PERSON FOR MORE INFORMATION: Tim Baker, Office of General Counsel, telephone (202) 272–4010.

Dated: February 1, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85–2998 Filed 2–1–85; 4:03 pm]

BILLING CODE 6820-35-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 4, 11, 18, and 25, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Week of February 4:

Tuesday, February 5—
2:00 p.m.: Briefing by INPO (Public Meeting)
Thursday, February 7—
10:00 a.m.: Staff Briefing on Standard Design Process (Public Meeting)
2:00 p.m.: Briefing by EPRI on Standard Design Process (Public Meeting)
3:30 p.m.: Affirmation/Discussion and Vote (Public Meeting):
a. Policy Statement on Training and Qualification of Nuclear Power Plant Personnel
b. Shoreham—Staff Recommendation to Release Previously Safeguarded Materials
c. San Onofre Order (Tentative)
d. Shoreham Order (Tentative)

Friday, February 8—
10:30 a.m: Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS (Public Meeting)

Week of February 11—Tenative:

Monday, February 11—
2:00 p.m.: Discussion of Material False Statements—Policy Options (Public Meeting)
Tuesday, February 12—
10:00 a.m.: Quarterly Briefing on Safety Goal Evaluation Report (Public Meeting)
2:00 p.m.: Discussion/Possible Vote on Full Power Operating License for Byron–1 (Public Meeting)
Wednesday, February 13—
10:00 a.m.: Affirmation on Hearings Warranted and Discussion of Impact of Hearings on Possible Restart of TMI–1 (Public Meeting)
Thursday, February 14—
2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed)

Week of February 18—Tenative:

Thursday, February 21—
9:30 a.m.: American Physical Society Report on Source Term (Public Meeting)
2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed)
3:00 p.m.: Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemptions 2 and 6)

Week of February 25—Tentative:

Tuesday, February 26—
10:00 a.m.: Discussion of Pending Investigations (Closed—Exemptions 5 and 7)
2:00 p.m.: Discussion/Possible Vote on Full Power Operating License for Waterford—3 (Public Meeting)
Thursday, February 28—
2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed)

To Verify the Status of Meetings Call (Recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Dated: January 31, 1985.

Andrew L. Bates,

Office of the Secretary

[FR Doc. 85–2977 Filed 2–1–85; 3:19 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
February 5, 1985

Part II

Environmental Protection Agency

Hazardous Waste Enforcement Policy; Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

[SW-FRL 2770-4]

Hazardous Waste Enforcement Policy

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The Agency is publishing today its interim CERCLA settlement policy in order to solicit public comment on it. The policy governs private party cleanup and contribution proposals under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA" or "Superfund"). The Agency is also publishing as an attachment a more detailed discussion of issues raised by this policy.

DATE: Comments must be provided on or before April 8, 1985.

FOR FURTHER INFORMATION CONTACT: Debbie Wood, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, WH-527, 401 M St. SW., Washington D.C. 20460, (202) 382-4829.

SUPPLEMENTARY INFORMATION: This interim policy describes the approach the Environmental Protection Agency is now taking in evaluating private party settlement proposals for cleanup of hazardous waste sites or contribution to funding of response action under the Comprehensive Environmental Response, Compensation, and Liability Act (" CERCLA" or "Superfund"). It reflects our recent reevaluation of Agency settlement policies. The policy is also generally applicable to imminent hazard enforcement actions under section 7003 of RCRA.

The Agency's hazardous waste settlement policies have resulted in numerous comprehensive private party cleanups, and in stronger settlements with private parties. Some potentially responsible parties (PRPs), however, have argued that Agency settlement policies have fostered litigation, and discouraged voluntary private party cleanup actions. They have suggested a number of changes, such as expanded releases from liability for PRPs and routine provision to PRPs of protection against possible contribution actions by non-settling parties. These suggestions have been made with the expectation that such changes would substantially encourage voluntary response.

The Agency's interim policy on CERCLA case settlement has therefore been amended to:

—Include additional incentives for private party cleanup;

—Articulate policy decisions previously made on a case by case basis in evaluating particular settlement offers;

—Address additional policy concerns, including releases from liability and contribution protection; and,

—Include a statement of the general principles governing EPA's CERCLA enforcement program.

This policy sets forth the general principles governing private party settlement under CERCLA, and specific procedures for Regions and Headquarters to use in assessing private party settlement proposals. It addresses negotiations concerning conduct of or contribution to the remedy determined by the Agency as a result of the remedial investigations and feasibility studies. The following topics are covered:

1. General principles for EPA review of private-party cleanup proposals;
2. Management guidelines for negotiation;
3. Factors governing release of information to potentially responsible parties;
4. Criteria for assessing settlement offers;
5. Partial cleanup proposals;
6. Contribution among responsible parties;
7. Releases and covenants not to sue;
8. Targets for litigation;
9. Timing for negotiations;
10. Management and review of settlement negotiations.

The policy does not explicitly address PRP participation in the Agency's selection of remedies for private party cleanups. That topic was addressed in a memorandum from Lee Thomas and Courtney Price, entitled "Participation of Potentially Responsible Parties in Development of Remedial Investigations and Feasibility Studies under CERCLA" (March 20, 1984).

The policies and procedures set forth in the interim policy are guidance to Agency and other government employees. The policy sets forth enforcement priorities and procedures, and internal procedures which are not appropriate or necessary subjects for rulemaking. Thus, the policy does not constitute rulemaking by the Agency, and may not be relied on to create a substantive or procedural right or benefit enforceable by any other person. The government may, therefore, take action that is at variance with policies and procedures contained in this document.

The Agency is publishing and soliciting comment on this interim policy for a number of reasons. The Agency recognizes that the public is very concerned with hazardous waste enforcement. We believe that this policy will substantially benefit the public by encouraging responsible parties to undertake appropriate and long term remedies through settlements. We also believe that the policy will yield better results if the public and potentially responsible parties understand the policy and our reasons for adopting it.

This policy was originally drafted in December, 1983, has been the subject of extensive review and evaluation by the Agency and the Department of Justice. It is therefore being published as interim policy. We will reevaluate this policy in light of our working experience with implementing it, and the public comments that we receive.

The Agency statement of policy follows. A more detailed discussion of issues for public comment is included in the Appendix.

Dated: January 25, 1985.

Jack W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Dated: January 28, 1985.

Courtney M. Price,

Assistant Administrator, Office of Enforcement and Compliance Monitoring.

Memorandum

December 5, 1984.

Subject: Interim CERCLA Settlement Policy

From: Lee M. Thomas, Assistant Administrator Office of Solid Waste and Emergency Response, Courtney M. Price, Assistant Administrator Office of Enforcement and Compliance Monitoring F. Henry Habicht, II, Assistant Attorney General Land and Natural Resources Division, Department of Justice

To: Regional Administrators, Regions I-X

This memorandum sets forth the general principles governing private party settlements under CERCLA, and specific procedures for the Regions and Headquarters to use in assessing private party settlement proposals. It addresses the following topics:

1. general principles for EPA review of private-party cleanup proposals;
2. management guidelines for negotiation;
3. factors governing release of information to potentially responsible parties;
4. criteria for evaluating settlement offers;
5. partial cleanup proposals;
6. contribution among responsible parties;

7. release and convenants not to sue;
8. targets for litigation;
9. timing for negotiations;
10. management and review of settlement negotiations.

Applicability

This memorandum incorporates the draft, Hazardous Waste Case Settlement Policy, published in draft in December of 1983. It is applicable not only to multiple party cases but to all civil hazardous waste enforcement cases under Superfund. It is generally applicable to imminent hazard enforcement actions under section 7003 of RCRA.

This policy establishes criteria for evaluating private party settlement proposals to conduct or contribute to the funding of response actions, including removal and remedial actions. It also addresses settlement proposals to contribute to funding after a response action has been completed. It does not address private-party proposals to conduct remedial investigations and feasibility studies. These proposals are to be evaluated under criteria established in the policy guidance from Lee M. Thomas, Assistant Administrator, Office of Solid Waste and Emergency Response, and Courtney Price, Assistant Administrator, Office of Enforcement and Compliance Monitoring entitled "Participation of Potentially Responsible Parties in Development of Remedial Investigations and Feasibility Studies under CERCLA". (March 20, 1984)

I. General Principles

The Government's goal in implementing CERCLA is to achieve effective and expedited cleanup at as many uncontrolled hazardous waste facilities as possible. To achieve this goal, the Agency is committed to a strong and vigorous enforcement program. The Agency has made major advances in securing cleanup at some of the nation's worst hazardous waste sites because of its demonstrated willingness to use the Fund and to pursue administrative and judicial enforcement actions. In addition, the Agency has obtained key decisions, on such issues as joint and several liability, which have further advanced its enforcement efforts.

The Agency recognizes, however, that Fund-financed cleanups, administrative acton and litigation will not be sufficient to accomplish CERCLA's goals, and that voluntary cleanups are essential to a successful program for cleanup of the nation's hazardous waste sites. The Agency is therefore re-evaluating its settlement policy, in light of three years experience with negotiation and litigation of hazardous waste cases, to remove or minimize if possible the impediments to voluntary cleanup.

As a result of this reassessment, the Agency has identified the following general principles that govern its Superfund enforcement program:

- The goal of the Agency in negotiating private party cleanup and in settlement of hazardous waste cases has been and will continue to be to obtain complete cleanup by the responsible parties, or collect 100% of the costs of the cleanup action.
- Negotiated private party actions are essential to an effective program for cleanup of the nation's hazardous waste sites. An effective program depends on a balanced approach relying on a mix of Fund-financed cleanup, voluntary agreements reached through negotiations, and litigation. Fund-financed cleanup and litigation under CERCLA will not in themselves be sufficient to assure the success of this cleanup effort. In addition, expeditious cleanup reached through negotiated settlements is preferable to protracted litigation.
- A strong enforcement program is essential to encourage voluntary action by PRPs. Section 106 actions are particularly valuable mechanisms for compelling cleanups. The effectiveness of negotiation is integrally related to the effectiveness of enforcement and Fund-financed cleanup. The demonstrated willingness of the Agency to use the Fund to clean up sites and to take enforcement action is our most important tool for achieving negotiated settlements.
- The liability of potentially responsible parties is strict, joint and several, unless they can clearly demonstrate that the harm at the site is divisible. The recognition on the part of responsible parties that they may be jointly and severally liable is a valuable impetus for these parties to reach the agreements that are necessary for successful negotiations. Without such an impetus, negotiations run a risk of delay because of disagreements over the particulars of each responsible party's contribution to the problems at the site.
- The Agency recognizes that the factual strengths and weaknesses of a particular case are relevant in evaluating settlement proposals. The Agency also recognizes that courts may consider differences among defendants in allocating payments among parties held jointly and severally liable under CERCLA. While these are primarily the concerns of PRPs, the Agency will also consider a PRP's contribution to problems at the site, including contribution of waste, in assessing proposals for settlement and in identifying targets for litigation.
- Section 106 of CERCLA provides courts with jurisdiction to grant such relief as the public interest and the equities of the case may require. In assessing proposals for settlement and identifying targets for litigation, the Agency will consider aggravating and mitigating factors and appropriate equitable factors.
- In many circumstances, cleanups can be started more quickly when private parties do the work themselves, rather than provide money to the Fund. It is therefore, preferable for private parties to conduct cleanups themselves, rather than simply provide funds for the States or Federal Government to conduct the cleanup.
- The Agency will create a climate that is receptive to private party cleanup proposals. To facilitate negotiations, the Agency will make certain information available to private parties. PRPs will normally have an opportunity to be involved in the studies used to determine the appropriate extent of remedy. The Agency will consider settlement proposals for cleanup of less than 100% of cleanup activities or cleanup costs. Finally, upon settling with cooperative parties, the government will vigorously seek all remaining relief, inlcuding costs, penalties and treble damages where appropriate, from parties whose recalcitrance made a complete settlement impossible.
- The Agency anticipates that both the Fund and private resources may be used at the same site in some circumstances. When the Agency settles for less than 100% of cleanup costs, it can use the Fund to assure that site cleanup will proceed expeditiously, and then use to recover these costs from non-settling responsible parties. Where the Federal government accepts less than 100% of cleanup costs and no financially viable responsible parties remain, Superfund monies may be used to make up the difference.
- The Agency recognizes the value of some measure of finality in determinations of liability and in settlements generally. PRPs frequently want some certainty in return for assuming the costs of cleanup, and we recognize that this will be a valuable incentive for private party cleanup. PRPs frequently seek a final determination of liability through contribution protection, releases or covenants not to sue. The Agency will consider releases from liability in appropriate situations, and

will also consider contribution protection in limited circumstances. The Agency will also take aggressive enforcement action against those parties whose recalcitrance prevents settlements. In bringing cost recovery actions, the Agency will also attempt to raise any remaining claims under CERCLA section 106, to the extent practicable.

The remainder of this memorandum sets forth specific policies for implementing these general principles.

Section II sets forth the management guidelines for negotiating with less than all responsible parties for partial settlements. This section reflects the Agency's willingness to be flexible by considering offers for cleanup of less than 100% of cleanup activities or costs.

Section III sets forth guidelines on the release of information. The Agency recognizes that adequate information facilities more successful negotiations. Thus, the Agency will combine a vigorous program for obtaining the data and information necessary to facilitate settlements with a program for releasing information to facilitate communications among responsible parties.

Sections IV and V to discuss the criteria for evaluating partial settlements. As noted above, in certain circumstances the Agency will entertain settlement offers from PRPs which extend only to part of the site or part of the costs of cleanup at a site. Section IV of this memo sets forth criteria to be used in evaluating such offers. These criteria apply to all cases. Section V sets forth the Agency's policy concerning offers to perform or pay for discrete phases of an approved cleanup.

Sections VI and VII relate to contribution protection and releases from liability. Where appropriate, the Agency may consider contribution protection and limited releases from liability to help provide some finality to settlements.

Section VIII sets forth criteria for selecting enforcement cases and identifying targets for litigation. As discussed above, effective enforcemnt depends on careful case selection and the careful selection of targets for litigation. The Agency will apply criteria for selection of cases to focus sufficient resources on cases that provide the broadest possible enforcemnt impact. In addition, targets for litigation will be identified in light of the willingness of parties to perform voluntary cleanup, as well as conventional litigation management concerns.

Section IX sets forth the requirements governing the timing of negotiations and section X the provision for Headquarters review. These sections address the need to provide the Regions with increased flexibilty in negotiations and to change Headquarters review in order to expedite site cleanup.

II. Management Guidelines for Negotiation

As a guideline, the Agency will negotiate only if the initial offer from PRPs constitutes a substantial proportion of the costs of cleanup at the site, or a substantial portion of the needed remedial action. Entering into discussion for less than a substantial proportion of cleanup costs or remedial action needed at the site, would not be an effective use of government resources. No specific numerical threshold for initiating negotiations has been established.

In deciding whether to start negotiations, the Regions should weight the potential resource demands for conducting negotiations against the likelihood of getting 100% of costs or a complete remedy.

Where the Region proposes to negotiate for a partial settlement involving less than the total costs of a cleanup, or a complete remedy, the Region should prepare as part of its Case Negotiations Strategy a dreaft evaluation of the case using the settlement criteria identified in section IV. The draft should discuss how each of the factors in section IV applies to the site in question, and explain why negotiations for less than all of the cleanup costs, or a partial remedy, are appropriate. A copy of the draft should be forwarded to Headquarters. The Headquarters review will be used to identify major issues of national significance or issues that may involve significant legal precedents.

In certain other categories of cases, it may be appropriate for the Regions to enter into negotiations with PRPs, even though the offers from PRPs do not represent a substantial portion of the costs of cleanup. These categories of cases include:

- administrative settlements of cost recovery actions where total cleanup costs were less than $200,000;
- claims in bankruptcy;
- administrative settlements with *de minimis* contributors of wastes.

Actions subject to this exceptions are administrative settlements of cost recovery cases where all the work at the site has been completed and all costs have been incurred. The figure of $200,000 refers to all of the costs of cleanup. The Agency is preparing more detailed guidance on the appropriate form of such settlement agreements, and the types of conditions that must be included.

Negotiation of claims in bankruptcy may involve both present owners, where the United States may have an administrative costs claim, and other parties such as past owners or generators, where the United States may be an unsecured potential creditor. The Regions should avoid becoming involved in bankruptcy proceedings if there is little likelihood of recovery, and should recognize the risks involved in negotiating without creditor status. It may be appropriate to request DOJ filing of a proof of claim. Further guidance is provided in the Memorandum from Courtney Price entitled "Information Regarding CERCLA Enforcement Against Bankrupt Parties," dated May 24, 1984.

In negotiating with *de minimis* parties, the Regions should limit their efforts to low volume, low toxicity disposers who would not normally make a significant contribution to the costs of cleanup in any case.

In considering settlement offer from *de minimis* contributors, the Region should normally focus on achieving cash settlements. Regions should generally not enter into negotiations for full administrative or judicial settlements with releases, contribution protection, or other protective clauses. Substantial resources should not be invested in negotiations with *de minimis* contributors, in light of the limited costs that may be recovered, the time needed to prepare the necessary legal documents, the need for Headquarters review, potential *res judicata* effects, and other effects that *de minimis* settlements may have on the nature of the case remaining to the Government.

Partial settlements may also be considered in situations where the unwillingness of a relatively small group of parties to settle prevents the development of a proposal for a substantial portion of costs or the remedy. Proposals for settlement in these circumstances should be assessed under the criteria set forth in section IV.

Earlier versions of this policy included a threshold for negotiations, which provided that negotiations should not be commenced unless an offer was made to settle for at least 80% of the costs of cleanup, or of the remedial action. This threshold has been eliminated from the final version of this policy. It must be emphasized that elimination of this threshold does not mean that the Agency is therefore more willing to accept offers for partial settlement. The objective of the Agency is still to obtain complete cleanup by PRPs, or 100% of the costs of cleanup.

III. Release of Information

The Agency will release information concerning the site to PRPs to facilitate discussions for settlement among PRPs. This information will include:

—Identity of notice letter recipients;
—Volume and nature of wastes to the extent identified as sent to the site;
—Ranking by volume of material sent to the site, if available.

In determining the type of information to be released, the Region should consider the possible impacts on any potential litigation. The Regions should take steps to assure protection of confidential and deliverative materials. The Agency will generally not release actual evidentiary material. The Region should state on each released summary that it is preliminary, that it was furnished in the course of compromise negotiations (Fed. Rules of Evidence 408), and that it is not binding on the Federal Government.

This information release should be preceded by and combined with a vigorous program for collecting information from responsible parties. It remains standard practice for the Agency to use the information gathering authorities of RCRA and CERCLA with respect to all PRPs at a site. This information release should generally be conditioned on a reciprocal release of information by PRPs. The information request need not be simultaneous, but EPA should receive the information within a reasonable time.

IV. Settlement Criteria

The objective of negotiations is to collect 100% of cleanup costs or complete cleanup from responsible parties. The Agency recognizes that, in narrowly limited circumstances, exceptions to this goal may be appropriate, and has established criteria for determining where such exceptions are allowed. Although the Agency will consider offers of less than 100% in accordance with this policy, it will do so in light of the Agency's position, reinforced by recent court decisions, that PRP liability is strict, joint and several unless it can be shown by the PRPs that injury at a site is clearly divisible.

Based on a full evalution of the facts and a comprehensive analysis of all of the listed criteria, the Agency may consider accepting offers of less than 100 percent. Rapid and effective settlement depends on a thorough evaluation, and an aggressive information collection program is necessary to prepare effective evaluations. Proposals for less than total settlement should be assessed using the criteria identified below

1 Volume of Wastes Contributed to Site by Each PRP

Information concerning the volume of wastes contributed to the site by PRPs should be collected, if available, and evaluated in each case. The volume of wastes is not the only criterion to be considered, nor may it be the most important. A small quantity of waste may cost proportionately more to contain or remove than a larger quantity of a different waste. However, the volume of waste may contribute significantly and directly to the distribution of contamination on the surface and subsurface (including groundwater), and to the complexity of removal of the contamination. In addition, if the properties of all wastes at the site are relatively equal, the volume of wastes contributed by the PRPs provides a convenient, easily applied criterion for measuring whether a PRP's settlement offer may be reasonable.

This does not mean, however, that PRPs will be required to pay only their proportionate share based on volume of contribution of wastes to the site. At many sites, there will be wastes for which PRPs cannot be identified. If identified, PRPs may be unable to provide funds for cleanup. Private party funding for cleanup of those wastes would, therefore, not be available if volumetric contribution were the only criteria.

Therefore, to achieve the the Agency's goal of obtaining 100 percent of cleanup or the cost of cleanup, it will be necessary in many cases to require a settlement contribution greater than the percentage of wastes contributed by each PRP to the site. These costs can be obtained through the application of the theory of joint and several liability where the harm is indivisible, and through application of these criteria in evaluating settlement proposals.

2. Nature of the Wastes Contributed

The human, animal and environmental toxicity of the hazardous substances contributed by the PRPs, its mobility, persistence and other properties are important factors to consider. As noted above, a small amount of wastes, or a highly mobile waste, may cost more to clean up, dispose, or treat than less toxic or relatively immobile wastes. In addition, any disproportionate adverse effects on the environment by the presence of wastes contributed by those PRPs should be considered.

If a waste contributed by one or more of the parties offering a settlement disproportionately increases the costs of cleanup at the site, it may be appropriate for parties contributing such waste to bear a larger percentage of cleanup costs than would be the case by using solely a volumetric basis.

3. Strength of Evidence Tracing the Wastes at the Site to the Settling Parties

The quality and quantity of the Government's evidence connecting PRPs to the wastes at the site obviously affects the settlement value of the Government's case. The Government must show, by a preponderance of the evidence, that the PRP's are connected with the wastes in one or more of the ways provided in Section 107 of CERCLA. Therefore, if the Government's evidence against a particular PRP is weak, we should weigh that weakness in evaluating a settlement offer from that PRP.

On the other hand, where indivisible harm is shown to exist, under the theory of joint and several liability the Government is in a position to collect 100% of the cost of cleanup from all parties who have contributed to a site. Therefore, where the quality and quantity of the Government's evidence appears to be strong for establishing the PRP's liability, the Government should rely on the strength of its evidence and not decrease the settlement value of its case. Discharging such PRPs from liability in a partial settlement without obtaining a substantial contribution may leave the Government with non-settling parties whose involvement at the site may be more tenuous.

In any evaluation of a settlement offer, the Agency should weigh the amount of information exchange that has occurred before the settlement offer. The more the Government knows about the evidence it has to connect the settling parties to the site, the better this evaluation will be. The information collection provisions of RCRA and/or CERCLA should be used to develop evidence prior to preparation of the evaluation.

4. Ability of the Settling Parties To Pay

Ability to pay is not a defense to an action by the Government. Nevertheless, the evaluation of a settlement proposal should discuss the financial condition of that party, and the practical results of pursuing a party for more than the Government can hope to actually recover. In cost recovery actions it will be difficult to negotiate a settlement for more than a party's assets. The Region should also consider allowing the party

to reimburse the Fund in reasonable installments over a period of time, if the party is unable to pay in a lump sum, and installment payments would benefit the Government. A structured settlement providing for payments over time should be at a payment level that takes into account the party's cash flow. An excessive amount could force a party into bankruptcy, which will of course make collection very difficult. See the memorandum dated August 26, 1983, entitled "Cost Recovery Actions under Section 107 of CERCLA" for additional guidance on this subject.

5. Litigative Risks in Proceeding to Trial

Litigative risks which might be encountered at trial and which should weigh in consideration of any settlement offer include traditional factors such as:

a. *Admissibility of the Government's evidence*

If necessary Government evidence is unlikely to be admitted in a trial because of procedural or substantive problems in the acquisition or creation of the evidence, this infirmity should be considered as reducing the Government's chance of success and, therefore, reducing the amount the Government should expect to receive in a settlement.

b. *Adequacy of the Government's evidence*

Certain aspects of this point have already been discussed above. However, it deserves mention again because the Government's case depends on substantial quantities of sampling, analytical and other technical data and expert testimony. If the evidence in support of the Government's case is incomplete or based upon controversial science, or if the Government's evidence is otherwise unlikely to withstand the scrutiny of a trial, the amount that the Government might expect to receive in a settlement will be reduced.

c. *Availability of defenses*

In the unlikely event that one or more of the settling parties appears to have a defense to the Government's action under section 107(b) of CERCLA, the Government should expect to receive less in a settlement from that PRP. Availability of one or more defenses to one PRP which are not common to all PRPs in the case should not, however, lower the expectation of what an entire offering group should pay.

6. Public Interest Considerations

The purpose of site cleanup is to protect public health and the environment. Therefore, in analyzing a settlement proposal the timing of the cleanup and the ability of the Government to clean up the site should be considered. For example, if the State cannot fund its portion of a Fund-financed cleanup, a private-party cleanup proposal may be given more favorable consideration than one received in a case where the State can fund its portion of cleanup costs, if necessary.

Public interest considerations also include the availability of Federal funds for necessary cleanup, and whether privately financed action can begin more quickly than Federally-financed activity. Public interest concerns may be used to justify a settlement of less than 100% only when there is a demonstrated need for a quick remedy to protect public health or the environment.

7. Precedential Value

In some cases, the factual situation may be conducive to establishing a favorable precedent for future Government actions. For example, strong case law can be developed in cases of first impression. In addition, settlements in such cases tend to become precedents in themselves, and are examined extensively by PRPs in other cases. Settlement of such cases should always be on terms most favorable to the Government. Where PRPs will not settle on such terms, and the quality and quantity of evidence is strong, it may be in the overall interest of the Government to try the case.

8. Value of Obtaining a Present Sum Certain

If money can be obtained now and turned over to the Fund, where it can earn interest until the time it is spent to clean up a site, the net present value of obtaining the sum offered in settlement now can be computed against the possibility of obtaining a larger sum in the future. This calculation may show that the net present value of the sum offered in settlement is, in reality, higher than the amount the Government can expect to obtain at trial. EPA has developed an economic model to assess these and other related economic factors. More information on this model can be obtained from the Director, Office of Waste Programs Envorcement.

9. Inequities and Aggravating Factors

All analyses of settlement proposals should flag for the decision makers any apparent inequities to the settling parties inherent in the Government's case, and apparent inequities to others if the settlement proposal is accepted, and any aggravating factors. However, it must be understood that the statute operates on the underlying principle of strict liability, and that equitable matters are not defenses.

10. Nature of the Case that Remains After Settlement

All settlement evaluations should address the nature of the case that remains if the settlement is accepted. For example, if there are no financially viable parties left to proceed against for the balance of the cleanup after the settlement, the settlement offer should constitute everything the Government expects to obtain at that site. The questions are: What does the Government gain by settling this portion of the case? Does the settlement or its terms harm the remaining portion of the case? Will the Government have to expend the same amount of resources to try the remaining portion of the case? If so, why should the settlement offer be accepted?

This analysis is extremely important and should come at the conclusion of the evaluation.

V. Partial Cleanups

On occasion, PRPs may offer to perform or pay for one phase of a site cleanup (such as a surface removal action) but not commit to any other phase of the cleanup (such as ground water treatment). In some circumstances, it may be appropriate to enter into settlements for such partial cleanups, rather than to resolve all issues in one settlement. For example, in some cases it is necessary to conduct initial phases of site cleanup in order to gather sufficient data to evaluate the need for and type of work to be done on subsequent phases. In such cases, offers from PRPs to conduct or pay for less than all phases of site cleanup should be evaluated in the same manner and by the same criteria as set forth above. Settlements performed at the site. This provision does not cover preparation of an RI/FS, which is covered by a separate guidance document: Lee Thomas and Courtney Price's "Participation of Potentially Responsible Parties in RI/FS Development" (March 20, 1984).

VI. Contribution Protection

Contribution among responsible parties is based on the principle that a jointly and severally liable party who has paid all or a portion of a judgment or settlement may be entitled to reimbursement from other jointly or severally liable parties. When the Agency reaches a partial settlement with some parties, it will frequently pursue an enforcement action against non-settling responsible parties to recover the remaining costs of cleanup. If such an action is undertaken, there is a possibility that those non-settlors

would in turn sue settling parties. If this action by nonsettling parties is successful, then the settling parties would end up paying a larger share of cleanup costs than was determined in the Agency's settlement. This is obviously a disincentive to settlement.

Contribution protection in a consent decree can prevent this outcome. In a contribution protection clause, the United States would agree to reduce its judgment against the non-settling parties, to the extent necessary to extinguish the settling party's libility to the nonsettling third party.

The Agency recognizes the value of contribution protection in limited situations in order to provide some measure of finality to settlements. Fundamentally, we believe that settling parties are protected from contribution actions as a matter of law, based on the Uniform Contribution Among Tortfeasors Act. That Act provides that, where settlements are entered into in "good faith", the settlors are discharged from "all liability for contribution to any other joint tortfeasors." To the extent that this law is adopted as the Federal rule of decision, there will be no need for specific clauses in consent agreements to provide contribution protection.

There has not yet been any ruling on the issue. Thus, the Agency may still be asked to provide contribution protection in the form of offsets and reductions in judgment. In determining whether explicit contribution protection clauses are appropriate, the Region should consider the following factors:

- Explicit contribution protection clauses are generally not appropriate unless liability can be clearly allocated, so that the risk of reapportionment by a judge in any future action would be minimal.
- Inclusion should depend on case-by-case consideration of the law which is likely to be applied.
- The Agency will be more willing to consider contribution protection in settlements that provide substantially all the costs of cleanup.

If a proposed settlement includes a contribution protection clause, the Region should prepare a detailed justification indicating why this clause is essential to attaining an adequate settlement. The justification should include an assessment of the prospects of litigation regarding the clause. Any proposed settlement that contains a contribution protection clause with a potential ambiguity will be returned for further negotiation.

Any subsequent claims by settling parties against non-settlors must be subordinated to Agency claims against these non-settling parties. In no event will the Agency agree to defend on behalf of a settlor, or to provide direct indemnification. The Government will not enter into any form of contribution protection agreement that could requrie the Government to pay money to anyone.

If litigation is commenced by non-settlors against settlors, and the Agency became involved in such litigation, the Government would argue to the court that in adjusting equities among responsible parties, positive consideration should be given to those who came forward voluntarily and were a part of a group of settling PRPs.

VII. Releases from Liability

Potentially responsible parties who offer to wholly or partially clean up a site or pay the costs of cleanup normally wish to negotiate a release from liability or a covenant not to sue as a part of the consideration for that cleanup or payment. Such releases are appropriate in some circumstances. The need for finality in settlements must be balanced against the need to insure that PRPs remain responsible for recurring endangerments and unknown conditions.

The Agency recognizes the current state of scientific uncertainty concerning the impacts of hazardous substances, our ability to detect them, and the effectiveness of remedies at hazardous waste sites. It is possible that remedial measures will prove inadequate and lead to imminent and substantial endangerments, because of unknown conditions or because of failures in design, construction or effectiveness of the remedy.

Although the Agency approves all remedial actions for sites on the National Priorities List, releases from liability will not automatically be granted merely because the Agency has approved the remedy. The willingness of the Agency to give expansive releases from liability is directly related to the confidence that Agency has that the remedy will ultimately prove effective and reliable. In general, the Regions will have the flexibility to negotiate releases that are relatively expansive or relatively stringent, depending on the degree of confidence that the Agency has in the remedy.

Releases or covenants must also include certain reopeners which preserve the right of the Government to seek additional cleanup action and recover additional costs from responsible parties in a number of circumstances. They are also subject to a variety of other limitations. These reopener clauses and limitations are described below.

In addition, the the Agency can address future problems at a site by enforcement of the decree or order, rather than by action under a particular reopener clause. Settlements will normally specify a particular type of remedial action to be undertaken. That remedial action will normally be selected to achieve a certain specified level of protection of public health and the environment. When settlements are incorporated into consent decrees or orders, the decrees or orders should wherever possible include performance standards that set out these specified levels of protection. Thus, the Agency will retain its ability to assure cleanup by taking action to enforce these decrees or orders when remedies fail to meet the specified standards.

It is not possible to specify a precise hierarchy of preferred remedies. The degree of confidence in a particular remedy must be determined on an individual basis, taking site-specific conditions into account. In general, however, the more effective and reliable the remedy, the more likely it is that the Agency can negotiate a more expansive release. For example, if a consent decree or order commits a private party to meeting and/or continuing to attain health based performance standards, there can be great certainty on the part of the Agency that an adequate level of public health protection will be met and maintained, as long as the terms of the agreement are met. In this type of case, it may be appropriate to negotiate a more expansive release than, for example, cases involving remedies that are solely technology-based.

Expansive releases may be more appropriate where the private party remedy is a demonstrated effective alternative to land disposal, such as incineration. Such releases are possible whether the hazardous material is transported offsite for treatment, or the treatment takes place on site. In either instance, the use of treatment can result in greater certainty that future problems will not occur.

Other remedies may be less appropriate for expansive releases, particularly if the consent order or agreement does not include performance standards. It may be appropriate in such circumstances to negotiate releases that become effective several years after completion of the remedial action, so that the effectiveness and reliability of the technology can be clearly demonstrated. The Agency anticipates that responsible parties may be able to achieve a greater degree of certainty in

settlements when the state of scientific understanding concerning these technical issues has advanced.

Regardless of the relative expansiveness or stringency of the release in other respects, at a minimum settlement documents must include reopeners allowing the Government to modify terms and conditions of the agreement for the following types of circumstances:

• Where previously unknown or undetected conditions that arise or are discovered at the site after the time of the agreement may present an imminent and substantial endangerment to public health, welfare of the environment;

• Where the Agency receives additional information, which was not available at the time of the agreement, concerning the scientific determinations on which the settlement was premised (for example, health effects associated with levels of exposure, toxicity of hazardous substances, and the appropriateness of the remedial technologies for conditions at the site) and this additional information indicates that site conditions may present an imminent and substantial endangerment to the public health or welfare or the environment.

In addition, release clauses must not preclude the Government from recovering costs incurred in responding to the type of imminent and substantial endangerments identified above.

In extraordinary circumstances, it may be clear after application of the settlement criteria set out in section IV that it is in the public interest to agree to a more limited or more expansive release not subject to the conditions outlined above. Concurrence of the Assistant Administrators for OSWER and OECM (and the Assistant Attorney General when the release is given on behalf of the United States) must be obtained before the Government's negotiating team is authorized to negotiate regarding such a release or covenant.

The extent of releases should be the same, whether the private parties conduct the cleanup themselves or pay for Federal Government cleanup. When responsible parties pay for Federal Government cleanup, the release will ordinarily not become effective until cleanup is completed and the actual costs of the cleanup are ascertained. Responsible parties will thereby bear the risk of uncertainties arising during execution of the cleanup. In limited circumstances, the release may become effective upon payment for Federal Government cleanup, if the payment includes a carefully calculated premium or other financial instrument that adequately insures the Federal Government against these uncertainties. Finally, the Agency may be more willing to settle for less than the total costs of cleanup when it is not precluded by a release clause from eventually recovering any additional costs that might ultimately be incurred at a site.

Release clauses are also subject to the following limitations:

• A release or covenant may be given only to the PRP providing the consideration for the release.

• The release or covenant must not cover any claims other than those involved in the case.

• The release must not address any criminal matter.

• Releases for partial cleanups that do not extend to the entire site must be limited to the work actually completed.

• Federal claims for natural resource damages should not be released without the approval of Federal trustees.

• Responsible parties must release any related claims against the United States, including the Hazardous Substances Response Fund.

• Where the cleanup is to be performed by the PRPs, the release or covenant should normally become effective only upon the completion of the cleanup (or phase of cleanup) in a manner satisfactory to EPA.

• Release clauses should be drafted as covenants not to sue, rather than releases from liability, where this form may be necessary to protect the legal rights of the Federal Government.

A release or covenant not to sue terminates or seriously impairs the Government's rights of action against PRPs. Therefore, the document should be carefully worded so that the intent of the parties and extent of the matters covered by the release or covenant are clearly stated. Any propsed settlement containing a release with a possible ambiguity will be returned for further negotiation.

VIII. Targets for Litigation

The Regions should identify particular cases for referral in light of the following factors:

—Substantial environmental problems exist;
—The Agency's case has legal merit;
—The amount of money or cleanup involved is significant;
—Good legal precedent is possible (cases should be rejected where the potential for adverse precedent is substantial);
—The evidence is strong, well developed, or capable of development;
—Statute of limitations problems exist;
—Responsible parties are financially viable.

The goal of the Agency is to bring enforcement action wherever needed to assure private party cleanup or to recover costs. The following types of cases are the highest priorities for referrals:

—107 actions in which all costs have been incurred;
—Combined 106/107 actions in which a significant phase has been completed, additional injunctive relief is needed and identified, and the Fund will not be used;
—106 actions which will not be the subject of Fund-financed cleanup.

Referrals for injunctive relief may also be appropriate in cases when it is possible that Fund-financed cleanup will be undertaken. Such referrals may be needed where there are potential statute of limitation concerns, or where the site has been identified as enforcement-lead, and prospects for successful litigation are good.

Regional offices should periodically reevaluate current targets for referral to determine if they meet the guidelines identified above.

As indicated before, under the theory of joint and several liability the Government is not required to bring enforcement action against all of the potentially responsible parties involved at a site. The primary concern of the Government in identifying targets for litigation is to bring a meritorious case against responsible parties who have the ability to undertake or pay for response action. The Government will determine the targets of litigation in order to reach the largest manageable number of parties, based on toxicity and volume, and financial viability. Owners and operators will generally be the target of litigation, unless bankrupt or otherwise judgment proof. In appropriate cases, the Government will consider prosecuting claims in bankruptcy. The Government may also select targets for litigation for limited purposes, such as site access.

Parties who are targeted for litigation are of course not precluded from involving parties who have not been targeted in developing settlement offers for consideration by the Government.

In determining the appropriate targets for litigation, the Government will consider the willingness of parties to settle, as demonstrated in the negotiation stage. In identifying a manageable number of parties for litigation, the Agency will consider the recalcitrance or willingness to settle of the parties who were involved in the

negotiations. The Agency will also consider other aggravating and mitigating factors concerning responsible party actions in identifying targets for litigation.

In addition, it may be appropriate, when the Agency is conducting phased cleanup and has reached a settlement for one phase, to first sue only non-settling companies for the next phase, assuming that such financially viable parties are available. This approach would not preclude suit against settling parties, but non-settlors would be sued initially.

The Agency recognizes that Federal agencies may be responsible for cleanup costs at hazardous waste sites. Accordingly, Federal facilities will be issued notice letters and administrative orders where appropriate. Instead of litigation, the Agency will use the procedures established by Executive Orders 12088 and 12146 and all applicable Memoranda of Understanding to resolve issues concerning such agency's liability. The Agency will take all steps necessary to encourage successful negotiations.

IX. Timing of Negotiations

Under our revised policy on responsible party participation in RI/FS, PRPs have increased opportunities for involvement in the development of the remedial investigations and feasibility studies which the Agency uses to identify the appropriate remedy. In light of the fact that PRPs will have received notice letters and the information identified in section III of this policy, prelitigation negotiations can be conducted in an expeditious fashion.

The Negotiations Decision Document (NDD), which follows completion of the RI/FS, makes the preliminary identification of the appropriate remedy for the site. Prelitigation negotiations between the Government and the PRPs should normally not extend for more than 60 days after approval of the NDD. If significant progress is not made within a reasonable amount of time, the Agency will not hesitate to abandon negotiations and proceed immediately with administrative action or litigation. It should be noted that these steps do not preclude further negotiations.

Extensions can be considered in complex cases where there is no threat of seriously delaying cleanup action. Any extension of this period must be predicated on having a good faith offer from the PRPs which, if successfully negotiated, will save the Government substantial time and resources in attaining the cleanup objectives.

X. Management and Review of Settlement Negotiations

All settlement documents must receive concurrence from OWPE and OECM-Waste, and be approved by the Assistant Administrator of OECM in accordance with delegations. The management guideline discussed in Section II allows the Regions to commence negotiations if responsible parties make an initial offer for a substantial proportion of the cleanup costs. Before commencing negotiations for partial settlements, the Regions should prepare a preliminary draft evaluation of the case using the settlement criteria in section IV of this policy. A copy of this evaluation shoud be forwarded to Headquarters.

A final detailed evaluation of settlements is required when the Regions request Headquarters approval of these settlements. This written evaluation should be submitted to OECM-Waste and OWPE by the legal and technical personnel on the case. These will normally be the Regional attorney and technical representative.

The evaluation memorandum should indicate whether the settlement is for 100% of the work or cleanup costs. If this figure is less than 100%, the memorandum should include a discussion of the advantages and disadvantages of the proposed settlement as measured by the criteria in section IV. The Agency expects full evaluations of each of the criteria specified in the policy and will return inadequate evaluations.

The Regions are authorized to conclude settlements in certain types of hazardous waste cases on their own, without prior review by Headquarters or DOJ. Cases selected for this treatment would normally have lower priority for litigation. Categories of cases not subject to Headquarters review include negotiation for cost recovery cases under $200,000 and negotiation of claims filed in bankruptcy. In cost recovery cases, the Regions should pay particular attention to weighing the resources necessary to conduct negotiations and litigation against the amounts that may be recovered, and the prospects for recovery.

Authority to appear and try cases before the Bankruptcy Court would not be delegated to the Regions, but would be retained by the Department of Justice. The Department will file cases where an acceptable negotiated settlement cannot be reached. Copies of settlement documents for such agreements should be provided ot OWPE and OECM.

Specific details concerning these authorizations will be addressed in delegations that will be forwarded to the Regions under separate cover. Headquarters is conducting an evaluation of the effectiveness of existing delegations, and is assessing the possibility of additional delegations.

Note on Purpose and Uses of this Memorandum

The policies and procedures set forth here, and internal Government procedures adopted to implement these policies, are intended as guidance to Agency and other Government employees. They do not constitute rulemaking by the Agency, and may not be relied on to create a substantive or procedural right or benefit enforceable by any other person. The Government may take action that is at variance with the policies and procedures in this memorandum.

If you have any questions or comments on this policy, or problems that need to be addressed in further guidance to implement this policy, please contact Gene A. Lucero, Director of the Office of Waste Programs Enforcement (FTS 382–4814), or Richard Mays, Senior Enforcement Counsel (FTS 382–4137).

Appendix—Discussion of Issues Raised by Interim CERCLA Settlement Policy

This appendix discusses in greater detail certain issues raised by the interim policy and identifies specific issues for public comment. It focuses on issues of broad public concern, rather than issues related primarily to internal Agency management. The section headings of this attachment generally parallel the specific sections of the enforcement policy.

I. General Principles

The discussion of general principles sets out the overall philosophy governing the Superfund enforcement program. To achieve the greatest possible number of timely and effective cleanup actions, the Agency must strike a balance between two opposite approaches. One approach emphasizes quick resort to the Fund and enforcement authorities, and the other features more incentives for private party cleanup.

We have attempted to combine features of both these approaches into a vigorous enforcement program that will encourage private party cleanups. These approaches, and their limitations, are described in greater detail below.

Under one general approach, the Agency would quickly resort to either

enforcement action such as litigation and administrative orders, or Federal government cleanup under the Fund. Releases from liability and explicit contribution protection clauses would be strictly limited under this approach, and the time for negotiations prior to enforcement or Fund-financed cleanup action would be short. The limitation of this general approach is that EPA may not always be able to move to clean up enough sites, because of restrictions on the use of the Fund and the time and resources needed to compel cleanup through enforcement. Furthermore, many private parties believe that, as a general matter, they can conduct cleanup activities more quickly and at less cost than the Federal government, and have clamed that this approach may discourage private party initiatives.

Under the other general approach, the Agency would provide additional incentives to encourage PRP cleanup. For example, settlements would allow more expansive releases from liability, contribution protection would be provided, and EPA would take as much time as needed to resolve issues through negotiations before it resorted to enforcement action or Fund-financed cleanup. It is possible that the Agency would reach more negotiated settlements under this approach. One limitation of this approach is that the Agency would assume financial risks if it becomes clear in light of changed circumstances or improved knowledge of site problems that additional cleanup action is needed; expansive releases from liability would preclude the Agency from pursuing responsible parties for additional cleanup costs.

Also, protracted negotiations would delay cleanup of sites. Further, private party cleanups may not increase without an attendant aggressive enforcement program (unilateral administrative orders, imminent hazard enforcement actions under CERCLA section 106, and cost-recovery actions under section 107) because private parties may lack an incentive to reach negotiated settlements.

We have attempted to strike a balance between the two directions, recognizing that no approach may be completely adequate to satisfy all of these concerns. While the Agency remains committed to a strong and vigorous enforcement program, it recognizes that negotiated private party cleanups are essential to a successful cleanup program. The Agency will minimize impediments to voluntary cleanup, and take aggressive enforcement action against those parties whose recalcitrance prevents settlements or makes complete settlement impossible.

The Agency solicits comments on whether any additional factors or principles should be considered by the Agency in formulating a settlement policy.

II. Management Guidelines for Negotiation

The previous settlement policy included a resource management guideline for use after the Agency has evaluated the case using the settlement criteria and determined that the prospects for successfully pursuing the case were good. The guideline stated that the Agency would generally negotiate only if the initial offer from PRPs was for 80 percent of the remedy or costs of cleanup. This 80 percent threshold was established so that the Regional offices would spend their time and resources negotiating cases where settlement on acceptable terms seems more likely. EPA considered retaining that guideline in this interim policy.

The threshold was not intended to be an absolute barrier to offers for less than 80 percent, and the earliest drafts of this interim policy indicated that offers for less than that amount might be considered. However, some PRPs may have perceived the guideline as an absolute barrier, and been reluctant to approach the Agency with valid settlement offers because those offers were not for 80 percent of the remedy or costs of the cleanup. Minor volumetric contributors of wastes to the site would generally be unwilling to offer 80 percent. It is also possible that a few recalcitrant parties who refused to join a group settlement offer could prevent the others from coming up with an 80 percent offer.

The Agency considered a variety of approaches for providing potentially responsible parties with a greater opportunity and incentive for becoming involved in negotiations. They include:

- Eliminating the threshold;
- Eliminating the threshold for certain categories of PRPs or cases;
- Lowering the threshold;
- Allowing deviation from the threshold when the Region has prepared an evaluation of the case, and Headquarters has reviewed this evaluation; and
- Allowing negotiations with individual parties, as long as the Region ultimately recovers a certain percentage of the costs of cleanup.

The approach in the interim policy combines elements of a number of these options. It eliminates the 80 percent threshold. Instead, the interim policy states that the Agency will negotiate only if the initial offer from PRPs constitutes a substantial proportion of the remedy or cleanup costs. Regions are asked to weigh the potential resource demands for conducting negotiations against the likelihood of getting 100 percent of costs or a complete remedy. Thus, while an offer of 80 percent is not required to initiate negotiations, there will be cases where offers of 80 percent will de deemed inadequate. Offers to negotiate for a partial settlement or cleanup should be evaluated by Regions using the criteria set forth in section IV of the policy. A copy of these draft evaluations are to be forwarded to Headquarters for review.

The policy announced today also recognizes that in certain limited categories of cases, it may be appropriate for Regions to enter into negotiations even though offers do not represent a substantial portion of costs. These categories include administrative settlements of cost recovery actions where total cleanup costs were less than $200,000, claims in bankruptcy, and administrative settlements with *de minimis* contributors of wastes. The term *"de minimis"* does not include parties who deposited any significant amount or type of waste at a site.

The approach of deleting the resource management guideline should provide a greater incentive for individual or small groups of PRPs to negotiate settlements. It should also give the Regions and the litigation team more flexibility in negotiating and settling with low volume PRPs. In addition, the 80 percent figure will not serve as a point of departure for negotiations, limiting the initial offers to that stated threshold percentage. PRPs should find it easier to develop proposals for settlement, and the ability of recalcitrants to obstruct a settlement will be reduced. However, since the objective of the Agency is still to obtain complete cleanup by PRPs, or 100 percent of the costs of cleanup, there will be cases where offers of 80 percent will be deemed inadequate. If a partial settlement offer is accepted, the Agency is committed to vigorous pursuit on non-settlors.

This approach, however, may increase the likelihood that Regional resources will be consumed by fragmented multiple negotiations with a wide variety of parties. The more intensive and time-consuming negotiations that may be necessary might ultimately limit the number of settlements that can be reached. It also places a higher burden on the Regions and Headquarters to assess the adequacy of settlement proposals in light of the settlement criteria, and to determine that sufficient

parties are left to provide the remaining cleanup costs.

The Agency solicits comment on whether substantial settlements will be possible without a threshold and whether eliminating the threshold will encourage a greater number of settlements for either a substantial portion of the costs of cleanup or of the cleanup itself. The Agency also solicits comment on how the term "*de minimis* contributor" should be defined.

III. Release of Information

The Agency will release information concerning the site to facilitate discussions of settlement among PRPs. This information will include:

—Identity of notice letter recipients;
—Volume and nature of wastes identified as delivered to the site;
—Any ranking by volume of material sent to the site.

Release of some of this material to PRPs is discretionary under the Freedom of Information Act (FOIA).

Under the policy announced today, information released to PRPs will generally be conditioned on a reciprocal release of information by PRPs. The Agency solicits comment on whether information exempt from disclosure under FOIA should be made available to PRPs on a discretionary basis.

IV. Settlement Criteria

As discussed above, there will no longer be any specific threshold for considering settlement offers from PRPs. Rather, settlement offers will be evaluated using the criteria in this seciton. Evaluations under these criteria should result in a full evaluation of the offer and will promote consistency among Regional offices. These criteria will apply in evaluation offers from PRPs (1) to clean up the site, (2) to pay for clean up of the site, and (3) in cost recovery actions. These criteria include:

- Volume of waste contributed by each PRP;
- Nature of waste contributed;
- Strength of evidence tracing waste to settling parties;
- Ability of settling parties to pay;
- Litigative risks in proceeding to trial;
- Public interest considerations;
- Precedential value;
- Value of obtaining a present sum certain;
- Inequities and aggravating factors;
- Nature of case that remains after settlement.

Many of these criteria are typical for assessing offers to settle any type of litigation. Although the Agency will consider offers of less than 100 percent in accordance with this policy, it will do so in light of the Agency's position that PRP liability is strict, joint and several unless it can be shown by PRPs that injury at a site is clearly divisible. EPA solicits comment on the need, if any, for additional criteria.

V. Partial Cleanups

Under the interim policy, EPA will now, on occasion, consider PRP offers to perform or pay for one phase of a site cleanup. The interim policy discusses the circumstances in which it may be appropriate to enter into settlements for such partial cleanups. ESA solicits comments on these arrangements.

VI. Contribution Protection

Contribution among responsible parties is based on the principle that, where liability is joint and several, a party who has paid more than his proportional share of a judgment or settlement is entitled to reimbursement from other liable parties. When the Agency reaches a partial settlement with some parties, it will frequently pursue an enforcement action against non-settling responsible parties to recover the remaining costs of cleanup. If such as action is undertaken, there is a possibility that those non-settlors would in turn sue settling parties, arguing that the settlors are liable to them for contribution. If this action by non-settling parties is successful, settling parties could end up paying a larger share of cleanup costs than was determined in the Agency's settlement.

A contribution protection clause in a consent decree is one method to prevent this outcome. While maintaining the right to go against non-settlors for all remaining relief, the United States could agree to reduce its judgment against the non-settling parties, to the extent necessary to extinguish the settling party's liability to the non-settling third party. This suggested approach is one of several contribution protection options available to the government. Parties negotiating settlement have frequently sought such protection.

The position taken by the government in litigation involving contribution is that the courts should adopt a Federal rule of decision that follows section 4 of the Uniform Contribution Among Tortfeasors Act. Section 4 provides that, where settlements are entered into in "good faith," the settlors are discharged from "all liability for contribution to any other tortfeasors." Under this interpretation, there is no need to provide contribution protection to PRPs who reach good faith settlements with the government. (We do not support adopting section 1 of the Uniform Act as a Federal rule of decision. Section 1 would preclude settlors from seeking contribution from non-settlors unless the settlors financed or performed a 100 percent cleanup at a site.)

However, since the right of contribution under CERCLA is not yet a settled question, the Agency can take two approaches in response to requests from PRPs for contribution protection:

- argue that under its legal interpretation, explicit contribution protection clauses are unnecessary;
- provide explicit contribution protection clauses in consent decrees on a case-by-case basis, based on the Agency's ability to clearly apportion liability, the percentage of the cleanup represented by the settlement, and a case-specific consideration of the law which is likely to be applied.

Explicit contribution protection clauses may serve as an incentive for private party settlement, because PRPs may be more confident with a settlement which includes an explicit contribution protection clause as part of an agreement. It is consistent with our position on joint and several liability and our support for a uniform Federal rule of decision in this area. However, explicit contribution protection clauses have several limitations. For example, the Agency may become vulnerable for part of the cleanup costs that would otherwise be borne by responsible parties. In addition, the drafting problems involved with such clauses are complex. Finally, such clauses may embroil the Federal government in complex litigation rather than resulting in final settlements.

In the interim policy published today, the Agency has authorized a very limited use of contribution protection clauses. The Agency is soliciting public comment on whether the interim policy provides for contribution protection in the proper circumstances.

VII. Releases From Liability

Potentially responsible parties have frequently sought total releases from past and future liability as a condition of settlement. The Agency has generally been reluctant to grant such total releases because they impair the Agency's ability to assure cleanup in light of changed conditions or new information concerning a site.

We recognize the current state of scientific uncertainty concerning the impacts of hazardous substances, our ability to detect them, and the effectiveness of remedies at hazardous waste sites. It would be inappropriate for the Agency to assume the responsibility for cleanup if previously

unknown or undetected conditions arise or are discovered after settlement, or if new information indicates there may be an imminent and substantial endangerment to public health or welfare or the environment.

Three broad approaches for reconciling the concerns of the Agency and of PRPs are to:

- authorize releases for remedial actions taken pursuant to EPA-approved RI/FS and design;
- authorize total releases for remedial actions taken pursuant to EPA-approved RI/FS and design, but include a reopener clause allowing the Agency to seek additional cleanup action or cleanup costs for unknown conditions that indicate possible imminent and substantial endangerments;
- allow very limited releases with reopener clauses that not only cover imminent and substantial endangerments, but require private parties to respond to all other releases or threats of release from the site.

The guidelines in this policy take the second approach. We recognize that an expansive release policy would be an incentive for private party cleanup, but its value as an incentive must be weighed against the scientific uncertainties surrounding the nature of exposure to hazardous substances, their degree of toxicity, and the effectiveness of remedies.

Generally, the expansiveness of a release will depend on the degree of confidence that the Agency has in a remedy. It may be appropriate to negotiate a more expansive release where responsible parties consent to meeting and continuing to attain health based performance standards. In addition, the Agency is considering allowing more expansive releases where the private party remedy is a demonstrated effective alternative to land disposal, such as incineration.

Under the second approach, designed for remedial actions, PRPs will be required to assume risks of imminent and substantial endangerments attributable to problems not known by the Agency at the time the remedy was selected. In return, EPA will be responsible for responding to future releases of contaminants that do not rise to the level of an imminent and substantial endangerment (assuming that, if PRPs conduct the remedial action, the approved remedy is maintained as required).

Releases will be of a similar scope, whether activities will be conducted by EPA or by private parties. Any release policy that allowed more extensive releases when the Agency conducted the cleanup actions than when private parties conducted the actions would discourage private party cleanup, or, at a minimum, encourage private parties to pay for government cleanups rather than conduct the remedial action themselves. Private party conduct of the remedial action is preferable because it is likely to occur sooner than Agency cleanup, and the use of private money frees the government to use the Fund for other sites with no identified PRPs.

The Agency is also considering whether a more expansive release may be allowed where the PRPs hire an approved contractor to perform the cleanup, and the PRPs' performance is secured by a satisfactory premium payment or surety bond in an amount well in excess of the estimated cost of the work. The term "premium payment" refers to risk apportionment device under which the risk of an ineffective remedy would be mitigated by a cash payment in excess of cleanup costs, or another financial assurance mechanism.

The Agency solicits comments on the interim release policy, including the circumstances under which releases should be granted, reopener conditions that should be included, and when releases should become effective. The Agency also solicits comment on the premium payment or surety bond concept.

VIII. Targets for Litigation

The Agency is not legally required to bring action against all potentially responsible parties at a site. The interim policy provides that the Agency will continue to identify targets for litigation on the basis of factors such as financial viability, strength of the case, and our ability to manage litigation. This policy also provides an additional incentive for voluntary cleanup by targeting recalcitrants for litigation.

The presence of a Federal agency as a potentially responsible party at a hazardous waste site sometimes delays negotiations because the position of the Federal PRP may not be clear to government negotiators or other PRPs. The interim policy provides that Federal facilities are to be treated like other PRPs in most respects except being joined as a party in litigation. The reference to administrative orders is intended to direct the Regions to make more aggressive use of administrative orders in dealing with Federal facilities. Instead of litigation, we will use the procedures established by Executive Orders 12088 and 12146 and appropriate Memoranda of Understanding to resolve issues remaining with these facilities after negotiation ends. EPA will encourage Federal facilities to participate in these negotiations.

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Department of Transportation

Federal Aviation Administration

14 CFR Parts 65, 71, 91, 93, 103, and 105

Airspace Reclassification/Services/Requirements, and Terminal Airspace Reclassification; Advance Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 65, 71, 91, 93, 103, and 105

[Docket No. 24456 Notice No. 85-5]

Airspace Reclassification/Services/ Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: This notice announces the FAA's intentions to consider adopting certain recommendations resulting from the National Airspace Review (NAR). These changes are intended to: (1) Simplify airspace designations; (2) achieve international commonality of airspace designations; and (3) associate appropriate pilot certification requirements, visibiliity and distance from cloud requirements, and air traffic services with each proposed airspace designation. The preadoption considerations on which the FAA is seeking public comment are: (1) the potential economic impact of the recommendations if adopted; (2) methods of implementation; (3) impact on pilot education; and (4) charting techniques.

DATE: Comments must be received on or before June 6, 1985.

ADDRESSES: Comments may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24456, 800 Independence Avenue SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Davis, Airspace-Rules and Aeronautical Information Division, AAT-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

This ANPRM is being issued in accordance with the FAA's policy of encouraging the early public participation in rulemaking proceedings. An ANPRM is issued when FAA finds there is a need to consider rulemaking but the resources of the FAA and reasonable outside inquiry do not yield a sufficient basis to propose a specific course of action. It would be helpful, therefore, to invite public particpation in identifying and selecting a course of action before a Notice of Proposed Rulemaking (NPRM) is developed and issued.

Interested persons are invited to participate in these preliminary rulemaking procedures by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24456." The postcard will be date/time stamped and returned to the commenter. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. If it is determined to be in the public interest to proceed with further rulemaking after considering the available data and comments received in respone to this Advance Notice, an NPRM will be issued.

Availability of ANPRM's

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this ANPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

On April 22, 1982, the NAR plans was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control system. Organizations participating in the NAR task group include:

Federal Aviation Administration
Department of Defense
Air Line Pilots Association
Air Transport Association
National Business Aircraft Association
National Association of State Aviation Officials
Regional Airline Association
Aircraft Owners and Pilots Association
Experimental Aircraft Association
Helicoper Association International

The three main objectives of the NAR are:

(1) To develop and incorporate into the air traffic system a more efficient relationship between traffic flows, airspace allocation, and system capacity. This will involve the use of improved air traffic flow management to maximize system capacity and improved airspace management.

(2) To review and eliminate, wherever possible, governmental restraints to system efficiency imposed by Federal Aviation Regulations (FAR) and FAA directives—reducing complexity and simplifying the air traffic control (ATC) system.

(3) To revalidate ATC services within the National Airspace System with respect to state-of-the-art and future technological improvements.

In concert with these objectives, Task Group (TG) 1-5 was organized and assigned to review the United States and Canadian air traffic control procedural interface. The group studied a Canadian airspace classification proposal and make complementing NAR recommendations which were forwarded to the Administrator through the NAR Executive Steering Committee for further processing.

The NAR Executive Steering Committee includes:

Department of Defense—Major General, USAF
Air Transport Association—Senior Vice President
Regional Airline Association—President
National Business Aircraft Association—President
Experimental Aircraft Association—President
Helicopter Association International—President
Aircraft Owners and Pilots Association—Senior Vice President

TG 1-5 Recommendations Pertaining To This Proposal

NAR 1-5.2.1 (CANADIAN AIRSPACE PROPOSAL)

The United States should consider reclassifying its airspace system. This can be done either by adopting the proposed Canadian method of airspace classification or by adopting a classification system similar to the proposed Canadian classification.

NAR 1-5.2.2 (ESTABLISH Task Group 1-7)

Concurrently, the Task Group recommends that the National Airspace Review Plan be expanded to establish a new Task Group/Task Assignment to pursue recommendation NAR 1-5.2.1. This group should include members of the industry in addition to members from Task Group 1-5.

TG 1-7—Airspace Review

The NAR Executive Committee, in concurring with NAR Recommendation 1-5.2.2 established TG 1-7 to consider reclassifying U.S. airspace and make recommendations on how this might be done. TG 1-7.1 convened and considered the following airspace assignments, task group staff studies, and related airspace information:

1. *Airspace assignments, terminologies, and designations:* Control zones, transition areas, terminal control areas, airways and jet routes, positive control areas, continental control area, terminal radar service areas, airport traffic areas, control areas, special use airspace; and uncontrolled airspace.

2. *Task group staff studies:* TG 1-5.2 Report—CANADIAN AIRSPACE PROPOSAL, TG 1-2.1 Report—TERMINAL CONTROL AREAS, TG 1-2.2 Report—TERMINAL RADAR SERVICE AREA (See SFAR 45 and 48 FR 50038), and TG 1.2.3 Report—CONTROL ZONES, AIRPORT TRAFFIC AREAS AND TRANSITION AREAS. Copies of these reports are in the public docket.

3. *Related Airspace Information:* A U.S. airspace classification model developed by the Airspace-Rules and Aeronautical Information Division, AAT-200, per NAR Recommendation 1-5.2.1 (CANADIAN AIRSPACE PROPOSAL), as a concept model toward developing viable classification system; and a draft report to the Air Navigation Commission of the International Civil Aviation Organization (ICAO) for airspace classification by the Visual Flight Rules Operations (VFO) Panel of the ICAO.

The Current Airspace Classification

FAR Parts 71, 73, and 75 contain the various designations of controlled airspace: Positive control areas, terminal control areas, and special use airspace. FAR Part 1 contains the definition of an airport traffic area. Uncontrolled airspace is not designated by regulation but may be thought of as that airspace not included within the definition of controlled airspace in Part 1.

Pilot certificates are not regulated or issued with respect to operations in a specific airspace designation, but may be issued with a limitation on authorized operations to those conducted under visual flight rules (VFR). Air traffic separation service and traffic advisory services also are not regulated under the FAR with respect to operations in any specific airspace designation but their application may be limited, by FAA directives, to aircraft activities conducted within certain airspace designations. While not specifically associated by regulation with any airspace designation, certain visibility and distance from cloud minimums are associated with uncontrolled airspace.

General Controlled Airspace

Controlled airspace is primarily designated under the provisions of Part 71. For the purposes of showing comparisons with the various reclassification concepts being considered under this ANPRM and by other aviation groups, the term "General Controlled Airspace" will be used to describe U.S. airspace designations within which there are no unique pilot operating requirements or special ATC services provided. Therefore, General Controlled Airspace may be considered to be that designated as Colored Federal Airways, VOR Federal Airways, the Continental Control Area, Control Areas Associated with Jet Routes Outside the Continental Control Area, Additional Control Areas, Control Area Extensions, Control Zones, Transition Areas, Area High Routes Outside the U.S., and Area Low Routes. Operations may be conducted in these airspace deisgnations under instrument flight rules (IFR) or VFR. If operations are conducted under IFR, then the pilot must be appropriately rated and possess the currency of experience requirements of Part 61 and aircraft must be appropriately equipped for IFR flight. There are no minimum visibility or distance from cloud requirements for operations conducted under IFR.

If operations are conducted under VFR, the pilot need only possess a student pilot certificate for most operations. However, depending on altitude(s) of the operation, certain minimum visibility values must exist for a flight to be conducted under VFR and a pilot must maintain a specified minimum distance from clouds. These minimums are prescribed in § 91.105.

In designated controlled airspace, except in a terminal control area (TCA) or positive control area (PCA), which will be addressed below, ATC separation or merging target services is provided only to takeoff and landing aircraft and to aircraft operating under IFR. ATC traffic advisory service is provided to aircraft on a controller workload permitting basis.

Positive Control Areas

Basically and with few exceptions, PCA's exist from 18,000 feet mean sea level (MSL) to FL 600. Section 91.97 requires in pertinent part that, unless otherwise authorized by ATC, any operations in a PCA must be conducted under IFR, by a pilot rated for IFR, and in an aircraft equipped for IFR flight. While there are no discrete visibility or distance from cloud minimums associated with a PCA, ATC authorized VFR operations would have to be conducted with at least the minimums specified under § 91.105. Except for operations conducted in ATC assigned airspace areas, ATC separation is provided to all aircraft operations in a PCA.

Terminal Control Areas

Operations in a TCA may be conducted under IFR or VFR. However, if conducted under VFR, operations must be authorized by ATC prior to entering the TCA. ATC separation service is provided to all aircraft, except helicopters, in a TCA. Section 91.105 visibility and distance from cloud minimums apply to operations in a TCA.

Special Use Airspace (SUA)

While this type of airspace is defined in, and designated under, Part 73 of the FAR (prohibited areas and restricted areas), the FAA establishes other types of SUA under nonrulemaking procedures. These SUA types are:

1. Alert Area—Airspace which may contain a high volume of pilot training activities or an unusual type of aerial activity, neither of which is hazardous to aircraft.

2. Controlled Firing Area—Airspace wherein activities are conducted under conditions so controlled as to eliminate hazards to nonparticipating aircraft and to ensure the safety of persons and property on the ground.

3. Military Operations Area (MOA)—Airspace assignment of defined vertical and lateral dimensions established outside PCA's to separate/segregate certain military activities from IFR traffic and to identify, for VFR traffic, where those activities are conducted.

Operations within SUA can be conducted under IFR or VFR, and ATC separation service is not provided between aircraft operating in SUA. Section 91.105 visibility and distance from cloud minimums apply.

Terminal Radar Service Area (TRSA)

Operations may be conducted under IFR or VFR in this type of airspace. While not established under any regulatory process, a TRSA generally consists of airspace already established under Part 71 (General Controlled Airspace) for designated airports wherein the FAA provides radar vectoring, sequencing, and separation on a full-time basis to all aircraft operating under IFR and participating aircraft operating under VFR.

NAR 1-2.2.1 Recommendation, "Replace TRSA's with Model B Airspace and Services," is being confirmed under SFAR No. 45 (48 FR 50038) at Austin, Texas, and Columbus, Ohio. These locations have been designated Airport Radar Service Areas (ARSA's) under SFAR No. 45. Operations may be conducted under IFR or VFR in an ARSA. Within an ARSA, ATC will, in addition to the services and separation currently applied to aircraft operating under IFR, resolve any potential conflict between an aircraft operating under IFR and an aircraft operating under VFR, as well as provide traffic advisory services and arrival sequence to all aircraft.

Airport Traffic Area (ATA)

An ATA is not designated by rulemaking but exists at any airport where an airport traffic control tower is operating. Operations may be conducted under either IFR or VFR, provided the operation is to or from an airport in the ATA. Overflight operations may be conducted under an ATC authorization. ATC separation service is only provided to aircraft operations conducted under IFR and between takeoff and landing operations. The visibility and distance from cloud minimums of § 91.105 apply.

The Canadian Airspace Classification

Canada has implemented a new airspace classification system that divides all airspace into six categories. These categories are defined as Class A, B, C, D, E, and F. Each class of airspace is associated with a set of pilot qualification requirements, pilot operating rules, and specific ATC services. The Canadian airspace classification is summarized and compared to the current U.S. Airspace Classification as follows:

Class A Airspace (U.S.—positive Control Area) is airspace wherein all flights must be conducted under IFR and ATC separation service is provided to all aircraft.

Class B Airspace (U.S.—Terminal Control Area) is airspace wherein all flights must be conducted under IFR or controlled visual Flight rules (CVFR) and ATC separation service is provided to all aircraft.

Class C Airspace (U.S.—Airport Traffice Area) is airspace wherein flights must be conducted under IFR unless and ATC authorization is received prior to entering. ATC separation service will only be provided to operations conducted under IFR.

Class D Airspace (U.S.—General Controlled Airspace) is airspace wherein flights may be conducted under IFR or VFR and ATC service is only provided to flights conducted under IFR.

Class E Airspace (U.S.—Uncontrolled Airspace) is airspace wherein any flight is not subject to or provided any ATC services.

Class F Airspace (U.S.— Special Use Airspace) is airspace of defined dimensions wherein activities must be confined because of their nature and limitations may be imposed upon participating and/or nonparticipating aircraft.

Visual Flight Rules Operations Panel Airspace Classification Recommendations (ICAO)

The Air Navigation Commission (ANC) of the ICAO has accepted a recommendation from the Visual Flight Rules Operations (VFO) Panel of the ICAO which proposes: "That ICAO, as soon as practicable, provide states and selected international organizations with information concerning the proposed types of airspaces, the types of traffic, and the air traffic services in each." In conjunction with the VFO Panel recommendation, an airspace classification concept similar to those of the U.S. and Canada is being developed by the VFO Panel to present to the ANC as a recommendation. A draft of the VFO Panel's concept, dated June 29, 1983, is summarized as follows:

Airspace A. All operations must be conducted under IFR and ATC separation service is applied to all aircraft. This type of airspace is similar to the current U.S. positive control areas.

Airspace B. Operations may be conducted under IFR or VFR and ATC separation service is applied to all aircraft. This type of airspace is similar to the current U.S. terminal control areas.

Airspace C. Operations may be conducted under IFR or VFR; however, in either case, prior authorization must be received. ATC separation service is applied to all aircraft operating under IFR and, as necessary, to any aircraft operating under VFR when any aircraft operating under IFR is involved. All VFR operation will be provided confliction advice and, on request conflict resolution instructions. This type of airspace is similar to the U S. airspace being studied under SFAR 45, Airport Radar Service Area.

Airspace D. Operations may be conducted under IFR or VFR; however, in either case, prior authorization must be received. ATC separation service is applied only to aircraft operating under IFR. All traffic will receive confliction advice and, upon pilot request, conflict resolution instructions. This type of airspace is similar to a U S. airport traffic area where no satellite airport exists.

Airspace E. Operations may be conducted under IFR or VFR. Prior authorization is required for IFR operations. ATC separation service is applied only to aircraft operating under IFR. As far as practical, ATC may provide confliction advice to aircraft operating under VFR. This type of airspace is similar to the U.S. defined in the ANPRM as general controlled airspace.

Airspace F. Operations may be conducted under IFR or VFR, ATC separation service will be ensured, so far as practical, between aircraft operating under IFR. Air traffic advisory and flight information services will be given to all aircraft operating under IFR. VFR operations will only receive flight information service. This type of airspace would be similar to U.S. uncontrolled airspace except for ATC services provided.

Airspace G. Operations may be conducted under IFR or VFR and only flight information service is available. This type of airspace is similar to U.S. uncontrolled airspace.

After considering the Canadian and VFO Panel's airspace classifications and believing that the current U.S. air space classification is complicated because of its numerous categories, overlapping designations, and operating requirements TG 1-7.1 made the following recommendations:

NAR 1-7.1.1 (RECLASSIFICATION OF U.S. AIRSPACE)

The task group recommends that the Airspace Classification Concept be pursued.

NAR 1-7.1.2 (TG 1-7.1 AIRSPACE CLASSIFICATION MODEL)

The task group recommends that the classification model (developed by this group) be used as a basis for application by Task Group 1-7-2.

TG 1-7.1, Airspace Classification Model, appears in Appendix B of TG 1-7.1 Staff Study and a copy of which is in the public docket. For the purpose of this ANPRM, the group's airspace model is

included as an integral part of the NAR 1-7.2.1 Recommendation (AIRSPACE CLASSIFICATION AND APPLICATION SYSTEM).

TC 1-7.2 Recommendations

TG 1-7.2 is a part of the overall ANR and is a joint aviation industry/FAA effort to conduct an in-depth study of the U.S. Airspace Classification System. As a committee within the NAR, TG 1-7 is an integral part of the National Airspace System Plan, and its objective is to provide near-term solutions to areas of mutual concern affecting the U.S. Airspace System.

The primary function of TG 1-7.2 was to apply the classification model recommended by TG 1-7.1 to U.S. airspace and also to: (1) Recommend where each class of airspace should be applied; (2) identify what rules need to be changed to make the airspace classification and structure compatible; and (3) recommend whether or not and how the agency should pursue further action on airspace classification and structure.

Within this framework, TG 1-7.2 sought simplification, commonality, and standardization. The group discussed the areas of consideration in detail and summarized its discussion in the form of the following recommendations. The group stressed that these recommendations must not change the intent of current regulations or the VFR minima applicable to helicopter operations.

NAR 1-7.2.1 (AIRSPACE CLASSIFICATION AND APPLICATION SYSTEM)

Task Group 1-7.2 recommends that the application system (developed by this Group) by the basis for integrating the airspace classification model (developed be TG 1-7.1) within the U.S. Airspace structure.

NAR 1-7.2.2 (INTEGRATE TRSA REPLACEMENT)

Task Group 1-7.2 recommends that if Model B (as recommended by NAR TG 1-2.2) is adopted as a replacement for the Terminal Radar Service Area (TRSA) Program (as identified in Class C airspace), that Model B be identified as Class C airspace with a mandatory participation requirement.

Note.—Model B Airspace is being referred to as Airport Radar Service Area under SFAR 45.

NAR 1-7.2.3

Task Group 1-7.2 recommends that pilot requirements for Special Visual Flight Rules (SVFR) operations be included on the agenda for TG 1-7.3.

NAR 1-7.2.4 (VERTICAL/LATERAL LIMITS OF SVFR)

Amend the Code of Federal Regulations by adding as FAR 91."XXX": *SVFR Operations* are authorized in Class C and D airspace only at airport locations within that portion of airspace extending upward from the surface to 3000 feet AGL within the designated surface lateral limits. SVFR operations are authorized in Class B airspace at airport locations within that portion of airspace extending upward from the surface to 3000 feet AGL within the designated surface lateral limits not to exceed five miles.

NAR 1-7.2.5 (DEFINE SVFR)

Amend the Code of Federal Regulations definition and Pilot/Controller Glossary as follows:

SVFR Conditions—(FAR 1.1)

Weather conditions which are less than basic VFR minima in which some aircraft are permitted to fly under visual flight rules in certain Class B, C, and D terminal airspace. (See SVFR operations, FAR 91.XXX).

NAR 1-7.2.6 (DEFINE SVFR)

Amend the Pilot/Controller Glossary (in the Airman's Information Manual) as follows:

SVFR Operations

Aircraft operating VFR in accordance with clearances within Class B, C, or D terminal airspace in weather conditions less than the basic VFR minima. Such operations must be requested by the pilot and approved by ATC."

NAR 1-7.2.7 (REVISE FAR 91.107)

In FAR 91.107—SVFR weather minimums, substitute the phrase "in Class B, C, or D terminal airspace as prescribed in FAR 91.XXX" for the term 'Control Zone'.

NAR 1-7.28 (REVISE FAR 103.17)

Revise FAR 103.17 to read:

Unless prior authorization has been obtained from the ATC facility having jurisdiction over the airspace, no person may operate an ultralight vehicle in:

(a) Class A, B, or C airspace, or

(b) Class D terminal airspace extending upward from the surface to 3,000 feet AGL within the designated surface lateral limits around designated airports.

NAR 1-7.29 (AMEND FAR 91.105)

Amend the tables in FAR's 91.105(a) and 103.23 as follows:

VFR MINIMA

Airspace class	Visibility	Clearance from clouds
A	N/A	N/A.
B		
(1) Terminal	3	Clear of clouds.
(2) En route at or above 10,000' MSL	5	1 Mile horizontal; 1,000' above; 1,000' below.
C	3	2000' horizontal; 1000' above; 500' below.
D		
(1) At or above 10,000' MSL	5	1 Mile horizontal; 1000' above 1000' below.
(2) Below 10,000' MSL	3	2,000' Horizontal; 1000' above; 500' below.
E		
(1) At or below 1200' MSL	1	Clear of clouds.
(2) Above 1200' AGL *but* below 10,000' MSL	1	2,000' Horizontal; 1,000' above; 500' below.
(3) Above 1200' AGL *and* at or above; 10,000' MSL	5	1 Mile horizontal; 1000' above 1000' below.

NOTE.—Rules for helicopter operations would not change.

TASK GROUP 1-7.2'S AIRSPACE APPLICATION SYSTEM

(1. Task Group 1-7.1 Recommended Airspace Reclassification Model)

"Airspace class	Type operation	Minimum civil pilot qualification*	Separation	Communications requirements
A	IFR	Instrument	IFR from IFR	Two-way communication with controlling ATC facility. Prior authorization to enter required.
B	IFR	Instrument	IFR from IFR, IFR/SVFR from SVFR, IFR from VFR	Two-way communications with controlling ATC facility. Prior authorization to enter required.
	SVFR	Student with endorsement, instrument for night	IFR/SVFR from SVFR	
	VFR	Student with endorsement	IFR from VFR, VFR from VFR	
C	IFR	Instrument	IFR from IFR, IFR/SVFR from SVFR, IFR/VFR from VFR at designated terminal radar locations to participating pilots.	Two-way communications with controlling ATC facility; however, no-radio arrivals and departures may be approved when properly coordinated. Prior authorization to enter required.
	SVFR	Student, instrument for night	IFR/SVFR from SVFR	
	VFR	Student	IFR/VFR from VFR at designated terminal radar locations to participating pilots. Traffic Advisories.	

TASK GROUP 1-7.2's AIRSPACE APPLICATION SYSTEM—Continued

[1. Task Group 1-7.1 Recommended Airspace Reclassification Model]

"Airspace class	Type operation	Minimum civil pilot qualification*	Separation	Communications requirements
D	IFR	Instrument	IFR from IFR, IFR/SVFR from SVFR	No communication or prior approval necessary to enter VFR. Two-way communication with appropriate ATC facility required for IFR/SVFR flight.
	SVFR	Student, instrument for night	IFR/SVFR from SVFR	
	VFR	Student	Traffic Advisories	
E	IFR	Instrument	No separation. Additional Services * * on request	No communication or prior approval necessary to enter IFR/VFR.
	VFR	Student		

*FAR Part 91.107 applies.
** Additional Services as defined in Pilot-Controller Glossary/AIM./ATC Handbook apply."

2. The TG recommends that the term "controlled airspace" be amended in Part 1 as follows:

Controlled Airspace (Existing)

Controlled airspace means airspace designated as the Continental Control Area, Control Area, Control Zone, Terminal Control Area, or Transition Area, within which some or all aircraft may be subject to air traffic control.

Controlled Airspace (Revised)

Controlled airspace means airspace designated as Class A, B, C, or D within which some or all aircraft may be subject to air traffic control.

3. The TG recommends that a new term "uncontrolled airspace" be added to Part 1 as follows:

Uncontrolled Airspace (New)

Class E (Uncontrolled) airspace is that portion of the airspace that has not been designated as Class A, B, C, or D and within which ATC has no authority or responsibility for exercising control over air traffic.

4. With respect to Part 71, the TG recommends the following airspace proposals:

Class A Airspace

Class A airspace is that airspace listed in Subpart H of this part consisting of airspace of the contiguous 48 states and the District of Columbia within 3 miles beyond and parallel to the shoreline extending from 18,000 feet MSL to and including FL 600 but excluding the Santa Barbara Island, Farallon Island, and the portion south of latitude 25°04'00" N.

Class A airspace in Alaska is that airspace within 3 miles beyond and parallel to the shoreline extending from 18,000 feet MSL to and including FL 600 but not including airspace less than 1,500 feet AGL and the Alaska Peninsula west of longitude 160°00'00" W.

Class B Airspace

Class B airspace is that airspace listed in Subpart K of this part consisting of controlled airspace extending upward from the surface or higher to specified altitudes.

Class C Airspace

Class C airspace consists of controlled airspace listed in Subpart F of this part which normally extends upward from the surface and terminates at 3,000 feet AGL, except at designated * radar terminal locations which will be a 5-mile radius of primary airport at the surface extending upward to 4,000 feet AGL, thence within a 10 mile radius extending upward from 1,200 feet to 4,000 feet above the surface.

Class C airspace may include one or more airports and is normally a circular area with a radius of 5 miles around the airport with any extensions necessary to include instrument approach and departure paths.

Handbook Material

Class C airspace becomes a candidate for Class B designation when:

1. The primary airport serves at least 1 percent of national enplaned passengers.

2. The primary airport reaches a total annual operations count of 300,000 with 50 percent of all operations being air carrier.

3. Military airports/facilities become candidates based upon criteria provided by DOD and agreed upon by FAA.

* Recommended criteria per NAR 1-2.2.6.

Note.— At those locations with part-time airport traffic control towers, Class C airspace would revert to Class D or E airspace, as appropriate, when the tower was not in operation.

Class D Airspace

1. Class D airspace consists of controlled airspace extending upward from 1,200 ft. or more above the surface to unlimited which is not designated as Class A, B, or C over the contiguous 48 States, the District of Columbia and Hawaii including that airspace:

(a) Within a 3 NM beyond and parallel to the shoreline.

(b) Associated with jet routes outside (a) above.

(c) Except for the airspace listed in Subparts E, F and G, Class D airspace does not include airspace less than 1,200 feet above the surface.

2. Class D airspace in Alaska consists of all controlled airspace not designated as Class A, B, or C and extending from 14,500 feet MSL to unlimited and including that airspace:

(a) Within 3 NM beyond and parallel to the shoreline east of longitude 160°00'00" W.

(b) Listed in subparts B, C, E and G.

Except for that airspace listed in Subparts E, F, and G, Class D airspace does not include airspace less than 1,500 feet above the surface.

Handbook Material

Class D airspace becomes a candidate for Class C designation when one or more of the following events occur:

1. An airport traffic control tower is commissioned.

2. An operational requirement, other than 1 above, is determined to exist in the Class D Environment which warrants the application of Class C rules and services.

Class E Airspace

Uncontrolled airspace is Class E airspace and is that portion of the airspace that has not been designated as Class A, B, C, or D and within which ATC has no authority or responsibility for exercising control over air traffic.

Handbook Material

Class E airspace becomes a candidate for Class D designation when one or more of the following events occur:

1. An airway/s is established based on air traffic and/or user requirements.

2. Instrument procedures (arrival-departure-holding) are established requiring controlled airspace.

3. An air traffic and/or user operational requirement other than the above is determined to exist in Class E airspace that warrants the rules and services of Class D be applied.

Class E airspace becomes a candidate for Class C airspace when an airport traffic control tower is commissioned.

TG 1-7.3 Recommendations

TG1-7.3 was established to deal with the subject of associating pilot certification/qualification requirements with a reclassified airspace system. After an in-depth review of pertinent pilot certifications and the TG 1-7.2 conclusions and recommendations, TG 1-7.3 determined that the present requirements for pilot certification could be applied to a reclassified U.S. airspace. Enforcing the foregoing conclusion, TG 1-7.3 made the following recommendation.

NAR 1-7.3.1 (PILOT CERTIFICATION)

Task Group 1-7.3 recommends the regulatory requirements for the present certification of student, private, instrument, commercial, and airline transport pilots be retained within the reclassification airspace system.

Pilot requirements for types of operations—IFR, VFR, and Special VFR (SVFR)—as they would apply to airspace reclassification recommendations of TG 1–7.1 were considered. For certain types of operations, the members were in agreement on the minimum civil pilot qualifications necessary. For example, an instrument rating would continue to be the minimum requirement for operations conducted under IFR and SVFR operations conducted at night.

During the dicussion of Class A airspace pilot requirements, the TG determined that the Department of Defense (DOD) pilots are authorized to conduct undergraduate pilot training in PCA's (Class A Airspace) in noncompliance with the § 91.97 requirement for pilots to be instrument rated. The TG was advised by the FAA that should reclassification be adopted, there would be no substantive changes made to the authorization provisions of § 91.97.

With the proposed substitution of the provisions of Group I and II TCA's with Class B airspace, concerns were expressed by some TG members that under the provisions of NAR 1–7.2.1, (AIRSPACE CLASSIFICATION AND APPLICATION SYSTEM), there would be a relaxation in the student pilot prohibition provisions of current § 91.90. The relaxation would allow student pilots into the airspace associated with what are now referred to as Group I TCA's provided the student pilot has a Certified Flight Instructor's endorsement for such operations. After much discussion of this aspect's a consensus was arrived at by the TG that the minimum Class B pilot requirement for VFR operations would remain a student certificate and that the rulemaking process would be used to delineate airports (such as is currently provided for under § 91.90) that would require an operator to process a private pilot certificate as a minimum for operations within a particular Class B Airspace designation.

In discussing the pilot requirements for operations in Airspace Classes C, D, and E, the TG concluded that airspace reclassification would have little, if no, effect on current pilot requirements. The group made the following recommendations:

NAR 1–7.3.2 (CLASS A AIRSPACE PILOT QUALIFICATIONS)

Task Group 1–7.3 recommends the possession of an instrument rating be established as the minimum civil pilot qualification for operations within Class A airspace.

*Current DOD exemptions or Memorandums of Agreement allowing Undergraduate Pilot Training (UPT) within the Positive Control Area (PCA) should be extended to allow that training to continue in Class A airspace.

NAR 1–7.3.3 (CLASS B AIRSPACE PILOT REQUIREMENTS)

Task Group 1–7.3 recommends the following minimum civil pilot requirements for operations in Class B airspace:

IFR operations: instrument rating
*VFR operations: student pilot certificate
*Day SVFR operations: student pilot certificate
Night SVFR operations: instrument rating
*Except at those airports designated in FAR 93.XXX.

NAR 1–7.3.4 (CLASS C AIRSPACE PILOT QUALIFICATIONS)

Task Group 1–7.3 recommends the following minimum civil pilot qualifications for operations in Class C terminal airspace:

IFR operations: a valid instrument rating.
*VFR operations: student pilot certificate.
*Day SVFR operations: a current student pilot certificate.
Night SVER operations: an instrument rating.

*Except as designated in FAR 93 or FAR 91.

NAR 1–7.3.5 (CLASS C AIRSPACE PILOT REQUIREMENTS)

Task Group 1–7.3 recommends the following minimum civil pilot requirements for operations in Class D airspace:

IFR operations: an instrument rating
*VFR operations: a student certificate
*Day SVFR operations: a student certificate
Night SVER operations: an instrument rating

NAR 1–7.3.6 (CLASS C AIRSPACE PILOT QUALIFICATIONS)

Task Group 1–7.3 recommends the following minimum civil pilot qualifications for operations within Class E Airspace:

IFR operations: An instrument rating
VFR operations: A student certificate

Discussion of the Proposal of the NAR Recommendations

The FAA believes there is merit in the TG's recommendations concerning airspace reclassification and is providing advance notice proposing those recommendations. The proposal is recognized as one that would have long-range effects. The FAA, therefore, solicits comments from all interested parties, on all aspects of the proposal. These comments will be given full consideration prior to any future agency action on this proposal.

The FAA reaffirms that this notice does not propose any change to any existing special use airspace provision or requirement. The discussion of the subject in this proposal is simply to afford interested persons the opportunity to compare the current U.S. special use airspace system and the recently adopted Canadian special use airspace classification. To help interested parties correlate most aspects of this proposal with existing regulatory provisions, a graphic depiction is included as Table 1. The remaining aspects of this proposal are discussed below.

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TABLE 1.—THE PROPOSAL IN GRAPHIC FORM

CURRENT AIRSPACE DESIGNATORS CLASSIFICATION	PROPOSED AIRSPACE DESIGNATORS	FLIGHT RULES (EXCEPTIONS)		MINIMUM CIVIL PILOT QUALIFICATIONS (EXCEPTIONS)		VISIBILITY REQUIREMENTS AND CLOUD CLEARANCE MINIMUMS		ATC SERVICES	PERMISSION TO ENTER?	TWO-WAY RADIO COMMUNICATIONS?
						Below 10,000' MSL	Above 10,000' MSL			
Positive Control Area/Route	A	IFR	(6)	Instrument	(6)	N/A	N/A	Separation for all operations	Yes	Yes (1)
Terminal Control Area	B	IFR	N/A	Instrument	None	N/A	N/A	Separation of all aircraft operations (4)	Yes	Yes
		VFR	N/A	Student	Private required at Atlanta, GA Boston, MA Chicago, IL Dallas/ Ft. Worth, TX Los Angeles, CA Miami, FL New York, NY San Fran, CA Wash., D.C.	3 miles & clear of clouds[5]	5 miles & 1 mile hor. 1,000' abv 1,000' bel.	Separation of all operations (4)	Yes	Yes
		SVFR	Only at: San Diego, CA Kansas City, MO Las Vegas, NV	Student	Private with instrument required for night operations	1 mile & clear of clouds	1 mile & clear of clouds	Separation for all operations	Yes	Yes
Control Zone with Operating Control Tower Airport Traffic Area	C	IFR	N/A	Instrument	None	N/A	N/A	Separation of all IFR operations from SVFR operations and other IFR operations (2)	Yes (3)	Yes (1)
		VFR	N/A	Student	Private required at Dulles, VA (Part 159)	3 miles & 2,000' hor. 1,000' abv. 500' bel.	3 miles & 2,000' hor. 1,000' abv. 500' bel.	(2)	Yes (3)	Yes (1,2,3,4,5)
Airport Radar Service Area Terminal Radar Service Area (7)		SVFR	Prohibited at Baltimore, MD Buffalo, NY Columbus, OH Covington, KY Indianapolis, IN Louisville, KY Memphis, TN Portland, OR Tampa, FL	Student	Private with instrument required for night operations	1 mile & clear of clouds	N/A	Separation of all SVFR operations from IFR operations and other SVFR operations (2)	Yes (3)	Yes (1)

TABLE 1.—THE PROPOSAL IN GRAPHIC FORM (continued)

TABLE 1.—THE PROPOSAL IN GRAPHIC FORM (continued)

CURRENT AIRSPACE DESIGNATORS CLASSIFICATION	PROPOSED AIRSPACE DESIGNATORS	FLIGHT RULES (EXCEPTIONS)		MINIMUM CIVIL PILOT QUALIFICATIONS (EXCEPTIONS)		VISIBILITY REQUIREMENTS AND CLOUD CLEARANCE MINIMUMS				ATC SERVICES	PERMISSION TO ENTER?	TWO-WAY RADIO COMMUNICATIONS?
						Below 10,000' MSL		Above 10,000' MSL				
VOR Federal Airway Colored Federal Airway Continental Control Area Transition Area Additional Control Area Control Area Extension Area High Route Outside The U.S. Area Low Route Control Zone Without Operating Control Tower	D	IFR	N/A	Instrument	None	N/A		N/A		Separation of all IFR operations from SVFR operations and other IFR operations	Yes (3)	Yes (1)
		VFR	N/A	Student	None	3 miles & 2,000' hor. 1,000' abv. 500' bel.		5 miles & 1 mile hor. 1,000' abv. 1,000' bel.		Traffic Advisories	No	No
		SVFR	N/A	Student	Private with instrument required for night operations	1 mile & clear of clouds		1 mile & clear of clouds		Separation of all SVFR operations from IFR operations and other SVFR operations	Yes (3)	Yes (5)
None	E					Below 1,200' AGL	Above 1,200' AGL	Below 1,200' AGL	Above 1,200' AGL			
		IFR	N/A	Instrument	None	N/A	N/A	N/A	N/A	None	No	No
		VFR	N/A	Student	None	1 mile & clear of clouds*	1 mile & 2,000' hor. 1,000' abv. 500' bel.	1 mile & clear of clouds	5 miles 1 mile hor. 1,000' abv. 1,000' bel.	None	No	No

(1) Unless otherwise authorized by ATC.
(2) See SFAR 45 (48 FR 50038) for ATC services at airport radar service area locations.
(3) ATC clearance or establishment of two-way radio constitutes permission to enter.
(4) Related proposal effecting this item.
(5) New requirement.
(6) Except helicopters from helicopters.
(7) Non-regulatory airspace designation.

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NAR 1–7.2.1 (AIRSPACE CLASSIFICATION AND APPLICATION SYSTEM)

The graphic depiction entitled, "The Proposal in Graphic Form Table 1" represents this recommendation except for the portion that would require student pilots to obtain their instructor's endorsement before operations in Class B Airspace could be conducted under SVFR or VFR. This exception represents the intent of the NAR 1–7.3.3 (Class B Airspace Pilot Requirement) Recommendation, which would leave current pilot requirements and restrictions intact. The graphic depiction also does not include the voluntary participation aspects of ATC services associated with the current TRSA program or mandatory/voluntary aspects of the ARSA program which is being evaluated under SFAR 45 (48 FR 50038).

NAR 1–7.2.2 (INTEGRATE TRSA REPLACEMENT)

The FAA assumes that Model B Airspace (ARSA) would be classified as Class C Airspace if it is adopted.

NAR 1–7.2.3

This recommendation is already adopted.

NAR 1–7.2.4 (VERTICAL/LATERAL LIMITS OF SVFR)

Comments are specifically requested on this recommendation. The FAA recognizes the intent of the TG to define the limits of an SVFR operation conducted under an airspace system that would classify the airspace of a control zone to which SVFR operations are currently limited. However, the FAA believes that the current language of § 91.107 (Special VFR Weather Minimums) is operationally flexible to procedurally accommodate this recommendation. For example, the rule limits SVFR operations to those conducted under an approporiate ATC clearance. Currently, FAA directives specify to the controller the content and applicability of an ATC clearance authorizing a pilot to conduct SVFR operations.

NAR 1–7.2.5 and NAR 1–7.2.6 (DEFINE SVFR)

Under this recommendation, the FAA would propose an amendment to Part 1 to include a definition of SVFR. A corresponding change to the "Pilot/Controller Glossary" (contained in various FAA directives and in the Airman's Information Manual) would be circulated for comments to FAA field elements and interested aviation industry representatives.

NAR 1–7.2.7 (REVISE FAR 91.107)

This recommendation would be proposed in its entirety.

NAR 1–7.2.8 (Revise FAR 103.17)

Under this recommendation § 103.17 would be amended to reflect the airspace reclassification terms. Also, ultralight vehicle operations would be permitted above 3,000 feet AGL over an airport that is within a control zone but does not have an operating control tower (Class D Airspace). The FAA considers this a relaxation of the current § 103.17, which prohibits ultralight operations within the entire control zone except those conducted under an ATC authorization. Today a control zone may reach as high as 14,500 feet MSL.

NAR 1–7.2.9 (AMEND FAR 91.105)

This recommendation would basically associate airspace reclassification terms with the current provisions of § 91.105. Also under this recommendation, current minimum distance from clouds requirement below 10,000 MSL in control airspace would be reduced to "clear of clouds" in a terminal control area (Class B Airspace). The FAA specifically requests comments on this aspect.

The recommended airspace reclassification model of TG 1–7.1, the airspace class designators, type of operations allowed within an airspace class, minimum civil pilot qualifications for operations within an airspace class, ATC services provided in each airspace class, and communications requirements are contained in the above graphic depiction of the proposal. The remaining aspects of the group's recommended airspace reclassification model, i.e., airspace class descriptors and associated establishment criteria, are summarized below.

1. *Class A Airspace (Positive Control Areas).* Class A Airspace would include that airspace presently designated as Positive Control Areas and Positive Control Routes.

2. *Class B Airspace (Terminal Control Areas).* Class B Airspace would include that airspace presently designated as Terminal Control Areas.

3. *Class C Airspace (Airport Traffic Area).* Class C Airspace would be that airspace presently designated for an airport where an airport traffic control tower is operating, and would include the associated control zone, airport traffic area, or terminal radar service area, airport radar service area designated for that airport. The ceiling of Class C Airspace would be 4,000 feet AGL for airport radar service locations and 3,000 AGL feet for all other locations. The base of Class C Airspace would be the surface except at airport radar service areas, in which case, the base would be the surface within a 5-mile radius of the airport and a 1,200 AGL base within a 10-mile radius of the airport.

4. *Class D Airspace (General Controlled Airspace).* Class D Airspace would be that airspace presently designated as Federal Airways; Continental Control Area; Control Zones and Transition Areas that overly Class C Airspace; Control Areas and Control Area Extensions; Area Routes; that airspace designated below 1,200 feet (in Alaska, below 1,500 feet AGL) as Control Areas and Control Area Extensions; and Control Zones or Transition Areas in their entirety at airports without operating airport traffic control towers.

5. *Class E Airspace (Uncontrolled Airspace).* This airspace would not be designated by regulations but would exist by definition as any airspace not designated as Class A, B, C, or D.

6. *Controlled Airspace.* The definition of controlled airspace would be amended as recommended.

7. *Uncontrolled Airspace.* Part 1 would be amended to include the definition as recommended for uncontrolled airspace.

8. *Airspace Designation Criteria.* Appropriate FAA directives would be revised to specify the criteria as recommended by the task group.

NAR 1–7.3.1, 1–7.3.2, 1–7.3.3, 1–7.3.4, 1–7.3.5, 1–7.3.6 (Pilot Certifications)

Under these recommendations current regulations dealing with pilot certifications would be revised to associate pilot certification, as they exist today, with a reclassified airspace system.

Economic Concerns and Questions

An important consideration in the FAA regulatory process is the examination of the benefits and costs of rulemaking actions. Agencies of the Federal Government are required by Executive Order 12291 to adopt only those regulatory programs in which the potential benefits to society outweight the potential costs to society.

Any regulatory proposal FAA might make will be accomplished by an evaluation which will qualify or quantify, to the extent possible, the benefits and costs of such proposals. Therefore, it is essential that comments for or against the proposals discussed here are accompanied by statements of the economic impacts perceived by the commenter.

FAA specifically solicits comments from individuals, corporate entities and organizations on the economic benefits and costs of the proposed regulations.

With this in mind, the FAA poses several questions:

1. What are the benefits associated with:

a. Simplified airspace terms and designations?

b. International commonality of airspace designations?

c. Permitting ultralight vehicle operations above 3,000 feet AGL over airports within control zones that do not have operating control towers?

d. Reducing the current minimum distance from clouds requirement below 10,000 feet MSL in controlled airspace to "clear of clouds" in a terminal control area?

2. What are the incremental costs imposed on aviation training facilities, fixed-based operators, aviation textbook publishers of navigation charts?

3. What are the cost impacts on pilots and other aviation-related personnel who must re-educate themselves with the new airspace terms and designations?

4. Is the proposed rule believed to have a significant negative economic impact on small business, non-profit organizations or governmental jurisdictions? If so, what are the types and sizes of the entities affected? Also, what is the nature and magnitude of the negative economic impact?

Responses to these questions should fully address the nature of the impact and the groups or types of operators, businesses or entities that are impacted. Commenters should describe and quantify the specific benefits and costs supported by factual data to the extent possible, or explain why costs are not quantifiable. Commenters should also provide the rationale for their opinions, which might include information pertaining to type of operation and typical aviation practices, or publication practices. The FAA will examine separately the costs imposed on the Federal Government (e.g., re-education and training).

The benefit and cost questions outlined above cover the broad areas of this ANPRM. The FAA desires comments pertaining to these areas of impact and other areas which the commenter feels may be of impact. The FAA invites particularly interested groups to gather the preferences, ideas and comments of their group members, through such devices as articles in membership publications and polls of their membership.

List of Subjects

14 CFR Part 65

Control zone.

14 CFR Part 71

VOR Federal airways, Colored Federal airways, Airspace, Control areas, Continental control area, Control zones, Transition areas, Positive control areas, Reporting points, Terminal control areas, Area low routes, Area high routes.

14 CFR Part 91

Airport traffic area, Air traffic control, ATC clearance, Two-way radio communications, Air traffic control tower, Pilot requirements, Positive control areas, Flight visibility, Cloud clearance minimum, IFR, VFR, Special VFR.

14 CFR Part 93

ATC, Airport traffic area.

14 CFR Part 103

Ultralight vehicle, Control zone, Airport traffic area, Positive control area, Terminal control area.

14 CFR Part 105

Control zone.

(Secs. 307 and 313(a) of the Federal Aviation Act of 1958, as amended [49 U.S.C. 1348 and 1354]; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.45 and 14 CFR 11.65)

The FAA has determined that this proposal is nonsignificant under DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1979]. Based on the very limited information available at this time, a regulatory evaluation of the economic impacts of the proposal is not currently feasible. However, a full regulatory evaluation will be prepared with the assistance of comments received as a result of this advance notice, if necessary, in conjunction with any notice of proposed rulemaking that may be issued on this subject.

Issued in Washington, D.C., on December 19, 1984.

Norbert A. Owens,

Deputy Associate Administrator for Air Traffic.

[FR Doc. 85-2856 Filed 2-4-85; 8:45 am]

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14 CFR Part 91

[Docket No. 24455; Notice No. 85-4]

Terminal Airspace Reclassification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: On February 3, 1983 (48 FR 5202), the FAA announced completion of certain task assignments of the National Airspace Review (NAR) Terminal Airspace Task Group (TG) 1-2. The FAA is now announcing the availability of certain recommendations of that group concerning flight rules of Subpart B of Part 91 of the Federal Aviation Regulations (FAR) (14 CFR 91) for public review and comment in advance of formal rulemaking proposals. Additionally, Notice No. 85-5 is being issued simultaneously with this proposal as it seeks comments on recommendations of another task group (TG 1-7) which would classify airspace designations by category vice name as is the case in certain recommendations of TG 1-2 and as proposed in this notice.

DATE: Comments must be received on or before June 6, 1985.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attn.: Rules Docket (AGC-204), Docket No. 24455, 800 Independence Avenue SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Becker, Airspace-Rules and Aeronautical Information Division, AAT-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this advance proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the recommendations. Comments are specifically invited on any regulatory, economic, environmental, and energy aspects of the recommendations. Communications should identify the regulatory docket or notice number, appropriate NAR Task Group Recommendation(s), and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped

postcard on which the following statement is made: "Comments to Docket No. 24455." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before proposing any rule. Any proposed rule resulting from the recommendations contained in this notice may reflect comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of ANPRMs

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this ANPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

On April 22, 1982, the NAR plan was published in the **Federal Register** (47 FR 17448). On February 3, 1983, a revised NAR Plan was published (48 FR 5202). This revised plan reflects the status of task assignments within the various task groups. The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The three main objectives of the NAR are:

(1) To develop and incorporate into the air traffic system a more efficient relationship between traffic flows, airspace allocation, and system capacity. This will involve the use of improved air traffic flow management to maximize system capacity and improve airspace management.

(2) To review and eliminate, wherever possible, governmental restraints to system efficiency levied by the FAR and FAA directives—reducing complexity and simplifying the ATC system.

(3) To revalidate ATC services within the National Airspace System with respect to state-of-the-art and future technological improvements. This will entail a complete review of separation criteria, terminal control area/terminal radar service area (TCA/TRSA) requirements, instrument flight rules/visual flight rules (IFR/VFR) services to the pilot, etc.

Organizations participating in the NAR task groups are:

Federal Aviation Administration
Air Line Pilots Association
Department of Defense (USAF)
USAATC/ASO
Air Transport Association
Navy Department
National Business Aircraft Association
Regional Airline Association
National Association of State Aviation Officials
Aircraft Owners and Pilots Association
Heliports and Airways Helicopter Association
Experimental Aircraft Association
Helicopter Association International

NAR Recommendations Pertaining to This Notice

NAR 1-2.1.3 Terminal Control Area Operating Requirements

"Task Group 1-2.1 recommends that the FAA take action to delete the Group II category of TCAs and redesignate all existing TCAs as one type of terminal airspace with the following equipment requirements and operating rules:

1. A two-way radio capable of communicating with ATC on appropriate frequencies.

2. A VOR or TACAN receiver, except for helicopters.

3. A 4096 code transponder with Mode C automatic altitude reporting equipment, except for helicopters operating under a letter of agreement.

4. A student pilot logbook endorsement by a certified flight instructor (CFI) that he/she has satisfactorily demonstrated ability to operate in a TCA.

5. Unless otherwise authorized by ATC, each person operating a *large turbine*-engine powered airplane to or from a primary airport shall operate at or above the designated floors while within the lateral limits of the TCA.

6. No person may operate an aircraft in the airspace underlying a TCA, at an indicated airspeed of more than 200 knots (230 mph)—FAR 91.70.

7. Operations within TCA are exempt from the requirements of FAR 91.70, paragraph (a.) when authorized by ATC.

NAR 1-2.1.9 Terminal Control Area Name

Notwithstanding the current meaning and definition of "Terminal Control Areas," Task Group 1-2.1 recommends that the term "Terminal Control Area" be retained to describe the regulatory airspace and ATC services that are specified in appropriate Federal Aviation Regulations (FAR's) and related directives.

NAR 1-2.3.1 Control Tower Area

In an attempt to reduce misunderstanding and to more clearly associate terminology of airspace to the need for the airspace, Task Group 1-2.3 recommends that the term "Airport Traffic Area" be changed to "Control Tower Area".

NAR 1-2.3.2 Operations at Airports With Operating Control Towers

Task Group 1-2.3, recognizing the desirability for standardization and simplification of Federal Aviation Regulations and Air Traffic Procedures, recommends that the communications requirements for operations at airports with Control Towers, reflected in FAR 91.87(c) be deleted and the provisions of (b) be made applicable for all locations with an operating Control Tower.

Furthermore, Task Group 1-2.3 recommends that FAR 91.87(b) be revised, as follows, to clarify that pilots will be complying with the two-way communications requirements by contacting the ATC facility responsible for the airspace involved:

FAR 91.87(b) Communications with Control Towers. No person may, within an airport traffic area (control tower area), operate an aircraft to, from or on an airport having a control tower, unless two-way radio communications are maintained between that aircraft and the control tower responsible for the airport traffic area (control tower area), or with the facility from which the pilot is receiving air traffic control services.

Old

FAR 91.87(b) No person may within an airport traffic area, operate an aircraft to, from or on an airport having a control tower operated by the United States unless two-way radio communications are maintained between that aircraft and the control tower.

New

FAR 91.87(b) No person may, within a *control tower area*, operate an aircraft to, from or on an airport having a control tower, unless two-way radio communications are maintained between that aircraft and the control tower responsible for *control tower area*, or with the facility from which the pilot is receiving air traffic control services.

Additionally, the AIM should also be revised to accurately define the pilot and controller responsibility with respect to FAR 91.87(b).

NAR 1-2.3.4 Control Tower Area Definition

For the purpose of consistency and standardization of aeronautical references within the National Airspace System and to establish a common point of reference coincidental with Control Zones, TG 1-2.3 recommends that "Airport Traffic Area" as contained in FAR Part 1—Definitions and Abbreviations be amended as follows:

Control Tower Area means, unless otherwise specifically designated in Part 93, that airspace within a horizontal radius of 5 nautical miles from the geographic position of any airport at which a control tower is operating, extending from the surface up to, but not including, an altitude of 3,000 feet above the elevation of the airport.

Old

Airport Traffic Area means, unless otherwise specifically designated in Part 93, that airspace within a horizontal radius of 5 statute miles from the *geographic center of any airport* at which a control tower is operating, extending from the surface up to, but not including, an altitude of 3,000 feet above the elevation of the airport.

New

Control Tower Area means, unless otherwise specifically designated in Part 93, that airspace within a horizontal radius of *5 nautical miles* from the *geographic position* of any airport at which a control tower is operating, extending from the surface up to, but not including, an altitude of 3,000 feet above the elevation of the airport.

NAR 1-2.3.5 Control Zone Ceiling and Lateral Dimensions

For the purpose of consistency and standardization of aeronautical references within the National Airspace System, Task Group 1-2.3 recommends that Control Zone be redefined as follows:

Control Zone—controlled airspace which extends from the surface up to, but not including, an altitude of 3,000 feet above the elevation of the airport, unless othewise specified. A Control Zone may include one or more airports and is normally a circular area within a radius of 5 nautical miles and any extensions necessary to include instrument approach and departure paths.

Additionally, although not part of the definition, the Task Group recommends that all Control Zone extensions be expressed in Nautical Miles.

Old

FAR 71.11 The Control Zone listed in Subpart F of this part consists of controlled airspace which extends upward from the surface of the earth and terminates at the base of the continental control area. Control Zones that do not underlie the continental control area have no upper limit. A Control Zone may include one or more airports and is normally a circular area with a radius of 5 miles and any extensions necessary to include instrument approach and departure paths.

New

FAR 71.11 Control Zone—airspace which extends from the surface up to, but not including, an altitude of 3,000 feet above the elevation of of the airport, unless otherwise specified. A Control Zone may include one or more airports and is normally a circular area with a radius of *5 nautical miles* and any extensions necessary to include instrument approach and departing paths.

NAR 1-2.3.7 Nautical Miles Versus Statute Miles Designations

For the purpose of consistency and standardization of earonautical references within the National Airspace System, Task Group 1-2.3 recommends that FAR 71.19(b) be revised as follows:

(b) Except as otherwise specified and except that mileages for Federal airways, Control Zones and Transition Areas are stated as nautical miles, all mileages in this part are stated as statute miles.

Old

FAR 71.19(b) Except as otherwise specified and except that mileages for Federal airway are stated as nautical miles, all mileages in this part are stated as statute miles.

New

FAR 71.19(b) Except as otherwise specified and except that mileages for Federal airways, *Control Zones and Transition Areas* are stated as nautical miles, all mileages in this part are stated as statute miles.

A copy of the task group's report is in the public docket.

Discussion of the Recommendations

There is a discussion below of each regulatory proposal. Benefits and costs are an important consideration in decisions on whether to enact the proposals in this ANPRM. The primary benefits associated with the proposals come from improvements in the safety and efficiency of the airspace system. Any costs would result from increased equipment needs, personnel or publishing expenses, and changes in the access to the airspace system in certain areas.

Comments are sought on each regulatory proposal. The economic analysis for any proposed rule will concentrate on the net cost of proposals. A proposal may have costs if its benefits are expected to be greater than costs. Before any rule is proposed, a detailed economic evaluation will be made to assure that benefits of proposals outweigh any costs. Comments are requested to address perceived costs and benefits of the proposals in as much detail as possible so that an adequate economic evaluation of proposals can be conducted.

Terminal Control Area (NAR Recommendations 1-2.1.3, 1-2.1.9)

A TCA is designated airspace under Part 71 within which aircraft are subject to the provisions of air traffic control. It is controlled airspace extending upward from the surface or higher to specified altitudes, within which all aircraft are subject to operating rules and pilot and equipment requirements specified in the rules.

In support of their recommendations concerning TCA's, the task group felt that the speed and operating characteristics of aircraft are not as critical from an operational or air traffic management standpoint, and the more stringent pilot qualification requirements of a Group I TCA are not needed to achieve a safe environment in Group II TCA's. A private pilot certificate or better is presently required to land or take off from an airport within a Group I TCA. The proposed TCA would require a student pilot logbook endorsement by a certified flight instructor (CFI) that he/she has satisfactory demonstrated ability to operate in a TCA. Also, aircraft could be exempt from the airspeed restriction below 10,000 feet while in the TCA if authorized by ATC.

There are currently only two categories of TCA's, Group I and Group II which have been established at the 23 busiest locations in the United States. All of these TCA's were established for the same reason—to reduce the risk of midair collisions between known and unknown aircraft. There are no Group III TCA's, although provisions for this category are contained in the current rules. This recommendation will redesignate all existing TCA's as one type.

Benefits and Costs

To the extent possible, commenters are requested to provide quantitative economic impact assessments of this proposal. In particular, commenters are requested to address the following questions.

- What is the impact of the proposed transponder requirement for present Group II users?
- What is the benefit of relaxed use standards for student pilots using TCA airspace?
- Are there training or other costs associated with the relaxed standards for student pilots?

Airport Traffic Area (NAR Recommendations 1-2.3.1, 1-2.3.2, and 1-2.3.4)

An airport traffic area (ATA) exists by definition under Part 1 where an operational control tower exists. The area is basically a cylinder within a 5 mile radius of the airport, extending up to but not including 3,000 feet above the airport. In support of the recommendation concerning the existing ATA rules and definition, the group believes the term "airport traffic area" is misleading. A person, simply reading the term could easily and understandably make an assumption that the phrase is generic and applies to any airport. By definition, under Part 1, the phrase is only applicable to an airport where an air traffic control tower exists and is operating. The group felt the term "control tower area" more aptly applies.

Further, the group felt, the different communications requirements of "Federally" and "non-Federally" operated control tower were confusing

to pilots. For example, the current rule requires pilots operating to, from, or on an airport having a "Federally" operated control tower to maintain two-way radio communications with the control tower. For a non-Federal tower if an aircraft's radio equipment so allows, two-way radio communications must be maintained between the aircraft and the tower; however, if that aircraft's radio equipment allows only reception from the tower, the pilot simply must monitor the tower's frequency.

Air traffic control rules concerning airport traffic rules as well as associated ATC procedures refer to the airport traffic control tower upon which the airport traffic area is centered. The term "control tower area," according to the task group, would help users to associate the particular piece of airspace with the purposes and functions that it serves.

Benefits and Costs

NAR Recommendation 1–2.3.1 is without significant regulatory or economic consequences. The only impact is that reference throughout the FAR would have to be changed, and the terminology change would have to be entered into training systems in a number of ways.

However, NAR Recommendation 1–2.3.2 would require operations at all control towers to follow the regulations of FAR 91.87(b) which presently apply only to operations at Federally operated towers. There are approximately 35 non-Federal towers, some run by State governments at public use airports, and some run by private parties at private-use airports.

The basis difference is that FAR 91.87(c) presently allows operations into non-Federal towers with no radio, as well as receiving radios (one way communication) only.

The NAR task group points to several benefits associated with adopting these proposals. These are an orderly and safe environment, uniformity and simplicity in all airport traffic areas, a greater level of safety because of increased measure of accountability, and enhanced airport efficiency. Commenters are requested to quantify, to the extent possible, these and other benefits which could result from adoption of the proposal. Any analysis of accidents which may be relevant to this proposal should be presented in comments.

On the cost side, commenters are requested to itemize and quantify the potential costs associated with the proposal, especially the communications improvements that would be required for aircraft without radios and aircraft with only one-way communication capability. While the numbers of such aircraft are well documented, the use, by such aircraft, of non-Federal towered airports is not known.

Nautical versus Statute Miles Airspace Designations (NAR Recommendations 1–2.3.5 and 1–2.3.7)

The group believes that standardization should exist in all airspace designations. This is not the case presently. For example, some airspace designations use statute (control zones) while others use nautical miles (airways). Currently, an ATA is defined by using statute miles.

Benefits and Costs

The FAA has some reservations about changing all airspace lateral designations from statute miles to nautical miles. For example, since a nautical mile is longer than a statute mile, airspace now designated with statute miles would encompass a larger volume of airspace if the conversion was a simple replacement of the word "statute" with the word "nautical." On the other hand, if the conversion kept the existing airspace size intact, the system would have the majority of airspace assignments designated with fractions of a nautical mile, e.g., a 5 statute mile control zone would be approximately a 4.34 nautical mile radius, yet encompass the same volume of airspace.

The simple exchange of the terms "statute" and "nautical" would create an impact on aeronautical charts. For example, sectional charts are only updated every six months; however, chart updates are staggered on a monthly basis. Therefore, for a period of 12 months some charts would depict airspace designations as nautical while others would be statute. There would also be a sizable cost associated with any effort along this line.

The principal benefit claimed by the NAR for this group of recommendations is the value of standardization. Aircraft instruments are generally calibrated in nautical miles, and other key items are also represented in nautical miles. Conversion between nautical and statute miles, it is argued, is difficult and sometimes hazardous. Commenters are requested to quantify these and other benefits to the extent possible.

Commenters are requested to address all of the above potential benefits and costs of adopting the NAR recommendations. Comments should be quantified to the extent possible.

Control Zone Ceiling (NAR Recommendation 1–2.3.5)

The current vertical limit of a control zone is generally 14,500 feet, which is the base of the continental control area. The group felt this vertical limit was excessive. Clarification and simplification would be achieved if the cap of the control zone would coincide with the airport traffic area which has a vertical limit of up to but not including 3,000 feet. The group realized that all elements of a control zone and airport traffic area could not be merged into one entity, especially where airport traffic control towers do not exist and there are IFR approaches. Comments are requested on benefits and costs of this recommendation.

The FAA has determined that this proposal is nonsignificant under DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1979]. Based on the very limited information available at this time, a regulatory evaluation of the economic impacts of the proposal is not currently feasible. However, a full regulatory evaluation will be prepared with the assistance of comments received as a result of this advance notice, if necessary, in conjunction with any notice of proposed rulemaking that may be issued on this subject.

Similar FAA Proposals

Notice No. 85–5, which seeks comments on NAR TG 1–7's recommendations to classify U.S. airspace designations into five categories, is being issued simultaneously with this proposal. While this proposal, in part, seeks to rename an airport traffic area to a control tower area, and delete Group II TCA's, Notice 85–4 would categorize an airport traffic area as Class C airspace, and TCA as Class B airspace.

After reviewing public comments on both proposals, the FAA will determine the extent of follow-on regulatory actions concerning these proposals.

List of Subjects in 14 CFR Part 91

Aircraft, Air traffic control, Aviation safety.

(Secs. 307 and 313(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a)); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.45; and 14 CFR 11.65)

Issued in Washington, D.C., on December 28, 1984.

R. J. Van Vuren,

Associate Administrator for Air Traffic.

[FR Doc. 85–2866 Filed 2–4–85; 8:45 am]

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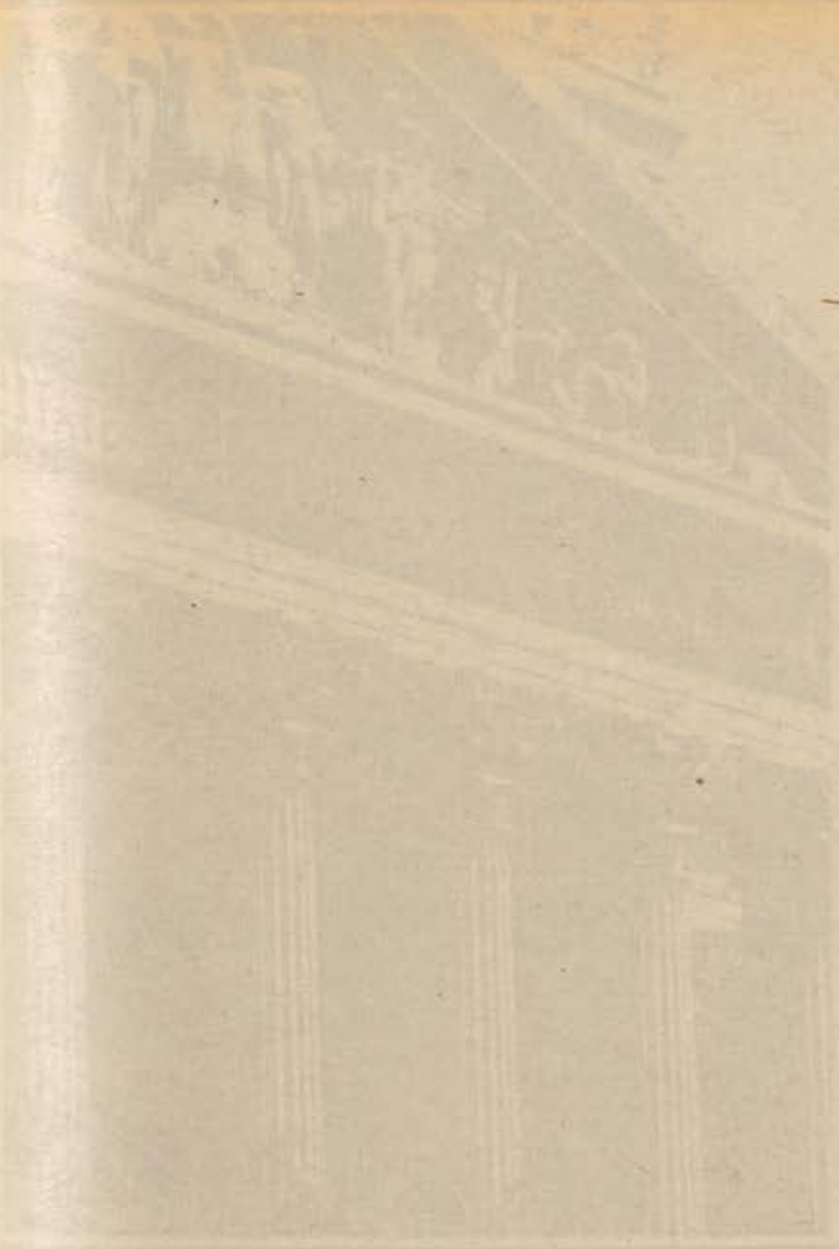

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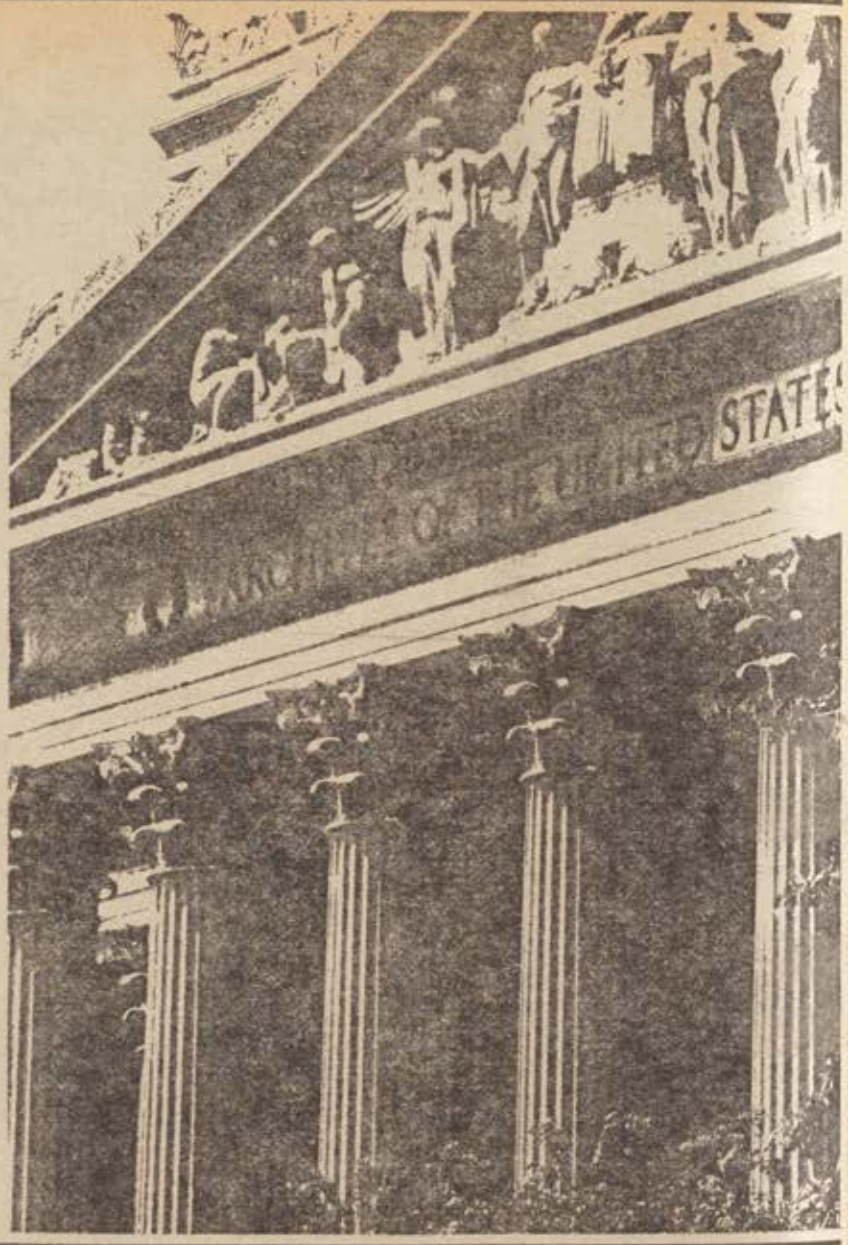

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