Hawaii and Puerto Rico for 1967 have been determined to be 50,000 and 130,000 short tons, raw value, respectively.

[F.R. Doc. 66-13898; Filed, Dec. 27, 1966; 8:50 a.m.]

[Sugar Reg. 817, Amdt. 7]

PART 817—REQUIREMENTS RELATING TO BRINGING OR IMPORTING SUGAR OR LIQUID SUGAR INTO CONTINENTAL UNITED STATES

Limitations on the Importation of Sugar-Containing Products or Mixtures

Basis and purpose and bases and considerations. This amendment is issued pursuant to authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), hereinafter referred to as the "Act," and provides for a determination establishing the quantities of certain sugar-containing products or mixtures as hereinafter described that may be imported into the continental United States, Hawaii, and Puerto Rico during the calendar year 1967 and procedural requirements which must be met in making such importations.

In accordance with the rule making requirements in 5 U.S.C. 553(b)(c) (80 Stat. 378) a notice of proposed rule making was published in the FEDERAL REGISTER, on Friday, December 2, 1966 (31 F.R. 15147). The notice provided for written data, views, or arguments for consideration in connection with the proposed regulation to be submitted by interested persons not later than December 12, 1966. All written submissions received pursuant to such notice have been thoroughly considered.

The purpose of this amendment is (1) to provide for quantitative import limitations on mixtures of sugar and butterfat and/or flour during the calendar year 1967 pursuant to section 206 of the Act; and (2) to make minor changes in the procedural requirements governing the importation of sugar-containing products subject to import limitations.

Based on data available to the Department, importations of products that contained more than 25 percent sugar and contained solid ingredients other than sugar consisting principally of either butterfat or flour or both from all countries during the three most recent consecutive years were as follows:

[Pounds]

Country of origin	1964 (1)	1965 (2)	1966 (3)	3-year average (4)
Australia	0	2,239,000	2,016,000	1,418,413
Austria	0	0	2,480,842	827,113
Belgium	0	151,032	42,109,314	14,089,584
Canada	0	0	34,942,461	11,649,816
Denmark	0	1,120,000	4,656,230	1,925,683
France	0	0	612,854	204,300
The Netherlands	0	0	4,144	1,381
Sweden	0	0	1,190,840	396,900
United Kingdom	0	0	6,475,560	2,158,500
West Germany	0	0	336,000	112,000

The quantities shown for 1966 are not necessarily final and the 3-year averages may be subject to adjustment after all 1966 import data are finalized.

Quantitative limitations in terms of pounds of product are established in § 817.10(d) for each country having 3-year average importations in excess of 100 short tons, raw value, of sugar content, except that the quantity established for Australia will be equal to the limitation established for the country having the highest 3-year average importations. Prior to 1966 Australia had been the principal exporter of sugar-butterfat mixtures to the United States. That country beginning in 1963 voluntarily limited exports of these mixtures and as a consequence did not expand its exports in 1966 when a number of countries entered this market and others increased their exports many fold. Consequently the average of the quantities imported during the most recent 3 years is less than could have been expected had Australia not voluntarily limited its exports, and had participated with other countries in the increase in imports of these sugar containing products in 1966. It is determined that such an annual limitation for 1967 for Australia will not substantially interfere with the attainment of the objectives of the Act. Assuming an average sugar content of 55 percent, countries other than Australia receiving quantitative limitations are those whose imports during the 3-year period (1964–66) averaged more than 340,000 pounds of product, which amount on the basis of 55 percent sugar content would contain 187,000 pounds of refined sugar. Importations in 1967 from all countries not having average imports of more than 340,000 pounds of product during 1964–66 will be limited to 100 short tons, raw value, of sugar content which is the equivalent of 187,000 pounds of refined sugar.

Changes in the procedural regulations involve clarification of the port of departure, the country of origin, and the eligibility and priority of applications. An application to be counted separately for priority purposes, must cover all of an importer's shipment scheduled to depart from the same port on the same voyage and having the same destination. Provision is also made for importers to verify the actual weight and composition of the product imported. Failure to so verify may be grounds for withholding approval of an importer's subsequent applications. Also provision is made for cancellation of authorizations covering shipments which do not depart or arrive within reasonable time periods from dates stated on the applications.

In view of the several amendments to Part 817 dealing with sugar-containing products, § 817.10 is restated herein in its entirety for the convenience of interested persons.

Pursuant to the provisions of Section 403 of the Act (61 Stat. 932), section 817.10 of Part 817, Chapter VIII, Title 7, is amended to read as follows:

§ 817.10 Sugar-containing products and mixtures.

(a) The importation or bringing into the continental United States, Hawaii or Puerto Rico of any sugar-containing product or mixture shall not be subject to any import limitations pursuant to the provisions of this part unless and until the Secretary has made effective a determination that the prospective importation of such sugar-containing product or mixture will substantially interfere with the attainment of the objectives of the Act. A proceeding to make a determination required by this section as well as any amendment or repeal thereof will be instituted by the Secretary either upon the Secretary's own initiative, or upon the written petition of an interested person if the Secretary has reasonable grounds to believe, on the basis of information accompanying the petition and other information available to him, that there may be a substantial interference with attainment of the objectives of the Act. Petitions should be submitted to the Director, Sugar Policy Staff, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. A proceeding to make a determination that the importation or bringing into the continental United States, Hawaii or Puerto Rico of a sugar-containing product or mixture will or will not substantially interfere with the attainment of the objectives of the Act, or an amendment or repeal of such a determination, shall be instituted by publishing a notice of the proposed rule making, and affording interested persons an opportunity to submit written data, views and arguments and to submit the same orally if provision is made therefore in the notice. The determination shall be published in the FEDERAL REGISTER. A determination may pertain to one or more sugar-containing products or mixtures or a group of similar sugar-containing products or mixtures. In making a determination that the bringing in or importing of a sugar-containing product or mixture will or will not substantially interfere with the attainment of the objectives of the Act, the Secretary shall give consideration to (1) the total sugar content of the product or mixture in relation to other ingredients therein or to the sugar content of other products or mixtures for similar use; (2) the costs of the mixture in relation to the costs of its ingredients for use in the continental United States, Hawaii or Puerto Rico; (3) the present or prospective volume of importations relative to past importations of the product or mixture; (4) whether it will be marketed to the ultimate consumer in the identical form and package in which it is imported or the extent to which it is to be further subjected to processing or mixing with similar or other ingredients; and (5) other pertinent information. Information relating to the above listed factors should accompany any petition to the Secretary to institute a proceeding as provided in this section or shall be furnished by persons having such information upon request by the Secretary.

(b) If the Secretary has determined pursuant to paragraph (a) of this section that the prospective importation or bringing into the continental United States, Hawaii or Puerto Rico of a sugar-containing product or mixture will substantially interfere with the attainment of the objectives of the Act, a total quantity of such sugar-containing product or mixture shall not be brought or imported into the continental United States, Hawaii or Puerto Rico in any one year from any one country or area in excess of the quantity which the Secretary determines will not so interfere, but not less than (1) the average annual importations of the product or mixture from the country or area during the most recent 3 consecutive years for which reliable data are available; or (2) 100 short tons, raw value, of sugar content of the product or mixture from any one country or area in the event that no reliable data of quantities imported or brought in from the country or area for 3 consecutive years are available. Persons having information or data of quantities of a sugar-containing product or mixture imported or brought in during any of the most recent 3 consecutive years from a country or area may submit such information or data to the Director, Sugar Policy Staff, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, for consideration of its reliability for use.

(c)(1) Any sugar-containing product or mixture as to which the Secretary has determined that the actual or prospective importation or bringing thereof into the continental United States, Hawaii or Puerto Rico will substantially interfere with the attainment of the objectives of the Act, shall not be imported or brought into the continental United States, Hawaii or Puerto Rico until a release directed to the Collector of Customs has been obtained by the importer from the Secretary. If the Secretary or his delegate determines that the release of the product is permissible in accordance with limitations provided in paragraph (d) of this section such release will be issued upon application to the Sugar Quota Group, Policy and Program Appraisal Division, ASCS, U.S. Department of Agriculture, Washington, D.C. 20250, in quintuplicate on a prescribed form designated as Form SU-9A. Application forms will be available from the above mentioned source and at all Customs Houses, and will provide for the following information regarding the product to be imported on each vessel or carrier:

The name and address of the importer.

The name of the vessel or carrier which is to transport the product to the U.S. port or point of entry.

The port or point of departure of such vessel or carrier.

The date of departure from such point or port.

The port or point of entry.

The date of arrival.

The quantity of product to be imported (total pounds or gallons).

The country of origin (where manufactured).

The name of the product.

Whether the identical product as packaged will be marketed to the ultimate consumer.

The percentage of sugar and each other ingredient in the product including moisture.

A certification that the information contained in the application is true and correct to the best of the importer's knowledge and belief and that he will furnish the Department within 30 days after importation the consumption entry or warehouse withdrawal number, the actual weight entered, and verification of the composition of the product.

The date submitted, signature and title of the person signing the application.

(c)(2) An application for issuance of an authorization to a Collector for the release of a sugar-containing product or mixture shall become eligible for authorization at 12:01 a.m. of the fifth day prior to the date of departure of the shipment as stated on the application, or at the time of receipt of the application whichever time occurs later: *Provided*, That applications received on or before the date this amendment is published in the FEDERAL REGISTER that have dates of departure not later than 5 days after such effective date shall be considered as having been received at the same time and as all having the same date of departure. An authorized application shall be cancelled if the covered shipment does not leave the port or point of departure on or before the fifth day after the scheduled departure date as stated on such application, or if a duty-paid entry on such shipment is not made at the port of entry on or before 15 days after the scheduled arrival date as stated on such application, except that the period during which the application is valid may be extended by the Secretary for good cause satisfactory to the Secretary. The entire quantity of an importer's shipment scheduled to depart on a vessel or carrier from the same port of departure, on the same date of departure, and having the same destination, must be covered by one application. The Secretary shall authorize applications for the release of sugar-containing products by the Collector of Customs in the same order as such applications become eligible for authorization or approval. If two or more applications covering products from the same country become eligible for authorization at the same time, such applications shall be authorized in the order of the date of departure, earliest first, except when applications are considered as having the same date of departure as provided above. If two or more applications for release submitted by different applicants become eligible for authorization at the same time and have or are considered to have the same date of departure and the quantity permissible for importation within the limitations provided in paragraph (d) of this section is less than the total quantity covered by such applications, the quantity authorized for release under each such application shall be determined as follows. An equal share of the quantity permissible for importation shall be calculated by dividing such quantity by the total number of such applications. All such applications that cover a quantity in each application less than such equal share shall be approved and the quantities stated therein shall be authorized for release. The total of the quantities covered by such approved applications shall be deducted from the quantity permissible for importation, the remainder shall be divided equally among the remaining applications but not to exceed the quantity applied for in any such application, and the quantity assigned to each such remaining application as a result of such division shall be authorized for release under such application.

(c)(3) An application made pursuant to this section constitutes a representation by the applicant that at the time the application is made:

(1) He has control of the quantity of the product which is subject to shipment as specified;

(2) Firm commitment has been made by the shipping company for shipment as described on the application; and

(3) The date of departure of the vessel or carrier stated on the application is (i) the date specified to the applicant or shipper by the Master, Owner or Agent of such vessel or carrier as the expected departure date, or (ii) the date the shipper expects the vessel to depart based on the date the vessel or carrier will be available for loading as specified by the Master, Owner or Agent of such vessel or carrier plus the normally required loading time.

(c)(4) Authorizations of applications for the release of the sugar-containing product may be denied if the applicant has failed to report in the manner and within the time prescribed in this section with respect to a previous importation or if any information on an application previously submitted and approved is determined not to be substantially correct.

(d) It is hereby determined upon the basis and considerations heretofore stated and as set forth in Federal Register document 66-7654 (31 F.R. 9495) that prospective importation into the continental United States, Hawaii, and Puerto Rico of the following described sugar-containing products or mixtures will substantially interfere with the attainment of the objectives of the Act and shall be subject to the import limitations provided in this paragraph (d) of this section: Products or mixtures which (i) contain more than 25 percent sugar expressed as a percent of the total weight of solids (excluding moisture and volatile matter); (ii) contain solid ingredients other than sugar consisting principally of either butterfat or flour or both; and (iii) either are to be further subjected to processing or mixing with similar, or other ingredients, or are not to be marketed to the ultimate consumer in the identical form and package in which imported. The total quantity of all such products or mixtures which may be imported during the calendar year 1967 from each of the following countries shall not exceed the amount stated as follows for such country:

Country	Pounds
Australia	14,090,000
Austria	827,000
Belgium	14,090,000
Canada	11,650,000
Denmark	1,926,000
Sweden	397,000
United Kingdom	2,159,000
Any other country	([1])

[1] 100 short tons, raw value, of sugar content (dry basis), the equivalent of 187,000 pounds, refined sugar.

NOTE: The quantities shown in pounds are based partly on preliminary data and are subject to change to reflect final 1966 data.

None of the described products or mixtures shall be imported except pursuant to the procedural requirements contained in paragraph (c) of this § 817.10.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153; sec. 206; 61 Stat. 927 as amended by P.L. 89-331, 79 Stat. 1277)

Effective date. The regulations determining the quantitative limitations on sugar-containing products or mixtures apply to such products to be imported beginning January 1, 1967. Accordingly, it is hereby found to be impracticable and not in the public interest to comply with the 30-day effective date requirements in 5 U.S.C. 553(d) (80 Stat. 378). The aspects relating to the submission and approval or acceptance of applications shall be effective when published in the FEDERAL REGISTER and all other provisions of this regulation shall become effective January 1, 1967.

Signed at Washington, D.C., this 22d day of December 1966.

JOHN A. SCHNITTKER,
Under Secretary.

[F.R. Doc. 66-13856; Filed, Dec. 27, 1966; 8:47 a.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 246, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553 (1966)) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

Order, as amended. The provisions in paragraph (b)(1) (i), (ii), and (iii) of § 910.546 (Lemon Reg. 246, 31 F.R. 16185) are hereby amended to read as follows:

§ 910.546 Lemon regulation 246.

* * * * *

(b) * * *

(1) * * *

(i) District 1: 30,690 cartons;

(ii) District 2: 71,610 cartons;

(iii) District 3: 125,550 cartons.

* * * * *

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 22, 1966.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 66-13894; Filed, Dec. 27, 1966; 8:50 a.m.]

Chapter X—Consumer and Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

[Milk Order 32]

PART 1032—MILK IN SOUTHERN ILLINOIS MARKETING AREA

Order Terminating a Certain Provision

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Southern Illinois marketing area (7 CFR Part 1032), it is hereby found and determined that:

(a) The following provision of the order no longer tends to effectuate the declared policy of the Act:

(1) The last sentence in § 1032.12(c) which reads "For the months of February through August 1967, a supply plant may be a pool plant pursuant to this paragraph if it was a pool plant in each month from the effective date of this order through January 1967."

(b) Thirty days notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(1) This termination order does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This termination order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(3) This provision as contained in the amended order to be effective January 1, 1967, would permit a supply plant qualifying as a pool plant during January 1967 to continue as a pool plant during the following months of February through August.

The Suburban St. Louis order, as amended effective January 1, 1967, is a "continuing" order and is newly designated the Southern Illinois order. The present order (Suburban St. Louis) permits a supply plant qualifying as a pool plant during the months of September through January to automatically continue to be a pool plant during the following months of February through August. However, as shown in the final decision of the Acting Secretary issued October 27, 1966 (31 F.R. 14028), the intent was to continue the present automatic pool supply plant standards of the Suburban St. Louis order whereby only supply plants qualifying as pool plants during the months of September through January may maintain pool plant status during the following months of February through August without making shipments of milk to pool distributing plants. The provision inadvertently inserted in the order does not affect any existing pool supply plant but could provide a means for supply plants not now associated with the market to qualify as pool supply plants in January 1967, and on this basis only, maintain pool plant status during the following months February through August without further shipments of milk to the market.

This action would continue the present pooling requirements and is necessary to maintain orderly marketing of milk in the area.

Failure to terminate this language would therefore result in the inappropriate application of the regulation to the handling of milk in the Southern Illinois market.

(4) Interested parties were afforded opportunity to file written data, views, or arguments concerning this termination (31 F.R. 15598). None were filed in opposition to the proposed termination.

Therefore, good cause exists for making this order effective January 1, 1967.

It is therefore ordered, That the aforesaid provision of the order is hereby terminated.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Effective date: January 1, 1967.

Signed at Washington, D.C., on December 22, 1966.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 66-13857; Filed, Dec. 27, 1966; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Airspace Docket No. 66–WA–38]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Airspace

The purpose of this amendment is to extend the time of designation of Restricted Area R–5802, Indiantown Gap, Pa.

On December 14, 1966, the Department of the Army stated that an urgent military requirement will exist for the use of Restricted Area R–5802 during the months of January and February 1967 for the development of a classified project. This project involves firing of a classified nature by the Budd Co. for the Picatinny Arsenal, Dover, N.J. The Army has stated that the firing is of such a nature that the controlled firing concept would not be satisfactory.

At the present time, R–5802 is not activated or designated during the months of December, January, or February. It is therefore necessary to designate this area for use during the months of January and February 1967. The area will be required for only a limited number of days during this period. Also, the times of usage and the altitudes required will vary. Therefore, the Army requirement can be met and the public best served by designating the area to be activated by the issuance of a NOTAM 48 hours in advance of desired usage. The Army will specify in each NOTAM the date(s), hours of use and the altitudes required for each test firing. The maximum altitude will not exceed 13,000 feet MSL.

Though there has been insufficient notice for normal procedures to effect this change, arrangements have been made to reflect this alteration on the appropriate en route low altitude navigation chart.

The Administrator has been authorized by Congress to order the use of airspace under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of airspace. In exercising the authority granted to him, the Administrator also is required to give full consideration to the requirements of national defense.

Since the Department of the Army has stated that the designation of this restricted area is an urgent military requirement, the Administrator has determined that it is contrary to the public interest to comply with the notice, public procedure, and effective date requirements of the Administrative Procedure Act and, therefore, this amendment may become effective in less than 30 days.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended effective 0001 e.s.t., January 5, 1967, as hereinafter set forth:

Section 73.58 (31 F.R. 2333) R–5802, Indiantown Gap, Pa., is amended by adding to the text the following time of designation "January 5 through February 28, 1967, as established by NOTAM issued at least 48 hours in advance."

(Secs. 306 and 307 of the Federal Aviation Act of 1958; 49 U.S.C. 1347, 1348)

Issued in Washington, D.C., on December 22, 1966.

WILLIAM E. MORGAN,
Acting Director,
Air Traffic Service.

[F.R. Doc. 66–13899; Filed, Dec. 27, 1966; 8:50 a.m.]

[Docket No. 7194; Amdt. 151–17]

PART 151—FEDERAL AID TO AIRPORTS

Review of Miscellaneous Eligibility Criteria and Programing Standards

These amendments to Part 151 of the Federal Aviation Regulations add, revise, and clarify certain eligibility criteria and programing standards for obtaining Federal financial assistance for airport development under the Federal-aid Airport Program. This action is taken on the basis of proposals made in Notice 66–5 that was published in the FEDERAL REGISTER on March 17, 1966 (31 F.R. 4523).

It appears to the Agency that further study is needed of Proposal 2 of the Eligibility Criteria Proposals (Adequate Land for Airport Development) and Proposal 5 of the Programing Standards Proposals (Airport Entrance Roads). If further amendment is considered necessary as a result of this study, it will be the subject of separate rule making action. Therefore, these two proposed amendments are withdrawn.

All comments received in response to Notice 66–5 have been fully considered. A number of the proposals have been reduced in scope in light of the comments and upon a careful reexamination of their merits and feasibility at this time.

Comments from two sources concern more than one proposal. Thus, one comment, in its concern about several of the proposals, adverted to the problem of ascertaining hypothetical costs that limit Federal participation but are not actually incurred. For instance, a sponsor may choose to install high intensity runway edge lighting while Federal participation is limited to 50 percent of medium intensity lighting. No bids on medium intensity lighting are invited. This problem is not newly introduced by the present amendments. In the past, the sponsor submitted an estimate of the hypothetical cost in the engineer's report that accompanies the application. The Agency could then adjust the cost figure upon consultation with the sponsor in light of information in its possession or requested of the sponsor, or sometimes also in light of the bids for the work actually to be performed. This procedure never presented any specific problems in the past and the problem is not aggravated by the present amendment.

Another comment expressed fear that some of the proposals would in effect prevent the State Department of Aeronautics from acting as an agent for the airport sponsor in any negotiation with the Federal Government, even though so authorized by a State statute. It has been accepted Agency practice under Part 151 to allow an agent to act for an airport sponsor seeking FAAP assistance if the agent has valid authorization from the sponsor to so act. This practice will apply to the requirements introduced by this amendment.

ELIGIBILITY CRITERIA PROPOSALS

Proposal 1. Compliance with outstanding agreements. This portion of the notice proposed, in part, to expressly set forth a list of the non-FAAP Agreements with the United States that a sponsor must comply with in order to receive Federal assistance; and to provide that assistance is granted in the presence of noncompliance if the sponsor is able to show that the noncompliance was caused by factors beyond his control.

No adverse comment was received on these changes and they are incorporated into § 151.7(a) as proposed in Notice 66–5.

This portion of the notice further proposed to extend the compliance requirement to agreements made by the sponsor with the United States at airports owned or controlled by him other than the airport for which a grant is requested. A number of comments opposed this proposal. Basically these comments contended that a sponsor's noncompliance at one airport should not, of itself, preclude FAAP assistance to the sponsor's other airports since it was not in the public interest to refuse Federal aid for the development of one airport because another airport was not complying with all of its agreements. Some of the commentators based their objection on the ground that the proposed change was unnecessary since the legal remedy of an action for specific performance was available to the FAA in the event of a sponsor's noncompliance. Others felt that there was no basis for the proposed change in terms of safety or improvement of the National Airport System.

After careful consideration of these various viewpoints, the Agency finds them to be without merit. The basic purpose of the majority of the sponsor's covenants required in a project application is to promote safe and efficient operation of airports within a planned National Airport system. For this reason § 151.7(a) currently authorizes the Administrator to expend FAAP funds only if he is satisfied that "the sponsorship requirements have been or will be met under existing and proposed agreements with the United States with respect to the airport involved."

Rather than altering this basic policy of § 151.7(a), this amendment merely extends it well within its rational limits. In actuality, noncompliance is chargeable to the sponsor and not to the individual airport where it occurs. For this reason, it is not considered to be in the public interest to make a grant of FAAP funds to any sponsor who is failing to comply with the provisions of any agreement with the United States affecting another airport he owns or controls. Likewise although a legal remedy of specific performance exists, it is considered unreasonable for the Federal Government to grant assistance to a sponsor at one airport while at the same time it is forced to initiate legal action to compel the same sponsor to live up to his agreements at another airport.

A number of other comments criticized the proposal for its alleged lack of procedural safeguards for the protection of the sponsor. They asserted a need for: (1) A procedure for the waiving of minor instances of noncompliance with old, non-FAAP Agreements; (2) Giving timely notice of noncompliance; (3) Holding a hearing on the issue of noncompliance; and (4) An appeal procedure for disputed cases of noncompliance.

It should be emphasized that this amendment makes no change to the procedures heretofore utilized or the rights afforded in the enforcement of § 151.7(a). The present procedure makes no provision for an appeal or hearing in the case of noncompliance. Therefore, the comments urging procedural changes are not germane to this amendment. It is also noted that these comments failed to mention any specific instances indicating a need for revision of the procedures currently being utilized by the Agency. In response to the other comments, subparagraphs (2) and (3) (ii) are added to § 151.7(a) to reflect procedures already utilized by the Agency. Subparagraph (2) provides for the issuance of a notice of noncompliance by the Agency to the sponsor. Subparagraph (3)(ii) provides that assistance is not withheld in cases of minor defaults under old agreements where the sponsor is taking reasonable prompt action to correct the deficiency, or where the noncompliance relates to an obsolete obligation.

Sections 151.7(a)(3) (i) and (ii) excuse noncompliance with past agreements only under the specific conditions stated therein. Under the general rule, any continuing noncompliance (such as an exclusive right originally granted in violation of a covenant or agreement with the United States) disqualifies all of the sponsors' airports from FAAP assistance until the sponsor terminates the noncompliance.

This amendment will not be applied retroactively but will only govern grant applications made after its effective date. However, in passing on these future grant applications, the FAA will apply the requirement of compliance to all past agreements that fall within the scope of § 151.7(a)(1).

One comment submitted that the proposal would adversely affect smaller agencies that were not adequately staffed to properly keep pace with the number and variety of new requirements. However, this proposal merely relates to compliance with existing requirements.

Section 151.67 is amended to reflect the new requirements of § 151.7(a), as amended. It is not considered necessary to amend § 151.37 that also was mentioned in Notice No. 66-5.

Proposal 3. Value of donated land. The third of the Eligibility Criteria Proposals stated that appraisals of value of property interests in land acquired by donation should no longer be furnished by the sponsor as now required under § 151.27(c) but that the FAA would make or obtain its own appraisal, and that the property interest would not be eligible for inclusion in any airport development project until that appraisal was made. A comment that the rule of § 151.41(b)(6) should be dropped is not germane to the proposal, and another comment that the FAA should make the value determination before the grant agreement is entered into only suggests what is implicit in the proposal.

Pertinent comments suggest appraisal by two local appraisers and one Federal appraiser; and raise the question of recourse if the sponsor considers the appraisal too low. The first of these suggestions would frustrate the purpose of this proposal. However, in response to the second comment, express provision for reconsideration of appraisals is being made in § 151.27(c). If he wishes, the sponsor may submit local appraisals with his request for reconsideration.

The amendments made to §§ 151.23, 151.27(c), and 151.39 (a) and (c) relate to this proposal. The principle of this proposal is also being applied to the other situations described in § 151.27(c) that require appraisal, and § 151.23 is being conformed accordingly.

Proposal 4. Consideration of local community interest. The purpose of this proposal was to require the sponsor to submit information to the Administrator that adequately demonstrates to him that fair consideration has been given to the interests of the communities in or near which the project is located.

A suggestion that FAA hold a public hearing for this purpose is beyond the scope of the notice. A majority of the adverse comments misconstrued the proposal as shifting to the sponsor the burden of determining whether fair consideration had been given to local community interest. Thus, a number of comments expressed fear that the new amendment would have the effect of delaying or inhibiting needed airport development by requiring the sponsor to enter into prolonged negotiations with local political subdivisions to obtain their approval. Other comments specifically advocated that the FAA should continue to satisfy itself in this matter by independent inquiry.

Section 151.39(a)(5) currently requires that the Administrator be satisfied that fair consideration has been given to local community interest. The amendment does not alter this requirement; it only requires the sponsor to submit with his project application a statement specifying what consideration has been given to local community interest, including the substance of any local objection or approval that has been made known to the sponsor. As amended, § 151.39(a)(5) specifically provides that the Administrator considers all pertinent information including the sponsor's statement. There is no requirement on the sponsor to enter into prolonged or unreasonable negotiations with local political subdivisions.

Sections 151.26 and 151.39(a)(5) are amended accordingly.

Proposal 5. Periodic cost estimate for force account work. The purpose of this proposal was to delete the requirement contained in §§ 151.51(b), 151.57(a)(2), and 151.67(a)(5) that a sponsor using a force account must file a Periodic Cost Estimate (FAA Form 1629) when he applies for a grant payment. The majority of comments received in response to Notice 66-5 were in favor of this change. One comment questioned the justification for the deletion unless the substantiating detail for FAA Form 1630 was submitted in some other manner. However, § 151.55 requires the sponsor to keep records of the itemized costs of force account work and to make these records available to the FAA after proper notice. These records may be used to substantiate FAA Form 1630. Therefore, §§ 151.51(b), 151.57(a)(2), and 151.67(a)(5) are amended as proposed in the Notice.

PROGRAMMING STANDARDS PROPOSALS

Proposal 1. High or medium intensity runway lighting. Programming Standards Proposal 1 related to the percentage of Federal participation in the cost of runway edge lighting. In the case of runways with approved straight-in approach procedures but not equipped with ILS that permits precision approach procedures (as required in certain instances by § 151.13(b)(3)) it proposed a reduction of the percentage of the cost of high intensity lighting from 75 to 50 percent. It proposed the same 50 percent for such lighting on runways with a navigational aid that allows use of instrument approach procedures. Finally, it proposed a Federal share of 50 percent in the cost of medium intensity lighting for runways eligible for runway edge lighting but not eligible for 75 or 50 percent Federal participation in high intensity lighting.

Comments opposed the reduction from 75 to 50 percent on the grounds that air safety is involved and that it would work a hardship in cases of extension in runways that were equipped with high intensity lighting under 75 percent Federal participation where Federal participation in the extension would be reduced to 50 percent. Upon reconsideration in light of these comments and other factors, the proposal to reduce now existing 75 percent participation in high intensity lighting to 50 percent is being dropped. Thus, under § 151.43(d)(1) which is not being substantively amended, Federal participation remains 75 percent of the cost of installing high intensity runway edge lighting on a designated instrument landing runway (where it is required by § 151.13(b)(3)) and on other runways with an approved straight-in procedure (where it is optional).

It was also commented that a sponsor who is willing to install high intensity runway edge lighting should always receive a Federal share of 50 percent of that cost, and not only 50 percent of the cost of medium intensity lighting. This comment fails to show that the proposed limitation to 50 percent of medium intensity lighting is not consistent with the aim of allocating available aid funds so as to produce the greatest progress towards the policy goals of the Federal Airport Act.

Accordingly, § 151.87(d) is being amended to fix the Federal share in runway edge lighting projects at 50 percent of the cost of medium intensity lighting in all instances where a higher Federal participation is not otherwise provided, except where low intensity lighting is installed. Section 151.43(b) is amended to cross reference the Federal participation provisions in Subpart C such as § 151.87(d), and the words "runway edge" are inserted in subparagraph (d)(1) for conformity.

Proposal 2. In-runway lighting. The purpose of Programing Standards Proposal 2 was to substitute the more accurate and comprehensive terms "touchdown zone lighting system, centerline lighting system and exit taxiway lighting system" in place of the language currently used in §§ 151.43(d)(2), 151.87(e) and Appendix F to describe the "in-runway lighting system." All of the comments to this proposal favored this change and therefore it is incorporated into the amendment as proposed.

Proposal 3. Paving second runways. This portion of the Notice proposed adoption of new standards recently developed by the FAA for the eligibility of second runway paving on the basis of wind conditions on airports that serve only small aircraft, and clarification of the distinction between eligibility based on wind conditions and eligibility based on other factors.

One comment misconstrued the amendment as possibly excluding turf landing strips from the FAAP program. Sections 151.77, 151.79, and new § 151.80 only apply to runway paving and therefore in no way exclude turf landing strips from other FAAP assistance.

One comment contended that wind coverage and noise were not the only factors to be considered in second runway orientation. The Agency believes this contention to be valid and therefore §151.79(a)(3) will provide that due consideration be also given to topography, soil conditions and other pertinent factors in runway orientation.

One comment criticized the amendment for proposing several sets of criteria for eligibility of paving a second runway for general aviation airports. It considered this to be confusing and felt that no proper basis had been given for the proposal. As an alternative, it suggested that a single standard be adopted combining both the cross-wind component and the number of justifying aircraft operations. After careful consideration the Agency finds this comment to be without merit. The effect of the cross-wind varies according to the size of the aircraft. Therefore by classifying airports according to the size of aircraft using them, this amendment provides more accurate standards for determining programming eligibility for various general aviation airports than a single criterion would yield. To make § 151.79 more easily comprehensible, paragraph catch lines have been supplied.

One comment asked what criteria the sponsor should use in demonstrating to the Administrator that aircraft noise has received due consideration in orienting the second runway. Such criteria have not been formulated and the sponsor is only required to state the considerations that have actually caused him to determine the proposed runway orientation, and why he thinks them adequate.

Accordingly, §§ 151.77 and 151.79 are being revised, and § 151.80 is added.

Proposal 4. Economy approach lighting aids. The purpose of this proposal was to provide programming standards for economy approach lighting aids in Part 151. All of the comments received favored this addition and agreed that these items should be eligible for Federal assistance. However, two comments felt that the programming standards as proposed were too restrictive and advocated that Federal assistance for economy approach landing aids not be limited to airports with visual deficiencies. One of the comments suggested that economy approach lighting aids should be eligible for airports with at least medium intensity lighting at the prime runway approach. The other maintained that all systems which simplify the approach and landing process, including economy approach lighting aids, should be eligible for Federal assistance at all air carrier airports.

In response to these comments, economy approach lighting aids are also made eligible at airports where they will reduce minimums for landing purposes. Therefore new § 151.87(j) provides for FAAP assistance where the economy approach lighting aids will either correct a visual deficiency or permit operations at lower minmums. Otherwise the standards suggested by the comments are unacceptable because the resulting benefits would not be commensurate with the Federal funds expended.

One comment opposed the programing standard under which the airport does not qualify for economy approach lighting aids if the FAA will install approach lighting aids under the Facilities and Equipment Program within the next 3 years. Because of the number of permanent airport improvements requiring Federal assistance, it is Agency policy not to expend funds for temporary development or construction except where necessary to permit uninterrupted operation of the airport during stages of construction. The expenditure of FAAP funds for lighting aids that would be replaced within 3 years is contrary to this policy and therefore this requirement is retained in new § 151.87(j). In addition, new § 151.87(j) contains a list of some of the economy approach lighting aids that are within the scope of that section.

Proposal 6. Airport utilities. The purpose of Programing Standard Proposal 6 was to amend § 151.93(b) to limit Federal participation in airport utility construction, installation and connection when the utility serves both eligible and ineligible airport areas and to restate the programing standards for water utility systems.

A number of comments objected to the proposal that costs of airport utilities serving both eligible and ineligible airport areas should be eligible only so far as they exceed the cost of providing utility service necessary for all ineligible airport facilities. One comment advocated the continuation of the present system of prorating these costs while another suggested that the prorating of costs be continued just for the electrical facilities required for runway lighting. A third comment felt that airport utilities should be eligible to the extent of providing service to eligible areas.

We agree that the statutory provisions allow for some exercise of discretion in this area. However, it is established Agency policy that Federal funds should not be used to provide any supporting utility for an ineligible airport area or facility. The proposed amendment to limit the Federal participation merely extends this policy within its logical limits and is considered necessary to ensure that the Federal funds available for assistance are utilized to promote the greatest degree of airport safety. Therefore § 151.93(b) is amended to incorporate the programming standard limitation proposed in Notice 66-5.

One comment suggested a standard for determining the Federal share of the cost for airport water utilities in terms of the cost of installations of a specific size and description. This type of standard is considered to be too narrow in scope to effectively be administered to the number and variety of airports seeking Federal assistance. No other comments were received adverse to this portion of the proposal and therefore it also is incorporated into § 151.93(b).

Proposal 7. Remarking runways and taxiways. It was proposed to clarify the programing standards for runway and taxiway marking and remarking. No adverse comments were received, but one comment suggested that eligibility of remarking necessitated by the obliteration of runway or taxiway markings by construction equipment routing be mentioned specifically. This amendment, together with the suggestion, is being affected by adding a new § 151.15 and amending § 151.95(f).

Proposal 8. Aprons for cargo buildings. The purpose of the last Programing Standards proposal was to remove an ambiguity in Appendix E regarding the eligibility of aprons for cargo buildings. It was originally considered that all aprons for cargo buildings were ineligible and therefore it was proposed to amend item 4 of Appendix E, Typical Ineligible Items, to read: "Aprons for any cargo building." A majority of the comments received opposed this proposal contending that these aprons should be treated the same way as aprons serving terminal buildings.

After careful reconsideration of this problem, the Agency agrees that the primary criterion in the determination of the eligibility of aprons serving cargo buildings should be the type of usage of the apron itself. Therefore, item 5 has been added to the list of Typical Eligible Items in Appendix E to provide for the eligibility of aprons for cargo buildings that serve the public, and item 4 of the Typical Ineligible Items is modified to reflect this change. In addition, several other editorial changes have been made to the list of Typical Eligible Items.

One comment inquired as to the eligibility of taxiways leading to cargo areas. Taxiways are regulated by § 151.81 and Appendix D and are beyond the scope of this amendment.

Other matters. In addition to these proposals contained in Notice 66-5, it is considered that the acquisition of small parcels of land for nonlanding area facilities should be eligible for FAAP assistance. The present restriction is relieved by the deletion of the exception contained in item 1(b) of the list of Typical Eligible Items in Appendix A.

In consideration of the foregoing, Part 151 is amended, effective January 27, 1967, as follows:

1. Section 151.7(a) is amended to read as follows:

§ 151.7 Grant of funds: general policies.

(a) *Compliance with sponsorship requirements.* The FAA authorizes the expenditure of funds under the Federal-aid Airport Program for airport planning and engineering or for airport development only if the Administrator is satisfied that the sponsor has met or will meet the requirements established by existing and proposed agreements with the United States with respect to any airport that the sponsor owns or controls.

(1) Agreements with the United States to which this requirement of compliance applies include—

(i) Any grant agreement made under the Federal-aid Airport Program;

(ii) Any covenant in a conveyance under section 16 of the Federal Airport Act;

(iii) Any covenant in a conveyance of surplus airport property under section 13(g) of the Surplus Property Act (50 U.S.C. App. 1622(g)); and

(iv) Any AP-4 agreement made under the terminated Development Landing Areas National Defense Program and the Development Civil Landing Areas Program.

This requirement does not apply to assurances required under section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1) and § 15.7 of the Federal Aviation Regulations (14 CFR 15.7).

(2) If it appears that a sponsor has failed to comply with a requirement of any of the agreements listed in subparagraph (1) of this paragraph, the FAA notifies him of this fact and affords him an opportunity to submit materials to refute the allegation of noncompliance or to achieve compliance.

(3) If a project is otherwise eligible under the Federal-aid Airport Program, a grant may be made to a sponsor who has not complied with an agreement included in subparagraph (1) of this paragraph if the sponsor shows—

(i) That the noncompliance is caused by factors beyond his control; or

(ii) That the following circumstances exist:

(*a*) The noncompliance consisted of a failure, through mistake or ignorance, to perform minor conditions in old agreements with the Federal Government; and

(*b*) The sponsor is taking reasonable action promptly to correct the deficiency or the deficiency relates to an obligation that is no longer required for the safe and efficient use of the airport under existing law and policy.

2. The following new section is added after § 151.13:

§ 151.15 Federal-aid Airport Program: policy affecting runway or taxiway remarking.

No project for developing or improving an airport may be approved for the Program unless it provides for runway or taxiway remarking if the present marking is obliterated by construction, alteration or repair work included in a FAAP project or by the required routing of construction equipment used therein.

3. The last sentence of § 151.23 is amended to read as follows:

§ 151.23 Procedures: application; funding information.

* * * If any part of the estimated project costs consists of the value of donated land, labor, materials, or equipment, or of the value of a property interest in land acquired at a cost that (as represented by the sponsor) is not the actual cost or the amount of an award in eminent domain proceedings, the sponsor must so state in the application, indicating the nature of the donation or other transaction and the value it places on it.

4. Section 151.26 is amended as follows:

a. The heading of § 151.26 is amended to read as follows:

§ 151.26 Procedures: applications; compatible land use information; consideration of local community interest.

b. The introductory paragraph is designated as paragraph (a) and subparagraphs (a), (b), and (c) are redesignated as (1), (2), and (3), respectively.

c. A new paragraph (b) is added to read as follows:

§ 151.26 Procedures: applications; compatible land use information; consideration of local community interest.

(a) * * *

(b) Each sponsor must submit with his application a written statement specifying what consideration has been given to the interest of all communities in or near which the project is located. This statement must contain the substance of any objection to, or approval of, the proposed project made known to the sponsor by any local individual, group or community.

5. Section 151.27(c) is amended to read as follows:

§ 151.27 Procedures: application, plans, specifications, and appraisals.

* * * * *

(c) If the project involves acquiring a property interest in land by donation, or at a cost that (as represented by the sponsor) is not the actual cost or the amount of an award in eminent domain proceedings, the Administrator, before passing on the eligibility of the project, makes or obtains an appraisal of the interest. If the appraised value is less than the value placed on the interest by the sponsor (§ 151.23), the Administrator notifies the sponsor that he may, within a stated time, ask in writing for reconsideration of the appraisal and submit statements of pertinent facts and opinion.

6. Section 151.39 is amended as follows:

a. Paragraph (a)(5) is amended to read as follows:

§ 151.39 Project eligibility.

(a) * * *

(5) The Administrator is satisfied, after considering the pertinent information including the sponsor's statement required by § 151.26, that fair consideration has been given to the interest of communities in or near which the project is located;

* * * * *

b. Paragraph (c) is amended by deleting the words "the estimated value of the donated land." and inserting in place thereof the words "the value of the donated land as appraised by the Administrator.".

7. Section 151.43 is amended as follows:

Paragraph (b) and (d) (1) and (2) are amended to read as follows:

§ 151.43 United States' share of project costs.

* * * * *

(b) Except as provided in paragraphs (c) and (d) of this section and in Subpart C of this part, the United States' share of the costs of an approved project for airport development (regardless of its size or location) is 50 percent of the allowable costs of the project.

* * * * *

(d) * * *

(1) The costs of installing high intensity runway edge lighting on a designated instrument landing runway or other runway with an approved straight-in approach precedure.

(2) The costs of installing in-runway lighting (touchdown zone lighting system, centerline lighting system, and exit taxiway lighting system).

8. Section 151.51(b) is amended to read as follows:

§ 151.51 Performance of construction work: force accounts.

* * * * *

(b) [Reserved]

§ 151.57 [Amended]

9. Subparagraph (2) of § 151.57(a) is amended by striking out the words "or force account".

§ 151.67 [Amended]

10. Section 151.67(a) is amended as follows:

a. Paragraph (a)(2)(ii) is amended by striking out the words "the existence of any defaults on other obligations to the United States" and inserting the words "the existence of any default on the compliance requirements of § 151.77 (a)" in place thereof.

b. Subparagraph (5) is amended by striking out the words "(or the sponsor, in the case of force account work)".

11. The second sentence of § 151.77(a) is amended to read as follows:

§ 151.77 Runway paving: general rules.

(a) * * * Program participation in constructing, reconstructing or resurfacing is limited to a single runway at each airport, unless more than one runway is eligible under a standard in § 151.79 or § 151.80.

* * * * *

12. Section 151.79 is amended to read as follows:

§ 151.79 Runway paving: second runway; wind conditions.

(a) *All airports.* Paving a second runway on the basis of wind conditions is eligible for inclusion in a project only if the sponsor shows that—

(1) The airport meets the applicable standards of paragraph (b), (c), (d), or (e) of this section;

(2) The operational experience, and the economic factors of air traffic at the location, justify an additional runway for the airport; and

(3) The second runway is oriented with the existing paved runway to achieve the maximum wind coverage, with due consideration to the airport noise factor, topography, soil conditions, and other pertinent factors affecting the economy and efficiency of the runway development.

(b) *Airports serving large and small aircraft.* The airport serves both large and small aircraft and the existing paved runway is subject to a crosswind component of more than 15 miles per hour (13 knots) more than 5 percent of the time.

(c) *Airports serving small aircraft only.* The airport serves small aircraft exclusively, and—

(1) The airport has 10,000, or more, aircraft operations each year; and

(2) The existing paved runway is subject to a crosswind component of more than 15 miles per hour (13 knots) more than 5 percent of the time.

(d) *Airports serving aircraft of less than 8,000 pounds only.* The airport serves small aircraft of less than 8,000 pounds maximum certificated takeoff weight exclusively and—

(1) The airport has 5,000, or more, aircraft operations each year; and

(2) The existing paved runway is subject to a crosswind component of more than 15 miles per hour (13 knots) more than 5 percent of the time.

(e) *Airports with limited facilities serving small aircraft only.* The airport serves small aircraft exclusively, has limited facilities, and is limited to VFR operations, and the existing paved runway is subject to a cross-wind component of more than 11.5 miles per hour (10 knots) more than 5 percent of the time.

13. The following new section is added after § 151.79:

§ 151.80 Runway paving: additional runway; other conditions.

Paving an additional runway on an airport that does not qualify for a second runway under § 151.79 is eligible if the Administrator, upon consideration on a case-to-case basis, is satisfied that—

(a) The volume of traffic justifies an additional paved runway and the layout and orientation of the additional runway will expedite traffic; or

(b) A combination of traffic volume and aircraft noise problems justifies an additional paved runway for that airport.

§ 151.87 [Amended]

14. Section 151.87 is amended as follows:

a. Paragraph (d) is amended by adding the words "runway edge" after the words "high intensity" wherever they occur and by adding a sentence at the end, to read as follows:

(d) * * * If a runway is not eligible for 75 or 50 percent Federal participation in high intensity runway edge lighting but is otherwise eligible for runway lighting, the U.S. share of the cost of runway edge lighting is 50 percent of the cost of the lighting installed but not more than 50 percent of the cost of medium intensity lighting.

b. Paragraph (e) is amended to read as follows:

(e) In-runway lighting (touchdown zone lighting system, centerline lighting system, and exit taxiway lighting system) is eligible on the designated instrument landing runway.

c. Paragraph (j) is redesignated as paragraph (k) and new paragraph (j) is added to read as follows:

(j) Economy approach lighting aids are eligible for inclusion in a project at an airport that will not qualify within the next three years for approach lighting aids installed by FAA under the Facilities and Equipment Program if the economy approach lighting aids—

(1) Will correct a visual deficiency on one of the lighted runways of the airport; or

(2) Will permit operations at an airport at lower minimums.

"Economy approach lighting aids" includes a medium intensity approach lighting system (MALS) that may include a sequence flasher (SF); a runway end identifier lights system (REILS); and an abbreviated visual approach slope indicator (AVASI).

15. Section 151.93(b) is amended to read as follows:

§ 151.93 Buildings; utilities; sidewalks; parking areas; and landscaping.

* * * * *

(b) Airport utility construction, installation, and connection are eligible under the Federal-aid Airport Program as follows:

(1) An airport utility serving only eligible areas and facilities is eligible; and

(2) An airport utility serving both eligible and ineligible airport areas and facilities is eligible only to the extent of the additional cost of providing the capacity needed for eligible areas and facilities over and above the capacity necessary for the ineligible areas and facilities.

However, a water system is eligible only to the extent necessary to provide fire protection for aircraft operations, and to provide water for a fire and rescue equipment building.

* * * * *

16. Paragraph (f) of § 151.95 is amended to read as follows:

§ 151.95 Fences; distance markers; navigational and landing aids; and offsite work.

* * * * *

(f) The initial marking of runway and taxiway systems is eligible for inclusion in a project. The remarking of existing runways or taxiways is eligible if—

(1) Present marking is obsolete under current FAA standards; or

(2) Present marking is obliterated by construction, alteration or repair work included in a FAAP project or by the required routing of construction equipment used therein.

However, apron marking that is not allied with runway and taxiway marking systems, is not eligible.

* * * * *

17. Item 1(b) of the list of Typical Eligible Items in Appendix A is amended to read as follows:

APPENDIX A

* * * * *

Typical Eligible Items

1. * * *

(b) Expansion of airport facilities.

18. Appendix E is amended as follows:

a. The list "Typical Eligible Items" is amended by amending Items 3 and 4 and adding a new Item 5, to read as follows:

APPENDIX E

* * * * *

Typical Eligible Items

* * * * *

3. Aprons available for public parking, storage, and service or a combination of any of the three.

4. Aprons serving hangars used for public storage of aircraft or service to the public, or both.

5. Aprons for cargo buildings used for public storage or service to the public, or both.

b. Item 4 of the list of "Typical Ineligible Items" is amended to read as follows:

APPENDIX E

* * * * *

Typical Ineligible Items

* * * * *

4. Aprons for cargo buildings not under Item 5 of "Typical Eligible Items".

19. Item 2 of the list of "Typical Eligible Items" listed in Appendix F is amended to read as follows:

APPENDIX F

* * * * *

Typical Eligible Items

* * * * *

2. In-runway lighting (touchdown zone lighting system, centerline lighting system, and exit taxiway lighting system).

(Secs. 1–15 and 17–20 of the Federal Airport Act; 49 U.S.C. 1101–1114, 1116–1119)

Issued in Washington, D.C., on December 20, 1966.

WILLIAM F. MCKEE,
Administrator.

[F.R. Doc. 66–13848; Filed, Dec. 27, 1966; 8:46 a.m.]

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER–480]

PART 290—TRANSFER OF AIRLIFT AMONG AIR CARRIERS IN CERTAIN EMERGENCIES

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 16th day of December 1966.

In EDR–98, published on March 10, 1966, 31 F.R. 4212, the Board proposed to issue a new Part 290 authorizing transfer of airlift among air carriers in certain emergencies. At the same time it also gave notice of a proposed emergency regulation to be included in the Code of Emergency Federal Regulations (CEFR) regarding the transfer of airlift among air carriers in the War Air Service Program (WASP). We have decided to adopt both regulations in the form proposed. By its terms the proposed Part 290 would authorize the carriers which have furnished aircraft to the Civil Reserve Air Fleet to lease an equal number of replacement aircraft with or without crew for 90-day periods from other air carriers without prior Board approval. This regulation, which goes into effect 30 days after adoption, is based on the Board's present exemption powers and operates on the theory that granting the carriers the necessary authority will enable them voluntarily to enter arrangements for the transfer of aircraft among themselves to meet airlift shortages. The draft emergency regulation which we are also adopting contemporaneously herewith in the form proposed in EDR–98 will not take effect until the War Air Service Program (WASP) has been activated.[1] Under the terms of the emergency regulation, which is based upon power which Executive Order 11090 contemplates will be conferred on this agency in an emergency, the Board could direct any carrier to charter or lease any of its aircraft to other air carriers as required in a defense emergency. We have not prescribed in either regulation the financial provisions which should apply to the transfer of aircraft but contemplate the attachment of such provisions in a subsequent proceeding.

American Air Lines, Inc., Pan American World Airways, Inc., United Air Lines, Inc., and Seaboard World Airlines, Inc., commented on the proposed regulations. After careful consideration of such comments the Board has concluded that the regulations should be adopted in the form proposed. In addition, in order to give the carriers, a full opportunity to participate in the Board's emergency planning, simultaneously with the adoption of the regulations, we are writing to the carriers represented on the Industry Advisory Committee on Aviation Mobilization inviting them to meet with the Board's staff for the purpose of advising and assisting the Board in further planning for the distribution of aircraft.

United Air Lines opposed adoption of the regulations, urging that the Board first formulate a WASP program. It expressed the view that Part 290 would be ineffective and that it fails to carry out the Presidential mandate in Executive Order 11090. United contends that until the Board formulates the WASP program contemplated by the executive order and designates essential air routes and services to be provided in an emergency, and specifies the terms and conditions the Board will impose in directing the transfer of aircraft in an emergency in the event the carriers fail to agree, the carriers cannot and will not voluntarily enter the lease arrangements contemplated by the regulation. United suggests that the Board's WASP planning take into account the necessity to maintain the competitive balance between CRAF and non-CRAF operators on the civil air routes.

It should be recognized that Part 290 is the Board's first step in carrying out that part of its responsibility under Executive Order 11090 which relates to planning for the distribution and redistribution of aircraft. Since the Board does not have the power at this time to compel the carriers to agree on terms or conditions for lease of aircraft, we will utilize such power as we do have by exempting the carriers from the Act to the extent necessary to enter standby lease agreements on a voluntary basis. It is not possible, of course, to determine in advance the extent to which the carriers will use Part 290. However, we are not prepared on the basis of this uncertainty alone to delay the adoption of the regulation until the whole WASP program has been completed. A good deal of planning is still needed in this area and it may be some time before the program is finalized. In the meantime, the regulation will provide the necessary authority for any carriers who are able to negotiate lease agreements. As we stated in EDR–98, since it can be anticipated that there will be little time in an emergency to negotiate mutually agreeable arrangements for the lease or charter of aircraft, the Board strongly urges the carriers to enter such agreements with each other providing for the lease and charter of aircraft to equalize shortages of equipment in emergencies.

Pan American suggests that instead of authorizing carriers to lease the same number of aircraft called up by CRAF the regulation should also authorize them to lease an equivalent capacity. We have not adopted this suggestion. Capacity involves too many factors such as speed, range, configuration, etc., to warrant using it as a measure in a regulation such as Part 290 which has general and automatic applicability. If sufficient aircraft cannot be obtained under the regulation, additional exemption authority can be granted by the Board upon special application.

Seaboard is concerned that it may be left out of any multicarrier leasing negotiations under Part 290 because it is not a member of the Air Transport Association and suggests amendment of the regulation to assure that all interested airlines can participate in any such negotiations. Seaboard's suggestion is premature; it relates to matters not dealt with in the regulation and since, under the procedures we propose, the whole matter will be the subject of further arrangements, Seaboard's problem can be met when it arises.

United Air Lines suggests that the Board provide antitrust immunity for carriers participating in the program. We are not convinced that such immunity should be granted since in our judgment the carriers would have nothing to fear while engaged in genuine efforts to prepare for a mobilization emergency. In any event, it has not been the Board's practice in comparable regulations to confer blanket antitrust immunity.

In regard to the emergency regulation, Pan American and American state that they are aware of no existing power conferred on the Board, even in an emergency, to lease aircraft to another air carrier or carriers for an amount of compensation to be determined by the Board. They suggest that the terms of any aircraft transfer be spelled out by agreement among the carriers and not be prescribed by the Board. American also observes that the emergency regulation does not contain the plans or procedures the Board will follow in transferring aircraft or determining compensation for aircraft. The Board's present responsibility under Executive Order 11090 is to

[1] The Emergency Regulation is not published in the FEDERAL REGISTER, but copies of the regulation in the form proposed in EDR–98 have been forwarded to the Office of Federal Register, General Services Administration, for inclusion in the Code of Emergency Federal Regulations (CEFR).