Rules and Regulations

Federal Register
Vol. 44, No. 160
Thursday, August 16, 1979

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 625]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period August 17–23, 1979. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: August 17, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act by tending to establish and maintain, in the interests of producers and consumers, an orderly flow of oranges to market and avoid unreasonable fluctuations in supplies and prices. The action is not for the purpose of maintaining prices to farmers above the level which is declared to be the policy of Congress under the act.

The committee met on August 14, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia Oranges continues to be weak.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effective the declared policy of the act. Interested person were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Further, the emergency nature of this regulation warrants publication without opportunity for further public comment, in accord with emergency procedures in Executive Order 12044. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An impact analysis is available from Malvin E. McGaha, (202) 447–5975.

§ 908.925 Valencia Orange Regulation 625.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period August 17, 1979, through August 23, 1979, are established as follows:

(1) District 1: 265,000 cartons;

(2) District 2: 235,000 cartons; and

(3) District 3: Unlimited.

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the market order.

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

Dated: August 15, 1979

William J. Doyle

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79–25681 Filed 8–15–79; 11:40 am]

BILLING CODE 3410–02–M

7 CFR Part 967

Celery Grown in Florida; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This handling regulation establishes the quantity of Florida celery to be marketed fresh during the 1979–80 season, with the objective of assuring adequate supplies and orderly marketing.

EFFECTIVE DATE: August 16, 1979.

FOR FURTHER INFORMATION CONTACT: Peter G. Chapogas (202) 447–5432.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 149 and Order No. 967, both as amended (7 CFR 967) regulate the handling of celery grown in Florida. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Florida Celery Committee, established under the order, is responsible for local administration.

This regulation is based upon the unanimous recommendations made by the committee at its public meeting in Orlando on June 13.

The committee recommended a Marketable Quantity of 9,644,310 crates of fresh celery for the 1979–80 season. This is based on the appraisal of the expected supply and prospective market demand.

Notice of the proposed regulation was published in the July 23 **Federal Register** (44 FR 42998) inviting written comments by August 3, 1979. None was received.

The 9.6 million crate Marketable Quantity is 26 percent more than the 7.6 million crates marketed fresh during the season which ended July 31, 1979. Each producer registered pursuant to § 967.37(f) will have an allotment equal to 100 percent of his historical marketings. This regulation provides the industry an opportunity to (1) produce to its fullest capacity for the benefit of the consumer, and (2) determine its actual

or potential maximum production capacity.

As required by § 967.37(d)(1) a reserve of six percent of the 1978–79 total Base Quantities is authorized for new producers and for increases by existing producers, with 279,705 crates to be allotted to each category. Four producers submitted applications for additional Base Quantities for use only one season. However, pursuant to § 967.151 (43 FR 15608) the committee denied such applications since under the formula set forth in § 967.155 (43 FR 57239), Base Quantities for the applicants would be increased a total of 512,243 crates.

To maximize the benefits of orderly marketing the regulation should become effective as early as possible in August, when the marketing year begins. Interested persons were given an opportunity to comment on the proposal at an open public meeting on June 13, where it was unanimously recommended by the committee. This regulation is similar to ones in effect for past seasons.

Findings. On the basis of all considerations it is believed that this regulation will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that (1) notice was given of the handling regulation set forth in this section through publicity in the production area and by publication in the July 23 **Federal Register**, (2) as provided in the marketing agreement and order, this regulation applies to celery marketed during the 1979–80 season, (3) compliance with this section will not require any special preparation by handlers which cannot be completed prior to the time actual handling of harvested celery begins, approximately the latter part of October, (4) prompt issuance of this regulation will be beneficial to all interested persons because it should afford producers and handlers maximum time to plan their operations accordingly, and (5) no useful purpose will be served by postponing such issuance.

This regulation has been reviewed under USDA criteria for implementing Executive Order 12044. A determination has been made that this action should not be classified "significant." An Impact Analysis is available from Peter G. Chapogas—(202) 447–5432.

7 CFR Part 967 is amended by adding a new § 967.315 as follows:

§ 967.315 Handling regulation; marketing quantity; and uniform percentage for the 1979–80 season ending July 31, 1980.

(a) The Marketable Quantity is established under § 967.36(a) as 9,644,310 crates of celery.

(b) As provided in § 967.38(a), the Uniform Percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the Marketable Allotment of a producer who has a Base Quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1) a reserve of six percent of the total Base Quantities is hereby authorized for (1) new producers and (2) increases for existing Base Quantity holders with 279,705 crates allotted to each category.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

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

Dated August 10, 1979 to become effective August 16, 1979.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-25300 Filed 8-15-79; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

Licensing of Production and Utilization Facilities; Facilities and Access for Resident Inspection

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to require power reactor licensees and construction permit holders and selected fuel facility licensees to provide (1) on site, rent-free, exclusive use of office space and (2) immediate licensee facility access to Commission inspection personnel. The rule is needed in order to facilitate implementation of a revised inspection program which was initiated in mid-1978. As a part of the revised program, the Commission is placing resident inspectors on site at selected nuclear power reactor construction sites, at selected power reactor sites in test and routine operations and at selected fuel facilities to observe and review licensee construction, operations, radiological safety, safeguards and environmental protection activities.

EFFECTIVE DATE: September 17, 1979 .

FOR FURTHER INFORMATION CONTACT: Mr. Edward L. Jordan, Assistant Director for Technical Programs, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Phone No. 301–492–8180.

SUPPLEMENTARY INFORMATION: On May 9, 1978, the Nuclear Regulatory Commission published in the **Federal Register** (43 FR 19860) a proposed amendment to its regulations, 10 CFR 50 *Licensing of Production and Utilization Facilities* and Part 70 *Special Nuclear Material*, which would implement authority of Section 161(o) of the Atomic Energy Act of 1954, as amended, and of the Energy Reorganization Act of 1974, as amended, in order to facilitate the on site resident inspection portion of its revised inspection program.

Interested persons were invited to submit written comments for consideration in connection with the proposed amendment by June 23, 1978. The comments which were received addressed three principal concerns: licensees should not be forced to provide rent-free space; the proposed space requirement was excessive and arbitrary; and inspector access provisions should be the same as for a regular plant employee.

In mid-1978, the Commission initiated a revised inspection program which includes the use of on site resident inspectors. Pursuant to Section 161(o) of the Atomic Energy Act of 1954, as amended, the Commission intends to place NRC resident inspectors on site at selected nuclear power reactor construction sites and at selected power reactor sites in test and in routine operation. Eventually the Commission expects to place full-time resident inspectors at all operating power reactors, at power reactors in later stages of construction and at selected fuel cycle facilities where nuclear reactor fuel is fabricated or processed. The resident inspector will observe and review licensee operations, construction safety, safeguards and environmental protection activities to determine whether they are adequate, conducted properly and at the required frequency. Other regionally or headquarters based NRC personnel will continue to provide technical support and managment review as required for the inspection program.

In order to facilitate the performance of the resident inspection program it is necessary that office space be provided

to selected Commission personnel. The regulation as adopted requires that the licensee provide on site, rent-free, exclusive office space upon the request of the Director, Office of Inspection and Enforcement. This requirement is not unique in that other federal departments and agencies have continuous inspection programs that require those subject to their regulations to furnish appropriate facilities to the inspectors.

Sufficient space is required in order to accommodate a full-time inspector, a part-time secretary and transient NRC personnel. The suggested space is 250 square feet but the rule does not specify an exact area. The space provided is expected to be commensurate with space normally provided to licensee employees. For sites with more than one power reactor unit or fuel facility it may be necessary to assign more than one resident inspector. If additional resident inspectors are assigned to a site, additional space will be requested.

In order to assure that the resident inspector or regionally based inspectors are afforded the opportunity to conduct unfettered reviews of work in progress it is necessary and the regulation requires, that properly identified inspectors be provided immediate access to the facility (the same as regular licensee employees). The inspectors afforded such access will be provided by the licensee that site-specific radiological safety and security information necessary for their safety, security, and radiological protection and will conform to all facility safety and security requirements.

A briefing on site-specific radiological protection practices, security and emergency response actions is appropriate and sufficient for unescorted access to other than vital areas, radiation areas and areas contaminated with radioactive material, for those NRC personnel who infrequently visit a site. As a result of the comments on the proposed rule the Commission reexamined the legal basis for the requirement that licensees provide office space and determined that the requirement is neither an arbitrary use of the Commission's regulatory power nor an unreasonable burden on the licensee.

As a result of the concerns expressed in the comments over excessive space requirements, the Commission has changed the proposed area requirement to guidance, with the condition that the space provided shall be commensurate with other office facilities at the site. Acceptability of the space is in the authority of the Director, Office of Inspection and Enforcement.

As a result of comments on the proposed rule, the provision for access by inspectors likely to conduct inspections at a specific facility has been reworded to emphasize that unfettered access for inspectors who are likely to inspect a specific facility, will be equivalent to that for a regular plant employee. Inspectors likely to inspect are those who are expected to conduct several inspections at the specific facility during a given year.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Parts 50 and 70 are published as a document subject to codification.

1. In § 50.70 of 10 CFR Part 50, an "(a)" is added preceding the present paragraph and paragraph (b) is added as follows:

§ 50.70 Inspections.

* * * * *

(b)(1) Each licensee and each holder of a construction permit shall upon request by the Director, Office of Inspection and Enforcement, provide rent-free office space for the exclusive use of the Commission inspection personnel. Heat, air conditioning, light, electrical outlets and janitorial services shall be furnished by each licensee and each holder of a construction permit. The office shall be convenient to and have full access to the facility and shall provide the inspector both visual and acoustic privacy.

(2) For a site with a single power reactor or fuel facility licensed pursuant to Part 50, the space provided shall be adequate to accommodate a full-time inspector, a part-time secretary and transient NRC personnel and will be generally commensurate with other office facilities at the site. A space of 250 square feet either within the site's office complex or in an office trailer or other on site space is suggested as a guide. For sites containing multiple power reactor units or fuel facilities, additional space may be requested to accommodate additional full-time inspector(s). The office space that is provided shall be subject to the approval of the Director, Office of Inspection and Enforcement. All furniture, supplies and communication equipment will be furnished by the Commission.

(3) The licensee or construction permit holder shall afford any NRC resident inspector assigned to that site, or other NRC inspectors identified by the Regional Director as likely to inspect the facility, immediate unfettered access, equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control meaures for security, radiological protection and personal safety.

2. In § 70.55 10 CFR Part 70, paragraph (c) is added as follows:

§ 70.50 Inspections.

* * * * *

(c)(1) In the case of fuel cycle facilities where nuclear reactor fuel is fabricated or processed each licensee shall upon request by the Director, Office of Inspection and Enforcement, provide rent-free office space for the exclusive use of Commission inspection personnel. Heat, air conditioning, light, electrical outlets and janitorial services shall be furnished by each licensee. The office shall be convenient to and have full access to the facility and, shall provide the inspector both visual and acoustic privacy.

(2) For a site with a single fuel facility licensed pursuant to Part 70, the space provided shall be adequate to accommodate a full-time inspector, a part-time secretary and transient NRC personnel and will be generally commensurate with other office facilities at the site. A space of 250 square feet either within the site's office complex or in an office trailer or other on site space is suggested as a guide. For sites containing multiple fuel facilities, additional space may be requested to accommodate additional full-time inspector(s). The office space that is provided shall be subject to the approval of the Director, Office of Inspection and Enforcement. All furniture, supplies and communication equipment will be furnished by the Commission.

(3) The licensee shall afford any NRC resident inspector assigned to that site, or other NRC inspectors identified by the Regional Director as likely to inspect the facility, immediate unfettered access, equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control meaures for security, radiological protection and personal safety.

(Sec. 161, Pub. L. 83–703, 68 Stat. 948 (42 U.S.C. 2201), Sec. 201, Pub. L. 93–438, 88 Stat. 1243 (42 U.S.C. 5841)).

Dated at Washington, D.C. this 10th day of August, 1979.

For The Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 79-25347 Filed 8-15-79; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 595

[Docket No. ERA-R-79-16]

Certification of the Use of Natural Gas To Displace Fuel Oil

AGENCY: Department of Energy (Economy Regulatory Administration).

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy hereby adopts a final rule which establishes the criteria and procedures under which the Administrator of ERA will certify to the Federal Energy Regulatory Commission (FERC) that certain natural gas purchased by an end-user for its own consumption and to be transported by an interstate pipeline company will be used to displace fuel oil, but not coal. The ERA certification is a prerequisite for authorization of the transportation of the natural gas intended to displace fuel oil under the FERC rule at 18 CFR Part 284, Subpart F.

EFFECTIVE DATE: August 16, 1979.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, N.W., Room 2130, Washington, D.C. 20461, (202) 254-9766.

Lawrence A. DiRicco (Division of Natural Gas Regulations), Economic Regulatory Administration, 2000 M Street, N.W., Room 3308, Washington, D.C. 20461, (202) 632-4721.

David A. Eaton (Office of Petroleum Operations), Economic Regulatory Administration, 2000 M Street, N.W., Room 4126, Washington, D.C. 20461, (202) 254-8202.

Michael T. Skinker (Office of General Counsel), James G. Beste, Department of Energy, Room 7140, 12th & Pennsylvania Ave., N.W., Washington, D.C. 20461, (202) 633-8788.

SUPPLEMENTARY INFORMATION:

I. Background

The ERA is today adopting a final rule which sets forth the criteria and procedures by which firms who have the capability to use natural gas in place of fuel oil and can arrange for direct purchases and transportation of natural gas pursuant to FERC's Order No. 30 (18 CFR Part 284, Subpart F, 44 FR 30323, May 25, 1979), or other FERC rules and orders, may apply to the ERA for the requisite certification of fuel oil displacement.

This certification rule is issued as part of a DOE strategy to utilize the present short-term excess of deliverable natural gas to displace fuel oil in order to reduce the need for petroleum imports and to restrain consumption of middle distillates in order to rebuild adequate stocks of heating oil for next winter. The use of this excess natural gas to displace oil is one of the components of the President's natural gas strategy as presented in the National Energy Plan II issued on May 7, 1979. Various events, including a major drawdown of middle distillate stocks during last winter's heating season, a shortage of diesel fuel, the interruption of Iranian crude oil exports, and the dramatic increase in world crude oil prices, underscore the immediate need to reduce consumption of fuel oil.

Some use of natural gas for fuel oil displacement is already occurring under existing FERC rules and the Natural Gas Policy Act of 1978 (Pub. L. 95-621, 92 Stat. 3350 15 U.S.C. 3301 et. seq.) (NGPA) authorities. Interstate natural gas pipeline companies have been actively seeking additional gas for system supply in order to reduce their curtailment of low-priority consumers who generally use fuel oil as an alternate fuel.

Nevertheless, certain historic industrial and electric utility users of natural gas, who are among the largest consumers of fuel oil, have been unable to obtain sufficient natural gas supplies from their traditional suppliers. At the same time their low-priority status, due to their use of natural gas for boiler fuel, effectively prevented them from obtaining FERC authorizations needed to permit interstate pipeline companies to transport natural gas purchased directly from producers or other sellers of gas.

On March 18, 1979, the DOE proposed a rule to the FERC which would encourage and facilitate the filing of applications by interstate pipeline companies for certificates of public convenience and necessity to transport oil displacement gas under section 7(c) of the Natural Gas Act. Among the provisions of the proposed rule was a requirement that the Administrator of ERA certify to the FERC that the natural gas involved in the transaction would be used to displace fuel oil, but not to displace coal.

On April 2, 1979 the ERA adopted an interim-final rule (44 FR 20398), which established the interim procedures and criteria under which the Administrator would make the requisite certifications. In adopting the interim-final rule, ERA requested public comment. Two speakers gave oral testimony at a public hearing held in Washington, D.C., on April 18, 1979. In addition, ERA received twenty-four written comments on the interim-final rule.

On May 17, 1979, the FERC adopted Order No. 30 (44 FR 30323, May 25, 1979) permitting transportation of oil displacement gas by an interstate pipeline company after certification by ERA.

As of August 1, 1979, ERA has received 72 applications for certification. Eleven certifications have been issued to date. Most of the applications filed to date were outside the purview of this ERA certification program because either the applicant had not located an eligible seller or the transaction did not involve transportation by an interstate pipeline company.

II. Discussion

Public comment on the interim-final rule consisted of oral testimony from a representative of fuel oil marketers and from a spokesman for an electric utility, as well as twenty-four written comments, seven of which were from industrial firms or their representatives, five from electric utilities, six from natural gas distribution companies or their representatives, two from fuel oil refiners and marketers, one from a process gas users association, one from an intrastate natural gas pipeline company, one from a hospital association, and one from a private citizen.

Two of the commenters asserted that ERA has no jurisdiction to issue a certification rule. They state that section 402(a)(1)(D) of the Department of Energy Organization Act (DOE Act, Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7101 *et. seq.*) establishes exclusive FERC jurisdiction over the issuance of certificates of public convenience and necessity under section 7 of the Natural Gas Act. They then conclude that the ERA certification rule will have a significant impact upon a function within the exclusive

jurisdiction of the FERC. Therefore, under sections 403(a) and 403(b) of the DOE Act, the entire rulemaking should be transferred to FERC.

These commenters misconstrue the effect of the ERA certification rule. Under the rule, ERA would not issue certificates of public convenience and necessity. That function remains exclusively with the FERC as provided by the DOE Act. Rather than attempting to grant ERA natural gas regulatory jurisdiction, the rule is based on ERA's expertise in determining whether fuel oil would be displaced by the use of an alternate fuel during this period of shortage. The FERC's consideration of ERA's fuel oil displacement certification is but one factor in the FERC's determination whether to issue a certificate authorizing interstate transportation of direct purchase natural gas.

A number of comments discussed the advisability of substituting natural gas for fuel oil. A majority of those commenting on the issue supported the program. Those opposed felt that the uncertainty about the impact of increased short-term gas use on long-term supplies was sufficient to warrant further review before implementation of any expanded natural gas use policy. One commenter suggested that all surplus gas be husbanded for future use.

We are aware of these concerns and have made every effort to ensure that use of present excess gas deliverability for fuel oil displacement will not adversely affect long-term supplies, particularly for high priority uses. Our first priority continues to be the support of expansion of pipeline system supplies, and we have not retreated from our long-term commitment to reduce industrial and utility use of natural gas in favor of coal or renewable resources. However, the urgency and importance of the current oil situation, including the fuel oil shortage, warrants the short-term policy of using surplus gas to displace fuel oil.

Two of the commenters urged that certain areas of the country (California and the Midwest) be excluded from the certification program. They believe that any displacement of fuel oil, particularly residual oil, in those areas will have a detrimental impact on the production capability of the independent refineries. Such blanket exclusions, however, would preclude the flexibility necessary to manage the oil problem. However, should the use of fuel oil displacement gas affect, for example, refinery production in a certain area, the Administrator under section 595.05 retains the authority to limit the applicability of this rule. The Administrator, under § 595.08, may also terminate a certification if it is in the public interest to do so. We believe that a case-by-case approach is the correct one.

A number of comments from natural gas distribution companies requested that certifications be limited to end-users who demonstrate that they are unable to obtain additional gas from their local distribution company. We have not adopted this suggestion because it would require ERA to effectively establish a hierarchy of sources of oil displacement gas, which we feel is unneeded to achieve fuel oil displacement and constitutes an unnecessary intrusion into a basic market place decision.

Several industrial firms and electric utilities recommended that various procedures specified in the interim rule be amended. One suggested revision concerned the duration of a certification, which most thought should be extended to two years. We have not extended the one-year maximum term for initial certifications because we need to maintain sufficient flexibility to respond to changes in natural gas supply conditions in the future. The FERC has taken a similar position in Order No. 30 by establishing a termination date of June 1, 1980 for all covered transportation.

In light of the Order No. 30 termination date, the December 31, 1979 filing deadline contained in section 595.05 of ERA's interim final rule has been deleted. ERA will now accept applications as long as the FERC fuel oil displacement transportation rule (Order No. 30) is effective or ERA certifications are required by other FERC rules or orders.

The same commenters suggested that failure of the Administrator to act on an application within thirty days should be considered automatic approval of the certification. We do not believe an automatic approval procedure to be appropriate, because it would not permit adequate ERA oversight.

Also, in response to another comment section 595.06(e) has been included to require ERA to issue written decisions for all certification or recertification approvals and denials.

A number of commenters requested that the definition of end-user be expanded to include not only persons with signed supply and transportation contracts, but also persons who are still negotiating with a seller and pipeline company. We have adopted this suggestion to the extent that the applicant has located and is actively negotiating with a potential eligible seller and has tentatively arranged for pipeline transportation. This approach is intended to facilitate the filing of applications for certification without burdening the administrative process with highly speculative transactions. Accordingly, § 595.06(a)(4) now requires the applicant to identify the prospective eligible seller and transporting pipeline. Firms which have not received tentative approval from the eligible seller and the pipeline companies prior to filing should not apply for certification.

One commenter suggested that the definition of end-user be expanded to include a subsidiary or affiliated entity which purchases or otherwise provides the natural gas to be used to displace oil. We have expanded the definition of end-user to the extent that it accommodates a subsidiary or affiliated entity of the end-user whose inclusion is essential for completion of a fuel oil displacement transaction. The definition of end-user is not intended to cover brokers, agents or other third parties dealing at arms length with an end-user.

Some commenters now using fuel oil requested that if they switch to natural gas, they be protected in any future allocation of fuel oil by DOE. Such protection already exists in section 6(c) of the Standby Product Allocation Regulations (10 CFR Part 211, Appendix B, Special Rule No. 1, 44 FR 3928). That section, if activated, provides for adjustment of fuel oil allocations due to use of natural gas for fuel oil displacement. Furthermore, DOE has requested that oil distributors voluntarily agree to give firms displacing fuel oil with natural gas the same priority if, in the future, they again request oil service.

Several commenters asked that § 595.06 of the interim rule be clarified to ensure appropriate notice prior to termination of a certification by the Administrator. We have always intended that notice and an opportunity to be heard will be provided before any certification or recertification will be terminated. Therefore, we have made some minor changes to what is now § 595.08 to remove any doubts about notice and comment requirements.

Two commenters asked that FERC Orders No. 533 and 2 allowing for the transportation of direct purchase gas to certain high priority industrial and commercial users be modified to permit the simultaneous use of process gas transported under those Orders and gas for boiler fuel purchased to displace oil. We have no authority to modify FERC Orders. We note, however, that the FERC in the preamble to its Order No.

30 indicated it would review the other direct purchase rule in light of the current situation. We have expanded the scope of our rule to allow issuance of an ERA certification whenever one would be required by rule or order of the FERC to authorize transportation of direct purchase gas to displace fuel oil.

III. Certification Rule Summary

The ERA rule establishes the procedures for the Administrator's certification to the FERC that the natural gas in question will be used to displace fuel oil. Under this rule, any end-user, including a subsidiary or affiliated entity, who purchases natural gas from an "eligible seller" to displace fuel oil, where the natural gas will be transported by an interstate pipeline company pursuant to FERC Order No. 30 or future FERC rules and orders requiring ERA certification, may apply to the Administrator for certification that the use is an "eligible use" (§ 595.03). An "end-user" is any person who purchases natural gas for his own consumption and not for resale (§ 595.02). An "eligible seller" is any willing seller of natural gas (§ 595.02). An "eligible use" is that use of natural gas certified by the Administrator to displace fuel oil that would otherwise be consumed in the end-user's facilities and where neither the gas nor the displaced fuel oil will be used by the end-user to displace coal in its facilities (§ 595.03 and § 595.04).

To clarify eligibility for certification we have added a new section 595.03 to the final rule. End-users who are receiving natural gas from their usual local suppliers need not apply for certification. It should also be understood that the fuel oil displacement program contemplates voluntary purchases. An ERA certification should not be looked upon as a "license" to purchase gas.

Under the provisions of § 595.05, the Administrator may determine that it is in the public interest to limit the applicability of this rule to certain specified end-users or certain specified geographic areas. An application for certification or recertification should contain certain basic information as specified in § 595.06(a). Among other things, an application must include an affidavit stating the natural gas and the displaced fuel oil will not be used by the applicant to displace coal.

Section 595.06(e) requires ERA to publish in the **Federal Register** a notice of receipt of appropriate applications and a request for public comments on them. The Administrator may, when it is in the public interest, grant certification prior to completion of the comment period (§ 595.06(e)). This section also requires the Administrator to publish his decisions in the **Federal Register** with copies to FERC, the applicants, and other interested persons.

Initial certifications may be issued for up to one year (§ 595.04); applications for recertification may be filed within 60 days prior to expiration of the initial certification and may be issued for up to one year (§ 595.04). Section 595.08 authorizes the Administrator to terminate a certification or recertification whenever he determines the gas in question is no longer used for an "eligible use" or termination is in the public interest.

In order to monitor the progress and measure the effectiveness of the ERA certification program, we have added a reporting requirement in § 595.07 of the final rule. It requires an end-user who receives an ERA certification or recertification to submit a monthly statement of the volume of natural gas actually used to displace fuel oil and the volume and type of the fuel oil displaced. The reports must be filed with ERA within fifteen days after the end of the month for which the data is being reported.

Section 595.09 provides that an applicant whose application for certification or recertification has been denied or whose certification or recertification has been terminated may file a request for reconsideration within 30 days of denial or termination. Failure by the Administrator to take action on a request for reconsideration within 30 days of its filing shall be considered a denial of the request. This is the only administrative review procedure for this rule and is a prerequisite for judicial review of a decision. An applicant is deemed to have exhausted his administrative remedies when his request for reconsideration has been acted upon or deemed denied.

IV. Environmental Impact

After reviewing the final rule pursuant to DOE's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et. seq.), DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment. ERA certification of natural gas to be used to displace fuel oil will not produce a measurable impact on the national environment, although we do expect that actual gas use may be beneficial on a local level to the extent that it replaces more polluting fuel oil.

V. Potential Program Impact

Due to the urgent need to begin the certification process, the requirements of DOE Order 2030.1 implementing Executive Order 12044, *Improving Government Regulations*, were waived by the Deputy Secretary of DOE, and the initial ERA certification rule was adopted on an interm-final basis with subsequent opportunity for public comments. As we indicated in promulgating the interim-final rule, the preparation of an analysis of the likely impact of the program is appropriate. Copies of this impact analysis may be obtained from the ERA, Office of Public Information, 2000 M Street, NW., Room B–110, Washington, D.C. 20461, (202) 634–2170.

The analysis indicates that since promulgation of the interim-final rule, ERA has received 72 requests for certification, that 11 certifications have been issued which if fully utilized will displace up to 24 million barrels of fuel oil. The analysis concludes that the use of natural gas to displace fuel oil will reduce the need for oil imports, will assist in the effort to increase distillate fuel stocks, will lessen demand for low-sulfur residual fuel which is in tight supply, and produce some economic benefits because of lower energy costs.

In consideration of the foregoing, Subchapter G of Chapter II of Title 10, Code of Federal Regulations, is amended by adding a Part 595 as set forth below.

Issued In Washington, D.C. August 9, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Subchapter G of Chapter II of Title 10, Code of Federal Regulations, is amended by adding a Part 595 to read as follows:

PART 595—CERTIFICATION OF USE OF NATURAL GAS TO DISPLACE FUEL OIL

Sec.

(Sections 102 (3) and (8), 501(e), 644, Pub. L. No. 95–91, 91 Stat. 567, 568, 588, 599, 42 U.S.C. §§ 7112(3), (8), 7191(e), 7254; E.O. 12009, 42 FR 46267.)

§ 595.01 Purpose and scope.

The extensive reliance of the United States on imported crude oil and petroleum products has severe detrimental effects on the security of our energy supplies, balance of payments, and economic well-being. The national interest requires that every practical step be taken to restrain imports quickly. In addition, because of the current shortage of middle distillates as a result of crude oil shortfalls, it is necessary to restrain consumption of that fuel oil in order to rebuild stocks for next winter's heating season.

The use of natural gas is one vehicle for displacing fuel oils. The regulations in this Part 595 will facilitate oil displacement by establishing a procedure whereby the Administrator may certify to the FERC that use of natural gas, purchased by an end-user for its own consumption, will displace fuel oil. ERA certification is a precondition to obtaining interstate transportation of fuel oil displacement gas in accordance with FERC authorizing procedures in 18 CFR Part 284, Subpart F, or any other FERC rules or orders requiring ERA certification pursuant to this Part 595.

§ 595.02 Definitions.

For the purpose of this Part 595:

"Administrator" means the Administrator of ERA or his or her delegate.

"End-user" means any person, including a subsidiary or affiliated entity of that person, who purchases natural gas for consumption in that person's facilities and not for resale.

"Eligible seller" means any willing seller of natural gas.

"Eligible use" means that use of natural gas certified by the Administrator pursuant to section 595.04.

"ERA" means the Economic Regulatory Administration of the Department of Energy.

"FERC" means the Federal Energy Regulatory Commission.

"Fuel oil" means middle distillates or residual fuel oils including #1 and #2 heating oils, kerosene-base jet fuel, #4, #5, and #6 fuel oils; crude oil burned directly as a fuel; and blends of any of the above.

§ 595.03 Eligibility for certification.

Any end-user who has purchased or is in the process of contracting to purchase natural gas directly from an eligible seller to displace fuel oil may apply for certification under this Part 595 if: (1) the natural gas will be used only to displace fuel oil which would otherwise be consumed in the end-user's facilities and not coal; (2) the displaced fuel oil will not be used to displace coal in any of the end-user's facilities; (3) the natural gas to be certified will be transported by an interstate pipeline company; and (4) the authorization for the transportation of the natural gas to be certified derives from the procedures in 18 CFR Part 284, Subpart F or any other FERC rule or order requiring ERA certification pursuant to this Part 595.

§ 595.04 Certification of eligible use.

The Administrator may certify that a purchase or proposed purchase of natural gas is for an eligible use if the end-user demonstrates, upon proper application that: (1) the natural gas will be used to displace fuel oil which would otherwise be consumed in the end-user's facilities during the term of the certification, (2) the natural gas will not be used by the end-user to displace coal in its facilities, and (3) the fuel oil displaced will not be used by the end-user to displace coal in its facilities. The initial certification will be effective for up to one year, unless the FERC authorizing procedures for the transportation of the certified gas require a shorter period of time. The Administrator also may issue a recertification, upon proper application within 60 days prior to the expiration of the initial certification or a previous recertification, which will be effective for up to one year, unless the FERC authorizing procedures for the transportation of the certified gas require a shorter period of time.

§ 595.05 Limitations of applicability.

The Administrator may determine to limit applicability of the regulations of this part to certain end-users or specific geographic areas when such limitation is in the public interest. In making a determination whether to establish any limitations, the Administrator may consider, among other criteria, the impact of certification or recertification on air quality, on regional or local energy supply, on refinery output and regional availability of petroleum products in light of refinery capabilities, on facilitating and advancing coal conversion programs, and on system supplies of natural gas.

§ 595.06 Application for certification and recertification.

(a) An end-user may apply for certification or recertification of an eligible use by filing a written application which must contain the following information:

(1) the company name, mailing address, and telephone number of the end-user, and the name of a person to contact regarding the application;

(2) the name and location of each facility to which the natural gas will be delivered and the volumes of natural gas to be received by each;

(3) an affidavit, signed by a responsible official representing the end-user which states:

(i) an estimate of the volumes, type, and sulfur content of the fuel oil which will be displaced by the natural gas at each of the end-user's facilities;

(ii) that any natural gas certified by the Administrator will be used by the end-user only to displace fuel oil and not to displace coal; and

(iii) that the end-user will not use the displaced fuel oil to displace coal in any of its facilities;

(4) the names and addresses of the eligible sellers with whom the end-user has entered into gas purchase and the interstate pipeline and local distribution companies with which the end-user has entered into transportation contracts or with whom the end-user is negotiating those contracts;

(5) a statement as to whether the applicant expects any transportation of the natural gas pursuant to 18 CFR Part 284, Subpart F, to be either self-implementing or to require a FERC transportation certificate of public convenience and necessity or whether the transportation of the oil displacement gas is authorized by another FERC rule or order;

(6) the FERC docket number and the date of filing of any application for a transportation certificate which has been filed with the FERC regarding this oil displacement gas;

(b) The Administrator may request any additional information he deems necessary.

(c) The applicant must notify ERA in writing if any of the above information is later determined to be incorrect or changed.

(d) An original and fifteen copies of the application should be submitted to:

Office of Petroleum Operations, Economic Regulatory Administration, Room 4126, 2000 M Street, NW., Washington, D.C. 20461.

(e) Notice of receipt of valid applications for certification or recertification will be published in the **Federal Register** within a reasonable time. An opportunity for public comment will be permitted for ten (10) calendar days from the date of publication, including an opportunity to request an oral presentation. After close of the

comment period, the Administrator will review the application and any comments and make a decision whether or not to issue a certification or recertification. Such decision will be published in the **Federal Register**, and sent to the FERC, the applicant, and any person filing comments. The Administrator may certify an eligible use prior to the close of the comment period, if the need for certification is demonstrated to be of sufficient public interest to warrant expedited treatment.

§ 595.07 Reporting requirements.

Each end-user receiving an ERA certification or recertification shall submit a statement to ERA by the fifteenth day of each month after the first month during the term of the certification or recertification, which provides the following information for the preceding month:

(1) The total volume of natural gas obtained and used at each facility pursuant to the ERA certification to displace fuel oil;

(2) The total volume(s) and type(s) (including sulfur content) of fuel oil displaced at each facility by natural gas obtained pursuant to the ERA certification.

Monthly statements should contain the ERA certification docket number. Statements should be mailed to: Office of Petroleum Operations, Economic Regulatory Administration, Room 4126, 2000 M Street, NW., Washington, D.C. 20461.

§ 595.08 Termination of eligibility.

The Administrator may terminate a certification or recertification of an eligible use whenever the Administrator determines, after notice and opportunity to be heard, that: (1) the natural gas is no longer being used for an eligible use as defined in section 595.02, or (2) termination is in the public interest. Upon making the determination to terminate a certification or recertification, the Administrator will notify FERC immediately and request that FERC take appropriate action to terminate any related transportation authorization.

§ 595.09 Request for reconsideration.

(a) Any applicant whose application for certification or recertification has been denied, or whose certification or recertification has been terminated, may request reconsideration within 30 days of the date of the denial or termination. The request should contain a statement of facts and reasons supporting reconsideration and should be submitted in writing to: Office of Petroleum Operations, Economic Regulatory Administration, Room 4126, 2000 M Street, NW., Washington, D.C. 20461.

(b) If the Administrator fails to take action on the request for reconsideration within 30 days, the request is deemed denied.

(c) An applicant has not exhausted his administrative remedies until a request for reconsideration has been filed and acted upon or deemed denied.

[FR Doc. 79-25253 Filed 8-15-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-NW-25-AD: Amdt. 39-3529]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) to require inspection and replacement as required of the engine pylon and spar attach bolts (fuse pins). A bolt failure would reduce the structural strength of the pylon to the extent engine separation could occur.

DATE: Effective date August 27, 1979.

Compliance required within 300 hours time-in-service after the effective date of this AD unless already accomplished.

ADDRESS: The Boeing service bulletin specified in this directive may be obtained upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION, CONTACT: Mr. Iven Connally, Airframe Section, ANW-212, Engineering and Manufacturing Branch, FAA, Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2516.

SUPPLEMENTARY INFORMATION: One instance of a fractured pylon midspar attach fuse bolt has been reported. The fracture was due to fatigue originating from a machine mark in the bore of the pin. Loss of support at these fittings could allow the engine to roll or yaw sufficiently to fail the opposite fitting which could, in turn, result in engine separation.

Since this condition is likely to exist or develop in other Boeing 747 airplanes, action is taken herein to require inspection and replacement, if required, of the pylon attach fuse bolts.

Since a situation exists that requires immediate adoption of this regulation it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

§ 39.13 [Amended]

* * * * *

Boeing: Applies to all Model 747 series airplanes certificated in all categories listed in Boeing Service Bulletin 747-53-2063 with more than 12,000 flight hours. Compliance required within 300 hours time-in-service after the effective date of this AD unless already accomplished. To prevent failure of the pylon midspar attach bolts accomplish the following:

A. Within 300 hours time-in-service after the effective date of this AD unless already accomplished, ultrasonic inspect the pylon attach bolts for cracks in accordance with Boeing Service Bulletin 747-54-2063 or a method approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

B. Replace cracked bolts in accordance with Boeing Service Bulletin 747-54-2063 before further flight.

C. Coat inside surface of the bolts with corrosion preventive compound MIL-C-11796, Class I or MIL-C-16173 Grade I within 300 hours time-in-service after effective date of this AD, unless already accomplished. If corrosion exists remove corrosion and reapply compound.

D. Repeat the inspection in accordance with paragraph A above at intervals not to exceed 2500 hours time-in-service.

E. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA Northwest Region may adjust the compliance times if the request contains substantiating data to justify the increase for that operator.

F. Report results of the ultrasonic inspections of the pylon attach bolts, both positive and negative, to the Chief, Engineering and Manufacturing Branch, FAA Northwest Region. (Reporting approved by the Bureau of Budget under BOB No. 04-R0174).

The manufacturer's specifications and procedures identified and described in this

directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer, may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

This amendment becomes effective August 27, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provision of Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Note.—The incorporation by reference provisions in the document were approved by the Director of the **Federal Register** on June 19, 1967.

Issued in Seattle, Washington, on August 7, 1979.

C. B. Walk, Jr.,

Director, Northwest Region.

[FR Doc. 79-25299 Filed 8-15-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-ASW-21]

Alteration of Transition Area: Port Isabel, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to alter the transition area at Port Isabel, Tex. The intended effect of the action is to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Port Isabel Cameron County Airport. The circumstance which created the need for the action is the establishment of a new instrument approach procedure to Runway 17 at Port Isabel Cameron County Airport using the Brownsville VORTAC.

EFFECTIVE DATE: October 4, 1979.

FOR FURTHER INFORMATION CONTACT: Manuel R. Hugonnett, Airspace and Procedures Branch (ASW-536), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On July 2, 1979, a notice of proposed rule making was published in the **Federal Register** (44 FR 38568) stating that the Federal Aviation Adminstration proposed to alter the Port Isabel, Tex., transition area. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the Federal Aviation Administration. No objections were received to the proposal. Except for editorial changes, this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71) alters the Port Isabel, Tex., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument approach procedures to the Port Isabel Cameron County Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 GMT, October 4, 1979, as follows:

In Subpart G § 71.181 (44 FR 442) the Port Isabel, Tex., transition area is amended by adding the following:

Port Isabel, Tex.

* * * and within 2 miles each side of the Brownsville, Tex., VORTAC 005° radial extending 1 mile north of the 5-mile radius area.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Fort Worth, Texas, on August 6, 1979.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 79-25127 Filed 8-15-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-WE-12]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Control Zone; Santa Maria, Calif.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the effective hours of the control zone so as to coincide with the hours of operation with the Airport Traffic Control Tower at Santa Maria, California.

EFFECTIVE DATE: August 16, 1979.

ADDRESSES: Federal Aviation Administration, Air Traffic Division, Chief, Airspace and Procedures Branch, AWE-530, 15000 Aviation Boulevard, Lawndale, California 90261.

FOR FURTHER INFORMATION CONTACT: Thomas W. Binczak, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261. Telephone: (213) 536-6182.

SUPPLEMENTARY INFORMATION: In Subpart F, 71.171 (44 FR 353) of FAR Part 71, the Santa Maria California Control Zone is effective from 0700 to 2200 hours local time daily. The agency proposes to increase the hours of tower operation from 0700 to 2200 local time daily to 0630 to 2200 local time daily to accommodate scheduled air taxi operations. Since the effective hours of the control zone are dependent upon weather observations and air traffic communications within the control zone, it is necessary to increase the time of designation of the control zone to coincide with these capabilities.

This alteration will allow for control zone designation to exist when weather and communications requirements are in effect. To make this possible, a change is required in the designation of the control zone to allow for part-time operation.

Since this alteration is mandated by regulation, we have determined that notice and public procedures provisions of the Administrative Procedures Act is unnecessary.