that must be used when setting the longitudinal trim tab for takeoff.

(d) The check required by paragraph (a) of this AD and the repositioning required by paragraph (c) of this AD may be performed by the pilot and an entry made in the airplane maintenance records in accordance with Part 43 of the Federal Aviation Regulations.

(e) Within 50 hours time in service after the effective date of this AD—

(1) For airplanes with Serial Numbers 1 to 75 inclusive, install Partenavia Kit P/N 68-010 in accordance with the kit manufacturer's instructions, or an FAA-approved equivalent.

(2) For airplanes with Serial Numbers 76 to 159 inclusive install Partenavia Kit P/N 68-009 in accordance with the kit manufacturer's instructions, or an FAA-approved equivalent.

(f) If an equivalent means of compliance is used in complying with this AD, that equivalent must be approved by the Chief, Aircraft Certification Staff, AEU-100, FAA, Europe, Africa and Middle East Office, c/o American Embassy, Brussels, Belgium.

This amendment becomes effective April 6, 1981.

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 Partenavia Costruzioni Aeronautiche S.p.A., Via Cava, Casoria—Napoli, Italy. These documents may be examined at FAA Headquarters, Room 916, 800 Independence Avenue, SW., Washington, DC 20591.

(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)); 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation under the President's memorandum of January 29, 1981, and an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT".

This rule is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Washington, D.C., on March 13, 1981.

George J. Pour,

Acting Director of Airworthiness.

The incorporation by reference provision in this document was approved by the Director of the Federal Register on June 19, 1967.

[FR Doc. 81-8541 Filed 3-20-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 21513; Amdt. No. 1186]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATE: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. The amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective March 23, 1981 and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require

making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

** * * Effective May 14, 1981*

Meridian, MS—Key Field, VOR-A, Amdt. 12
Memphis, TN—Memphis Intl, VOR Rwy 18R, Amdt. 1

** * * Effective April 30, 1981*

West Memphis, AR—West Memphis Muni, VOR/DME-A, Amdt. 3
Avalon, CA—Catalina, VOR-A, Amdt. 3
Avalon, CA—Catalina, VOR/DME-B, Amdt. 1
Twentynine Palms, CA—Twentynine Palms, VOR Rwy 26, Original
Atlanta, GA—DeKalb-Peachtree, VOR Rwy 27, Amdt. 13
Bainbridge, GA—Commodore Decatur, VOR-C, Amdt. 1
Moultrie, GA—Moultrie Municipal, VOR Rwy 4, Amdt. 10
Marion, IN—Marion Muni, VOR Rwy 4, Amdt. 8
Marion, IN—Marion Muni, VOR Rwy 15, Amdt. 5
Marion, IN—Marion Muni, VOR Rwy 22, Amdt. 11
Parsons, KS—Tri-City, VOR Rwy 13, Original
Caribou, ME—Caribou Muni, VOR-A, Amdt. 6
Davison, MI—Davison Genova, VOR Rwy 8, Amdt. 1
Hillsdale, MI—Hillsdale Muni, VOR-A, Amdt. 4
Plymouth, MI—Mettetal, VOR-A, Amdt. 5
Salem, MI—Salem, VOR-A, Amdt. 3
Wixom, MI—Spencer Field, VOR-A, Amdt. 1
Minneapolis, MN—Flying Cloud, VOR Rwy 9L, Amdt. 10, cancelled
Minneapolis, MN—Flying Cloud, VOR Rwy 9R, Amdt. 2
Minneapolis, MN—Flying Cloud, VOR Rwy 36, Amdt. 7
Thief River Falls, MN—Thief River Falls Regional, VOR Rwy 13, Amdt. 6
Thief River Falls, MN—Thief River Falls Regional, VOR/DME Rwy 13, Amdt. 1
Thief River Falls, MN—Thief River Falls Regional, VOR Rwy 31, Amdt. 7
Thief River Falls, MN—Thief River Falls Regional, VOR/DME Rwy 31, Amdt. 2
Somerville, NJ—Somerset, VOR Rwy 8, Amdt. 9
Lexington, NC—Lexington Muni, VOR/DME Rwy 8, Original
Maxton, NC—Laurinburg-Maxton, VOR/DME-A, Amdt. 2
Coshocton, OH—Richard Downing, VOR-A, Amdt. 3
Connellsville, PA—Connellsville, VOR-A, Original
Norfolk, VA—Norfolk Intl, VOR Rwy 23, Amdt. 6
Everett, WA—Snohomish County (Paine Fld), VOR Rwy 16, Amdt. 3
Everett, WA—Snohomish County (Paine Fld), VOR Rwy 34, Amdt. 2
Silverdale, WA—Apex Airpark, VOR-A, Amdt. 1

** * * Effective April 16, 1981*

Miami, FL—Miami Intl, VOR Rwy 12, Amdt. 25
Willmar, MN—Willmar Muni, VOR Rwy 10, Amdt. 9
Willmar, MN—Willmar Muni, VOR Rwy 28, Amdt. 4

** * * Effective March 5, 1981*

Ontario, CA—Ontario Intl, VOR or TACAN Rwy 26R, Amdt. 7

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

** * * Effective April 30, 1981*

Eagle, CO—Eagle County, LDA-A, Amdt. 1
Ft. Lauderdale, FL—Ft. Lauderdale-Executive, LOC Rwy 8, Amdt. 1
Champaign-Urbana, IL—University of Illinois-Willard, LOC BC Rwy 13, Amdt. 4
Chicago, IL—Chicago Midway, LOC Rwy 31L, Amdt. 9
Maxton, NC—Laurinburg-Maxton, SDF Rwy 5, Amdt. 2

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

** * * Effective May 14, 1981*

Meridian, MS—Key Field, NDB Rwy 1, Amdt. 17
Washington, NC—Warrent Field NDB-A, Amdt. 2
Memphis, TN—Memphis Intl, NDB Rwy 36R, Amdt. 6

** * * Effective April 30, 1981*

West Memphis, AR—West Memphis Muni, NDB Rwy 17, Amdt. 7
Chicago, IL—Chicago Midway, NDB Rwy 4R, Amdt. 10
Chicago, IL—Chicago Midway, NDB Rwy 13R, Amdt. 8
Chicago, IL—Chicago Midway, NDB Rwy 31L, Amdt. 8
Parsons, KS—Tri-City, NDB Rwy 17, Amdt. 4
Parsons, KS—Tri-City, NDB Rwy 35, Amdt. 2
Belfast, ME—Belfast Muni, NDB Rwy 15, Amdt. 1
Thief River Falls, MN—Thief River Falls Regional, NDB Rwy 31, Amdt. 1
Hastings, NE—Hastings Muni, NDB Rwy 14, Amdt. 9
Caldwell, NJ—Essex County, NDB-A, Amdt. 2
Caldwell, NJ—Essex County, NDB Rwy 22, Amdt. 3
Maxton, NC—Laurinburg-Maxton, NDB Rwy 5, Amdt. 4
Cleveland, OH—Cleveland-Hopkins Intl, NDB Rwys 5R/L, Amdt. 15
Port Angeles, WA—William R. Fairchild Intl, NDB-A, Original
Everett, WA—Snohomish County (Paine Fld), NDB Rwy 16, Amdt. 10

** * * Effective March 19, 1981*

Miami, FL—Miami Intl, NDB Rwy 27L, Amdt. 15

4. By amending § 97.29 ILS-MSL SIAPs identified as follows:

** * * Effective May 14, 1981*

Meridian, MS—Key Field, ILS Rwy 1, Amdt. 21
Memphis, TN—Memphis Intl, ILS Rwy 18L, Amdt. 6
Memphis, TN—Memphis Intl, ILS Rwy 18R, Amdt. 7
Memphis, TN—Memphis, Intl, ILS Rwy 36L, Amdt. 8
Memphis, TN—Memphis Intl, ILS Rwy 36R, Amdt. 7

** * * Effective April 30, 1981*

Chicago, IL—Chicago Midway, ILS Rwy 4R, Amdt. 7
Chicago, IL—Chicago Midway, ILS Rwy 13R, Amdt. 35
Marion, IN—Marion Muni, ILS Rwy 4, Amdt. 2
Minneapolis, MN—Flying Cloud, MLS Rwy 9R (Interim), Amdt. 1
Thief River Falls, MN—Thief River Falls Regional, MLS Rwy 31 (Interim), Amdt. 2
Monticello, NY—Sullivan County Intl, ILS Rwy 15, Amdt. 1
Cleveland, OH—Cleveland-Hopkins Intl, ILS Rwy 5R, Amdt. 9
Everett, WA—Snohomish County (Paine Fld), ILS Rwy 16, Amdt. 16
Wheeling, WV—Wheeling-Ohio County, ILS Rwy 3, Amdt. 13
Janesville, WI—Rock County, ILS Rwy 4, Amdt. 7

** * * Effective April 16, 1981*

Cordova, AK—Cordova Mile 13, ILS/DME Rwy 27, Amdt. 4

** * * Effective March 19, 1981*

Miami, FL—Miami Intl, ILS Rwy 9R, Amdt. 4
Miami, FL—Miami Intl, ILS Rwy 27L, Amdt. 20

** * * Effective March 5, 1981*

Ontario, CA—Ontario Intl, ILS Rwy 8L, Amdt. 2
Ontario, CA—Ontario Intl, ILS Rwy 26R, Amdt. 32

5. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective May 14, 1981*

Memphis, TN—Memphis International, RADAR-1, Amdt. 35

* * * *Effective April 30, 1981*

Champaign-Urbana, IL—University of Illinois-Willard, RADAR-1, Amdt. 3
Chicago, IL—Chicago-Midway, RADAR-1, Amdt. 23
Cleveland, OH—Cleveland-Hopkins Intl, RADAR-1, Amdt. 28

* * * *Effective April 16, 1981*

Miami, FL—Miami Intl, RADAR-1, Amdt. 19

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective May 14, 1981*

Meridian, MS—Key Field, RNAV Rwy 19, Amdt. 2

* * * *Effective April 30, 1981*

Parsons, KS—Tri-City, RNAV Rwy 17, Amdt. 2
Parsons, KS—Tri-City, RNAV Rwy 35, Amdt. 2
Somerville, NJ—Somerset, RNAV Rwy 12, Amdt. 1
Spokane, WA—Spokane Intl, RNAV Rwy 21, Original

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this document involves a regulation which is not significant under 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. The FAA has also determined that this regulation is an emergency regulation under the President's memorandum of January 29, 1981, and an emergency regulation that is not a major rule under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately in order to coincide with aeronautical charts which have either already been published or are in the process of publication. An unsafe flying environment would result if the effective rules are not accurately reflected in the charts used by pilots.

Issued in Washington, D.C., on March 13, 1981.

John S. Kern,

Chief, Aircraft Programs Division.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980.

[FR Doc. 81-8542 Filed 3-20-81; 8:45 am]

BILLING CODE 4910-13-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 207

Investigations To Review Outstanding Antidumping and Countervailing Duty Determinations and Outstanding Suspension Agreements

AGENCY: United States International Trade Commission.

ACTION: Final rule.

SUMMARY: Section 207.45 of the Commission's Rules of Practice and Procedure implements section 751 of the Tariff Act of 1930. This rule, as amended, sets forth procedures for the conduct of Commission investigations to review suspension agreements under sections 704 and 734 of the Tariff Act and determinations under sections 704(h)(2), 705(b), 734(h)(2), and 735(b) of the Tariff Act, under the Antidumping Act, 1921, and under the duty-free merchandise provisions of section 303(b) of the Tariff Act.

EFFECTIVE DATE: March 23, 1981.

FOR FURTHER INFORMATION CONTACT: Edward Easton, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0379.

SUPPLEMENTARY INFORMATION: An analysis of comments on the proposed amendments to the rule follows.

On August 14, 1980, a Notice of Proposed Rulemaking was published in the **Federal Register** (45 FR 54086) proposing to amend § 207.45 of title 19, chapter II, of the Code of Federal Regulations. The notice provided that comments concerning the proposed amendment were to be submitted on or before September 15, 1980. A submission was received from one interested person. That submission suggested that the Commission adopt procedures for publishing a notice in the **Federal Register** as soon as it receives a request to review an outstanding suspension agreement or an outstanding antidumping or countervailing duty determination and allow interested persons 30 days from the date of that publication in which to provide their views with regard to whether there are changed circumstances sufficient to warrant an investigation. This suggestion has been adopted. In the event that the Commission were to deny a petition on the basis that it failed to show sufficient changed circumstances, any subsequent petition for a review investigation would also have the burden of showing changed circumstances.

Another difference between the final rule and the proposed rule concerns the modification of outstanding antidumping and countervailing duty orders. The scope of § 207.45 as it was promulgated covered both the modification and revocation of outstanding orders. Given the possibility that an outstanding order may cover different merchandise in more than one market, the Commission can expect to receive requests for review investigations with a narrower product scope than the subject outstanding order. In such circumstances a request for modification of the coverage of the outstanding order would be more appropriate than a request to revoke it. The proposed rule published in the **Federal Register** of August 14, 1980, would have limited Commission action to the revocation of outstanding orders. The final rule covers both the revocation and modification situations.

The final rule contains a statement that in the case of an evenly divided vote as to whether a Commission determination should be affirmative or negative, the outstanding agreement or order shall remain unaffected. The final rule contains a reference to antidumping "orders" issued under the Antidumping Act, 1921, repealed January 1, 1980. The language in that act referred to "findings," not "orders." The term "order" is used in the antidumping provisions of title VII of the Tariff Act. The purpose of this reference to "orders" in the amended rule is to indicate that it considers these terms to be equivalent and that the Commission intends to continue to exercise review authority over the determinations issued under the Antidumping Act, 1921.

Section 207.45 is revised to read as follows:

§ 207.45 Investigation to review outstanding determination.

(a) *Purpose.* Upon the receipt of information concerning, or upon a request for a review of, a determination concerning a suspension agreement accepted under section 704 or 734 of the Act or an affirmative determination made under section 704(h)(2), 705(b), 734(h)(2), or 735(b) of the Act, or a determination which resulted in an order issued under the Antidumping Act, 1921, or section 303(b) of the Act, which shows changed circumstances sufficient to warrant a review of such determination, the Commission shall institute an investigation to determine, as the case may be, (1) whether, in light of the changed circumstances, the agreement continues to completely eliminate the injurious effect of imports

of the merchandise; or (2) whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of the merchandise covered by the countervailing duty order or the antidumping order if the order were to be modified or revoked. In the case of an evenly divided vote as to whether a Commission determination should be affirmative or negative, the outstanding agreement or order shall remain unaffected. In the absence of good cause shown, no investigation under this section shall be instituted within 24 months of the date of publication of the notice of the suspension or determination.

(b) *Procedures.* (1) *Commencement of proceedings.* (i) *Upon receipt of a request.* A proceeding is commenced upon the filing with the Commission of the original and nineteen (19) true copies of a request. Requests for a review investigation may be filed by any person. All requests shall set forth a description of changed circumstances sufficient to warrant the institution of a review investigation by the Commission under this section.

(ii) *Upon the initiative of the Commission.* Upon receipt of information concerning a suspension agreement accepted under section 704 or 734 of the Act or an affirmative determination made under 704(h)(2), 705(b), 734(h)(2), or 735(b) of the Act, or a determination which resulted in an order issued under the Antidumping Act, 1921, or section 303(b) of the Act, which shows changed circumstances sufficient to warrant a review of such determination, the Commission shall initiate an investigation to review such determination.

(2) *Notice of receipt of a request.* Upon the receipt of a properly filed request for a review investigation, the Commission shall publish a notice of having received such a request in the **Federal Register** inviting public comment on the question of whether the Commission should institute a review investigation. Interested persons shall have at least thirty (30) days from the date of publication in the **Federal Register** within which to submit comments to the Commission.

(3) *Institution of an investigation.* Within thirty (30) days after the close of the period for public comments following publication of the receipt of a request, the Commission shall determine whether the request shows changed circumstances sufficient to warrant a review and, if so, shall institute an investigation. The investigation instituted by notice published in the **Federal Register** and shall be completed within 120 days of the date of such publication. If the Commission determines that a request does not show changed circumstances sufficient to warrant a review, the request will be dismissed and a notice of the dismissal published in the **Federal Register** stating the reasons therefor.

(4) *Procedures set forth in Subpart C of Part 207.* The procedures set forth in §§ 207.21 through 207.24 and § 207.28 of this Part shall apply to all investigations instituted under this section.

(Sec. 751 of the Tariff Act of 1930)

By order of the Commission.

Issued: March 19, 1981.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-8822 Filed 3-20-81; 8:45 am]

BILLING CODE 7020-02-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[PH-FRL 1756-3; FAP 9H5241/R75]

Thiopanate-Methyl; Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency

Correction

In FR Doc. 81-5692 appearing on page 12956 in the issue of Thursday, February 19, 1981, make the following correction:

In the center column of page 12957, in the fourth line of § 561.387, "* * * (iminocarbonothioyl)] * * *" should have read "* * * (iminocarbonothioyl)] bis [carbamate]) * * * .".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 716 and 785

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Department of the Interior.

ACTION: Notice of suspension of certain rules in 30 CFR Chapter VII.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is suspending three final rules pending the outcome of rulemaking to modify those rules. This action is being taken as a result of preliminary review of the rules under Executive Order 12291. The specific regulations affected by this action are listed below.

EFFECTIVE DATE: March 23, 1981.

FOR FURTHER INFORMATION CONTACT: Andrew V. Bailey, Principal Deputy Director, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240 (202) 343-4006.

SUPPLEMENTARY INFORMATION: On February 4, 1981, the Department of the Interior, in accordance with the President's memorandum of January 29, 1981, extended until March 30, 1981, the effective dates of three final rules which had not yet become effective. The three rules deal with exemptions and definitions for the prime farmland rules of OSM's initial and permanent regulatory programs and an exemption for operations which affect two acres or less. As a result of a preliminary review of these rules undertaken pursuant to Executive Order No. 12291, 46 FR 13193, OSM has determined that it is in the public interest to consider modifications of these rules. The three rules are therefore suspended pending the outcome of further rulemaking which OSM will initiate in the near future. All appropriate procedures under Executive Order 12291, the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the Administrative Procedure Act (APA), and other applicable laws and regulations will be followed.

As a result of this notice, these rules will not become effective on March 30, 1981, as was stated in the notice published in the **Federal Register** on February 4, 1981, 46 FR 10707. Because none of the rules has ever been in effect, this suspension will allow the prior versions of each rule to remains in effect until the completion of new rulemaking proceedings.

Justification for Postponement Followed by Suspension

Many states have recently received outright or conditional approval of their regulatory programs and are beginning the difficult task of implementing those programs. If these rules were allowed to become effective on March 30, 1981, those states would be required to begin the process of amending their state programs to meet the new federal rules. State resources would be needlessly expended in this effort, however, if the result of OSM's planned future rulemaking differs from the postponed rules. Imposition of such an unnecessary burden on States which are currently facing the difficult task of implementing their regulatory programs is not justifiable. Consequently, good cause exists for immediate suspension of these

rules without notice and public procedure thereon to prevent such a wasteful exercise and allow a careful reevaluation and revision of the prime farmland and two acre exemption rules. Good cause similarly exists for this suspension to take effect immediately. Because the prior rules will remain in effect, the suspension of these versions of the rules will have no adverse effect upon achieving the purposes of SMCRA pending completion of the rulemaking process.

Notice of Suspended Regulations

The following regulations are suspended:

A. 30 CFR 716.7(a) and (b). Prime Farmland Exemption.

The regulation as published on January 22, 1981 (46 FR 7212) is suspended. The regulation which was removed by that notice remains in effect.

B. 30 CFR 716.7 (a) and (b). Prime Farmlands Exemption.

This regulation as published on January 23, 1981 (46 FR 7900) is suspended. The regulation which was revised by that notice remains in effect.

C. 30 CFR 785.17. Prime Farmland Exemption.

This regulation as published on January 23, 1981 (46 FR 7900) is suspended. The regulation which was revised by that notice remains in effect.

D. 30 CFR 700.11(b). Extraction of Coal; Two acres or less.

This regulation as published on January 23, 1981 (46 FR 7904) is suspended. The regulation which was revised by that notice remains in effect.

Dated: March 18, 1981.

Perry Pendley,

Deputy Assistant Secretary of the Interior.

[FR Doc. 81-8801 Filed 3-20-81; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 242b

General Procedures and Delegations of the Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Uniformed Services University of the Health Sciences.

ACTION: Final rule.

SUMMARY: This document amends the General Procedures and Delegations to realign certain functions of officers reporting to the Dean of the University (President). It revises titles and responsibilities to correspond to the realignment of functions.

EFFECTIVE DATE: March 2, 1981.

ADDRESS: Legal Counsel, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20014.

FOR FURTHER INFORMATION CONTACT: Merel Glaubiger, Legal Counsel, 202/295-3028.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-36169 published in the **Federal Register** on December 20, 1977 (42 FR 63775) the Uniformed Services University of the Health Sciences published General Procedures and Delegations of the Board of Regents of the Uniformed Services University of the Health Sciences, This was amended in FR Doc. 78-28367 published in the **Federal Register** on October 10, 1978 (43 FR 46531) to alter the number and responsibilities of officers reporting to the Dean of the University (President). The purpose of this amendment is to alter the responsibilities of these officers without changing their number and to reflect the changes in responsibility by changes in title. The rule establishes the offices of Associate Dean for Operations and Associate Dean for Academic Affairs in place of the Director of Resource Management and the Assistant Dean for Administration. The rule also makes technical changes in language.

Because these rules relate solely to matters of University organization and procedure, notice of proposed rulemaking and public participation in the rulemaking are not required by Section 553 of Title 5 of the United States Code.

Accordingly, pursuant to the Uniformed Services Health Professions Revitalization Act, Sections 552 and 553 of Title 5 of the United States Code, and Section 242b.8(a) of Title 32, Code of Federal Regulations, the Board of Regents of the Uniformed Services University of the Health Sciences, amends § 242b.7, Chapter I, Title 32, Code of Federal Regulations by revising § 242b.7(a)(7) and § 242b.7(b)(2)-(4) to read as follows:

PART 242b—GENERAL PROCEDURES AND DELEGATIONS OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

§ 242b.7 Officers of the University.

(a) * * *

(7) * * *

(iii) an Associate Dean for Operations; and

(iv) an Associate Dean for Academic Affairs.

* * * * * *

(b) * * *

(2) Associate Dean of the School of Medicine.

(i) The Associate Dean shall assist the Dean of the School of Medicine in planning, developing, and directing the activities and functions of the School of Medicine.

(ii) In the absence of the Dean, he or she shall act for the Dean.

(3) Associate Dean for Operations.

(i) The Associate Dean for Operations shall be responsible for the support of the educational and research activities of the University including but not limited to:

(A) financial management;

(B) building support and materiel acquisition;

(C) laboratory animal medicine;

(D) personnel/manpower;

(E) instructional and research support; and

(F) learning resources center.

(ii) He or she shall be responsible for preparation of the University budget estimates and program submission presentations for the approval of the Board.

(iii) He or she shall make all books, records or vouchers available for the inspection of any member of the Board and shall report at each meeting of the Administrative Affairs Committee.

(4) Associate Dean for Academic Affairs

(i) The Associate Dean for Academic Affairs shall be responsible for the overall management and supervision of the University's Basic Sciences Departments, Clinical Sciences Departments, and the Academic Sections including but not limited to:

(A) Operational and Emergency Medicine; and

(B) Medical Education.

M. S. Healy,
OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.
March 18, 1981.
[FR Doc. 81-8774 Filed 3-20-81; 8:45 am]
BILLING CODE 3810-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 57

[EN-FRL 1783-3]

Primary Nonferrous Smelter Orders

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In response to petitions for reconsideration, the Administrator, on December 24, 1980, proposed for public comment two amendments to the regulations concerning nonferrous smelter orders (NSOs). The one public comment received supported the proposal, and the Administrator is today promulgating the amendments as proposed. Their intended effect is to (1) allow an NSO to provide that certain emissions that occur during startup of an acid plant after scheduled maintenance are not excess emissions and (2) make a smelter owner's consent to liability inapplicable in criminal proceedings.

DATES: These amendments are effective April 22, 1981.

ADDRESS: Docket Number DSSE 78-1 contains all material relevant to this action and is located at the Central Docket Section, Gallery 1, West Tower, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. There may be a reasonable charge for copying.

FOR FURTHER INFORMATION CONTACT: David Rochlin, Division of Stationary Source Enforcement (EN-341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; telephone 202-755-2542.

SUPPLEMENTARY INFORMATION: On June 24, 1980 (45 FR 42514), the Administrator promulgated regulations that established the minimum required contents of initial primary NSOs issued under Section 119 of the Clean Air Act and the criteria and procedures EPA will use in issuing NSOs and evaluating NSOs issued by States.

In response to a petition for reconsideration from the State of Arizona, EPA on December 24, 1980 (45 FR 85084) proposed for public comment two amendments to the NSO regulations. The only public comment received supported the proposal and did not request a hearing. The reasons for these amendments, which the Administrator is today promulgating as proposed, are set out in the Administrator's response to the petitions for reconsideration of the NSO rules published December 24, 1980 (45 FR 85009, 85010-85011).

The Office of Management and Budget has exempted this regulation from the OMB review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

(Secs. 110, 114, 119 and 301 of the Clean Air Act, 42 U.S.C. 7410, 7414, 7419 and 7601)

Dated: March 12, 1981.

Walter C. Barber,
Acting Administrator.

The Administrator hereby amends Part 57 in Title 40 of the Code of Federal Regulations as follows:

1. Subpart C—Constant Controls and Related Requirements is amended by revising the first sentence of paragraph (e) of § 57.304 to read as follows:

§ 57.304 Bypass, excess emissions and malfunctions.

* * * * *

(e) An NSO may provide that excess emissions which occur during acid plant start-up as the result of the cooling of acid plant catalyst due to the unavailability of process gas to an acid plant during a prolonged SCS curtailment or scheduled maintenance are not excess emissions. * * *

2. Subpart D—Supplementary Control System Requirements is amended by revising § 57.403 to read as follows:

§ 57.403 Written consent.

(a) *The consent.* The NSO shall include a written consent, signed by a corporate official empowered to do so, in the following form:

As a condition of receiving a Primary Nonferrous Smelter Order (NSO) under section 119 of the Clean Air Act for the smelter operated by (*name of company*) at (*location*), the undersigned official, being empowered to do so, consents for the company as follows:

(1) In any civil proceeding (judicial or administrative) to enforce the NSO, the company will not contest:

(a) Liability for any violation of the National Ambient Air Quality Standards for sulfur dioxide in the smelter's designated liability area (DLA), except on the ground that a determination under 40 CFR 57.402(c)(3) was clearly wrong; or

(b) The conclusive allocation of liability under NSO provisions satisfying 40 CFR 57.402(d)(1) between the company's smelter and any other smelter(s) for any violation of the National Ambient Air Quality Standards for sulfur dioxide in an area of overlapping DLAs.

(2) The issuing agency (as defined in 40 CFR 57.103) will be allowed unrestricted access at reasonable times to inspect, verify calibration of, and obtain data from ambient air quality monitors operated by the company under the requirements of the NSO.

(b) *Rights not waived by the consent.* This consent shall not be deemed to waive any right(s) to judicial review of any provisions of an NSO that are otherwise available to the smelter owner or operator under section 307(b) of the Clean Air Act.

[FR Doc. 81-8763 Filed 3-20-81; 8:45 am]
BILLING CODE 6560-33-M

40 CFR Parts 122, 264, and 265

[SWH-FRL 1673-7a]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Consolidated Permit Regulations

Correction

In FR Doc. 81-463 appearing on page 2802, on Monday, January 12, 1981, make the following corrections:

(1) On page 2824, in the third column, in the second full paragraph, in the twenty-first line "post-closure period." should be corrected to read "post-closure trust fund since payments to the fund are not required in the post-closure period."

(2) On page 2857, in the first column, in the eighth paragraph, § 264.145(b), *"guaranteed"* should be corrected to read *"guaranteeing"*.

(3) On page 2861, in the first column, in the third line, "§ 264.140" should be corrected to read "§ 264.149".

(4) In § 264.151(f), on page 2866, in the first column, under **"Irrevocable Standby Letter of Credit"**, in the third line, "Irrevocable Letter" should be corrected to read "Irrevocable Standby Letter".

(5) In § 265.145(f), on page 2883, in the second column, in the third line, "post-closure of" should be corrected to read "post-closure care of".

BILLING CODE 1505-01-M

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508

Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations

March 17, 1981.

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information Only: Publication of Memorandum to Agencies Containing Answers to 40 Most Asked Questions on NEPA Regulations.

SUMMARY: The Council on Environmental Quality, as part of its oversight of implementation of the National Environmental Policy Act, held meetings in the ten Federal regions with Federal, State, and local officials to discuss administration of the implementing regulations. The forty most asked questions were compiled in a memorandum to agencies for the information of relevant officials. In order efficiently to respond to public inquiries this memorandum is reprinted in this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Nicholas C. Yost, General Counsel, Council on Environmental Quality, 722 Jackson Place NW., Washington, D.C. 20006; 202–395–5750.

March 16, 1981.

Memorandum for Federal NEPA Liaisons, Federal, State, and Local Officials and Other Persons Involved in the NEPA Process

Subject: Questions and Answers About the NEPA Regulations

During June and July of 1980 the Council on Environmental Quality, with the assistance and cooperation of EPA's EIS Coordinators from the ten EPA regions, held one-day meetings with federal, state and local officials in the ten EPA regional offices around the country. In addition, on July 10, 1980, CEQ conducted a similar meeting for the Washington, D.C. NEPA liaisons and persons involved in the NEPA process. At these meetings CEQ discussed (a) the results of its 1980 review of Draft EISs issued since the July 30, 1979 effective date of the NEPA regulations, (b) agency compliance with the Record of Decision requirements in Section 1505 of the NEPA regulations, and (c) CEQ's preliminary findings on how the scoping process is working. Participants at these meetings received copies of materials prepared by CEQ summarizing its oversight and findings.

These meetings also provided NEPA liaisons and other participants with an opportunity to ask questions about NEPA and the practical application of the NEPA regulations. A number of these questions were answered by CEQ representatives at the regional meetings. In response to the many requests from the agencies and other participants, CEQ has compiled forty of the most important or most frequently asked questions and their answers and reduced them to writing. The answers were prepared by the General Counsel of CEQ in consultation with the Office of Federal Activities of EPA. These answers, of course, do not impose any additional requirements beyond those of the NEPA regulations. This document does not represent new guidance under the NEPA regulations, but rather makes generally available to concerned agencies and private individuals the answers which CEQ has already given at the 1980 regional meetings. The answers also reflect the advice which the Council has given over the past two years to aid agency staff and consultants in their day-to-day application of NEPA and the regulations.

CEQ has also received numerous inquiries regarding the scoping process. CEQ hopes to issue written guidance on scoping later this year on the basis of its special study of scoping, which is nearing completion.

Nicholas C. Yost,

General Counsel.

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Questions and Answers About the NEPA Regulations (1981)

1a. Q. What is meant by "range of alternatives" as referred to in Sec. 1505.1(e)? [1]

A. The phrase "range of alternatives" refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. Section 1502.14. A decisionmaker must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents. Moreover, a decisionmaker must, in fact, consider all the alternatives discussed in an EIS. Section 1505.1(e).

1b. Q. How many alternatives have to be discussed when there is an infinite number of possible alternatives?

[1] References throughout the document are to the Council on Environmental Quality's Regulations For Implementing The Procedural Provisions of the National Environmental Policy Act. 40 CFR Parts 1500–1508.

A. For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest could be said to involve an infinite number of alternatives from 0 to 100 percent of the forest. When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the *full spectrum* of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.

2a. Q. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?

A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are *practical or feasible* from the technical and economic standpoint and using common sense, rather than simply *desirable* from the standpoint of the applicant.

2b. Q. Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized?

A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1(a).

3. Q. What does the "no action" alternative include? If an agency is under a court order or legislative command to act, must the EIS address the "no action" alternative?

A. Section 1502.14(d) requires the alternatives analysis in the EIS to "include the alternative of no action." There are two distinct interpretations of "no action" that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.

The second interpretation of "no action" is illustrated in instances involving federal decisions on proposals for projects. "No action" in such cases would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

Where a choice of "no action" by the agency would result in predictable actions by others, this consequence of the "no action" alternative should be included in the analysis. For example, if denial of permission to build a railroad to a facility would lead to construction of a road and increased truck traffic, the EIS should analyze this consequence of the "no action" alternative.

In light of the above, it is difficult to think of a situation where it would *not* be appropriate to address a "no action" alternative. Accordingly, the regulations require the analysis of the no action alternative even if the agency is under a court order or legislative command to act. This analysis provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. Section 1502.14(c). See Question 2 above. Inclusion of such an analysis in the EIS is necessary to inform the Congress, the public, and the President as intended by NEPA. Section 1500.1(a).

4a. Q. What is the "agency's preferred alternative"?

A. The "agency's preferred alternative" is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors. The concept of the "agency's preferred alternative" is different from the "environmentally preferable alternative," although in some cases one alternative may be both. See Question 6 below. It is identified so that agencies and the public can understand the lead agency's orientation.

4b. Q. Does the "preferred alternative" have to be identified in the Draft EIS and the Final EIS or just in the Final EIS?

A. Section 1502.14(e) requires the section of the EIS on alternatives to "identify the agency's preferred alternative if one or more exists, in the draft statement, and identify such alternative in the final statement . . ." This means that if the agency has a preferred alternative at the Draft EIS stage, that alternative must be labeled or identified as such in the Draft EIS. If the responsible federal official in fact has no preferred alternative at the Draft EIS stage, a preferred alternative need not be identified there. By the time the Final EIS is filed, Section 1502.14(e) presumes the existence of a preferred alternative and requires its identification in the Final EIS "unless another law prohibits the expression of such a preference."

4c. Q. Who recommends or determines the "preferred alternative?"

A. The lead agency's official with line responsibility for preparing the EIS and assuring its adequacy is responsible for identifying the agency's preferred alternative(s). The NEPA regulations do not dictate which official in an agency shall be responsible for preparation of EISs, but agencies can identify this official in their implementing procedures, pursuant to Section 1507.3.

Even though the agency's preferred alternative is identified by the EIS preparer in the EIS, the statement must be objectively prepared and not slanted to support the choice of the agency's preferred alternative over the other reasonable and feasible alternatives.

5a. Q. Is the "proposed action" the same thing as the "preferred alternative"?

A. The "proposed action" may be, but is not necessarily, the agency's "preferred alternative." The proposed action may be a proposal in its initial form before undergoing analysis in the EIS process. If the proposed action is

internally generated, such as preparing a land management plan, the proposed action might end up as the agency's preferred alternative. On the other hand the proposed action may be granting an application to a non-federal entity for a permit. The agency may or may not have a "preferred alternative" at the Draft EIS stage (see Question 4 above). In that case the agency may decide at the Final EIS stage, on the basis of the Draft EIS and the public and agency comments, that an alternative other than the proposed action is the agency's "preferred alternative."

5b. Q. Is the analysis of the "proposed action" in an EIS to be treated differently from the analysis of alternatives?

A. The degree of analysis devoted to each alternative in the EIS is to be substantially similar to that devoted to the "proposed action." Section 1502.14 is titled "Alternatives including the proposed action" to reflect such comparable treatment. Section 1502.14(b) specifically requires "substantial treatment" in the EIS of each alternative including the proposed action. This regulation does not dictate an *amount* of information to be provided, but rather, prescribes a *level of treatment*, which may in turn require varying amounts of information, to enable a reviewer to evaluate and compare alternatives.

6a. Q. What is the meaning of the term "environmentally preferable alternative" as used in the regulations with reference to Records of Decision? How is the term "environment" used in the phrase?

A. Section 1505.2(b) requires that, in cases where an EIS has been prepared, the Record of Decision (ROD) must identify all alternatives that were considered, ". . . specifying the alternative or alternatives which were considered to be environmentally preferable." The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

The Council recognizes that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS. Through the identification of the environmentally preferable alternative, the decisionmaker is clearly faced with a choice between that alternative and others, and must consider whether the decision accords with the Congressionally declared policies of the Act.

6b. Q. Who recommends or determines what is environmentally preferable?

A. The agency EIS staff is encouraged to make recommendations of the environmentally preferable alternative(s) during EIS preparation. In any event the lead agency official responsible for the EIS is encouraged to identify the environmentally preferable alternative(s) in the EIS. In all cases, commentors from other agencies and the public are also encouraged to address this question. The agency must identify the environmentally preferable alternative in the ROD.

7. Q. What is the difference between the sections in the EIS on "alternatives" and "environmental consequences"? How do you avoid duplicating the discussion of alternatives in preparing these two sections?

A. The "alternatives" section is the heart of the EIS. This section rigorously explores and objectively evaluates all reasonable alternatives including the proposed action. Section 1502.14. It should include relevant comparisons on environmental and other grounds. The "environmental consequences" section of the EIS discusses the specific environmental impacts or effects of each of the alternatives including the proposed action. Section 1502.16. In order to avoid duplication between these two sections, most of the "alternatives" section should be devoted to describing and comparing the alternatives. Discussion of the environmental impacts of these alternatives should be limited to a concise descriptive summary of such impacts in a comparative form, including charts or tables, thus sharply defining the issues and providing a clear basis for choice among options. Section 1502.14. The "environmental consequences" section should be devoted largely to a scientific analysis of the direct and indirect environmental effects of the proposed action and of each of the alternatives. It forms the analytic basis for the concise comparison in the "alternatives" section.

8. Q. Section 1501.2(d) of the NEPA regulations requires agencies to provide for the early application of NEPA to cases where actions are planned by private applicants or non-Federal entities and are, at some stage, subject to federal approval of permits, loans, loan guarantees, insurance or other actions. What must and can agencies do to apply NEPA early in these cases?

A. Section 1501.2(d) requires federal agencies to take steps toward ensuring that private parties and state and local entities initiate environmental studies as soon as federal involvement in their proposals can be foreseen. This section is intended to ensure that environmental factors are considered at an early stage in the planning process and to avoid the situation where the applicant for a federal permit or approval has completed planning and eliminated all alternatives to the proposed action by the time the EIS process commences or before the EIS process has been completed.

Through early consultation, business applicants and approving agencies may gain better appreciation of each other's needs and foster a decisionmaking process which avoids later unexpected confrontations.

Federal agencies are required by Section 1507.3(b) to develop procedures to carry out Section 1501.2(d). The procedures should include an "outreach program", such as a means for prospective applicants to conduct pre-application consultations with the lead and cooperating agencies. Applicants need to find out, in advance of project planning, what environmental studies or other information will be required, and what mitigation requirements are likely, in connecton with the later federal NEPA process. Agencies should designate staff to advise potential applicants of the agency's NEPA information requirements and should publicize their pre-application procedures and information requirements in newsletters or other media used by potential applicants.

Complementing Section 1501.2(d), Section 1506.5(a) requires agencies to assist applicants by outlining the types of information required in those cases where the agency requires the applicant to submit environmental data for possible use by the agency in preparing an EIS.

Section 1506.5(b) allows agencies to authorize preparation of environmental assessments by applicants. Thus, the procedures should also include a means for anticipating and utilizing applicants' environmental studies or "early corporate environmental assessments" to fulfill some of the federal agency's NEPA obligations. However, in such cases the agency must still evaluate independently the environmental issues

and take responsibility for the environmental assessment.

These provisions are intended to encourage and enable private and other non-federal entities to build environmental considerations into their own planning processes in a way that facilitates the application of NEPA and avoids delay.

9. Q. To what extent must an agency inquire into whether an applicant for a federal permit, funding or other approval of a proposal will also need approval from another agency for the same proposal or some other related aspect of it?

A. Agencies must integrate the NEPA process into other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Specifically, the agency must "provide for cases where actions are planned by . . . applicants," so that designated staff are available to advise potential applicants of studies or other information that will foreseeably be required for the later federal action; the agency shall consult with the applicant if the agency foresees its own involvement in the proposal; and it shall insure that the NEPA process commences at the earliest possible time. Section 1501.2(d). (See Question 8.)

The regulations emphasize agency cooperation early in the NEPA process. Section 1501.6. Section 1501.7 on "scoping" also provides that all affected Federal agencies are to be invited to participate in scoping the environmental issues and to identify the various environmental review and consultation requirements that may apply to the proposed action. Further, Section 1502.25(b) requires that the draft EIS list all the federal permits, licenses and other entitlements that are needed to implement the proposal.

These provisions create an affirmative obligation on federal agencies to inquire early, and to the maximum degree possible, to ascertain whether an applicant is or will be seeking other federal assistance or approval, or whether the applicant is waiting until a proposal has been substantially developed before requesting federal aid or approval.

Thus, a federal agency receiving a request for approval or assistance should determine whether the applicant has filed separate requests for federal approval or assistance with other federal agencies. Other federal agencies that are likely to become involved should then be contacted, and the NEPA process coordinated, to insure an early and comprehensive analysis of the direct and indirect effects of the proposal and any related actions. The agency should inform the applicant that action on its application may be delayed unless it submits all other federal applications (where feasible to do so), so that all the relevant agencies can work together on the scoping process and preparation of the EIS.

10a. Q. What actions by agencies and/or applicants are allowed during EIS preparation and during the 30-day review period after publication of a final EIS?

A. No federal decision on the proposed action shall be made or recorded until at least 30 days after the publication by EPA of notice that the particular EIS has been filed with EPA. Sections 1505.2 and 1506.10. Section 1505.2 requires this decision to be stated in a public Record of Decision.

Until the agency issues its Record of Decision, no action by an agency or an applicant concerning the proposal shall be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives. Section 1506.1(a). But this does not preclude preliminary planning or design work which is needed *to support an application* for permits or assistance. Section 1506.1(d).

When the impact statement in question is a program EIS, no major action concerning the program may be taken which may significantly affect the quality of the human environment, unless the particular action is justified independently of the program, is accompanied by its own adequate environmental impact statement and will not prejudice the ultimate decision on the program. Section 1506.1(c).

10b. Q. Do these limitations on action (described in Question 10a) apply to state or local agencies that have statutorily delegated responsibility for preparation of environmental documents required by NEPA, for example, under the HUD Block Grant program?

A. Yes, these limitations do apply, without any variation from their application to federal agencies.

11. Q. What actions must a lead agency take during the NEPA process when it becomes aware that a non-federal applicant is about to take an action within the agency's jurisdiction that would either have an adverse environmental impact or limit the choice of reasonable alternatives (e.g., prematurely commit money or other resources towards the completion of the proposal)?

A. The federal agency must notify the applicant that the agency will take strong affirmative steps to insure that the objectives and procedures of NEPA are fulfilled. Section 1506.1(b). These steps could include seeking injunctive measures under NEPA, or the use of sanctions available under either the agency's permitting authority or statutes setting forth the agency's statutory mission. For example, the agency might advise an applicant that if it takes such action the agency will not process its application.

12a. Q. What actions are subject to the Council's new regulations, and what actions are grandfathered under the old guidelines?

A. The effective date of the Council's regulations was July 30, 1979 (except for certain HUD programs under the Housing and Community Development Act, 42 U.S.C. 5304(h), and certain state highway programs that qualify under Section 102(2)(D) of NEPA for which the regulations became effective on November 30, 1979). All the provisions of the regulations are binding as of that date, including those covering decisionmaking, public participation, referrals, limitations on actions, EIS supplements, etc. For example, a Record of Decision would be prepared even for decisions where the draft EIS was filed before July 30, 1979.

But in determining whether or not the new regulations apply to the preparation of a *particular environmental document*, the relevant factor is the date of filing of the draft of that document. Thus, the new regulations do not require the redrafting of an EIS or supplement if the draft EIS or supplement was filed before July 30, 1979. However, a supplement prepared after the effective date of the regulations for an EIS issued in final before the effective date of the regulations would be controlled by the regulations.

Even though agencies are not required to apply the regulations to an EIS or other document for which the draft was filed prior to July 30, 1979, the regulations encourage agencies to follow the regulations "to the fullest extent practicable," i.e., if it is feasible to do so, in preparing the final document. Section 1506.12(a).

12b. Q. Are projects authorized by Congress before the effective date of the Council's regulations grandfathered?

A. No. The date of Congressional authorization for a project is not determinative of whether the Council's regulations or former Guidelines apply to the particular proposal. No incomplete projects or proposals of any kind are grandfathered in whole or in part. Only certain environmental documents, for which the draft was issued before the effective date of the regulations, are grandfathered and

subject to the Council's former Guidelines.

12c. Q. Can a violation of the regulations give rise to a cause of action?

A. While a trivial violation of the regulations would not give rise to an independent cause of action, such a cause of action would arise from a substantial violation of the regulations. Section 1500.3.

13. Q. Can the scoping process be used in connection with preparation of an environmental assessment, i.e., before both the decision to proceed with an EIS and publication of a notice of intent?

A. Yes. Scoping can be a useful tool for discovering alternatives to a proposal, or significant impacts that may have been overlooked. In cases where an environmental assessment is being prepared to help an agency decide whether to prepare an EIS, useful information might result from early participation by other agencies and the public in a scoping process.

The regulations state that the scoping process is to be preceded by a Notice of Intent (NOI) to prepare an EIS. But that is only the minimum requirement. Scoping may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.

However, scoping that is done before the assessment, and in aid of its preparation, cannot *substitute* for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration, *and* the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered.

14a. Q. What are the respective rights and responsibilities of lead and cooperating agencies? What letters and memoranda must be prepared?

A. After a lead agency has been designated (Sec. 1501.5), that agency has the responsibility to solicit cooperation from other federal agencies that have jurisdiction by law or special expertise on any environmental issue that should be addressed in the EIS being prepared. Where appropriate, the lead agency should seek the cooperation of state or local agencies of similar qualifications. When the proposal may affect an Indian reservation, the agency should consult with the Indian tribe. Section 1508.5. The request for cooperation should come at the earliest possible time in the NEPA process.

After discussions with the candidate cooperating agencies, the lead agency and the cooperating agencies are to determine by letter or by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific issues should be assigned. The allocation of responsibilities will be completed during scoping. Section 1501.7(a)(4).

Cooperating agencies must assume responsibility for the development of information and the preparation of environmental analyses at the request of the lead agency. Section 1501.6(b)(3). Cooperating agencies are now required by Section 1501.6 to devote staff resources that were normally primarily used to critique or comment on the Draft EIS after its preparation, much earlier in the NEPA process—primarily at the scoping and Draft EIS preparation stages. If a cooperating agency determines that its resource limitations preclude any involvement, or the degree of involvement (amount of work) requested by the lead agency, it must so inform the lead agency in writing and submit a copy of this correspondence to the Council. Section 1501.6(c).

In other words, the potential cooperating agency must decide early if it is able to devote any of its resources to a particular proposal. For this reason the regulation states that an agency may reply to a request for cooperation that "other program commitments preclude any involvement or the degree of involvement requested in the *action* that is the subject of the environmental impact statement." (Emphasis added). The regulation refers to the "action," rather than to the EIS, to clarify that the agency is taking itself out of all phases of the federal action, not just draft EIS preparation. This means that the agency has determined that it cannot be involved in the later stages of EIS review and comment, as well as decisionmaking on the proposed action. For this reason, cooperating agencies with jurisdiction by law (those which have permitting or other approval authority) cannot opt out entirely of the duty to cooperate on the EIS. See also Question 15, relating specifically to the responsibility of EPA.

14b. Q. How are disputes resolved between lead and cooperating agencies concerning the scope and level of detail of analysis and the quality of data in impact statements?

A. Such disputes are resolved by the agencies themselves. A lead agency, of course, has the ultimate responsibility for the content of an EIS. But it is supposed to use the environmental analysis and recommendations of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible, consistent with its own responsibilities as lead agency. Section 1501.6(a)(2).

If the lead agency leaves out a significant issue or ignores the advice and expertise of the cooperating agency, the EIS may be found later to be inadequate. Similarly, where cooperating agencies have their own decisions to make and they intend to adopt the environmental impact statement and base their decisions on it, one document should include all of the information necessary for the decisions by the cooperating agencies. Otherwise they may be forced to duplicate the EIS process by issuing a new, more complete EIS or Supplemental EIS, even though the original EIS could have sufficed if it had been properly done at the outset. Thus, both lead and cooperating agencies have a stake in producing a document of good quality. Cooperating agencies also have a duty to participate fully in the scoping process to ensure that the appropriate range of issues is determined early in the EIS process.

Because the EIS is not the Record of Decision, but instead constitutes the *information* and *analysis* on which to base a decision, disagreements about conclusions to be drawn from the EIS need not inhibit agencies from issuing a joint document, or adopting another agency's EIS, if the analysis is adequate. Thus, if each agency has its own "preferred alternative," both can be identified in the EIS. Similarly, a cooperating agency with jurisdiction by law may determine in its own ROD that alternative A is the environmentally preferable action, even though the lead agency has decided in its separate ROD that Alternative B is environmentally preferable.

14c. Q. What are the specific responsibilities of federal and state cooperating agencies to review draft EISs?

A. Cooperating agencies (i.e., agencies with jurisdiction by law or special expertise) and agencies that are authorized to develop or enforce environmental standards, must comment on environmental impact statements within their jurisdiction, expertise or authority. Sections 1503.2, 1508.5. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should simply comment accordingly. Conversely, if the cooperating agency determines that a draft EIS is incomplete, inadequate or inaccurate, or it has other comments, it should promptly make such comments, conforming to the requirements of specificity in section 1503.3.

14d. Q. How is the lead agency to treat the comments of another agency with jurisdiction by law or special expertise which has failed or refused to cooperate or participate in scoping or EIS preparation?

A. A lead agency has the responsibility to respond to all substantive comments raising significant issues regarding a draft EIS. Section 1503.4. However, cooperating agencies are generally under an obligation to raise issues or otherwise participate in the EIS process during scoping and EIS preparation if they reasonably can do so. In practical terms, if a cooperating agency fails to cooperate at the outset, such as during scoping, it will find that its comments at a later stage will not be as persuasive to the lead agency.

15. Q. Are EPA's responsibilities to review and comment on the environmental effects of agency proposals under Section 309 of the Clean Air Act independent of its responsibility as a cooperating agency?

A. Yes. EPA has an obligation under Section 309 of the Clean Air Act to review and comment in writing on the environmental impact of any matter relating to the authority of the Administrator contained in proposed legislation, federal construction projects, other federal actions requiring EISs, and new regulations. 42 U.S.C. Sec. 7609. This obligation is independent of its role as a cooperating agency under the NEPA regulations.

16. Q. What is meant by the term "third party contracts" in connection with the preparation of an EIS? See Section 1506.5(c). When can "third party contracts" be used?

A. As used by EPA and other agencies, the term "third party contract" refers to the preparation of EISs by contractors paid by the applicant. In the case of an EIS for a National Pollution Discharge Elimination System (NPDES) permit, the applicant, aware in the early planning stages of the proposed project of the need for an EIS, contracts directly with a consulting firm for its preparation. See 40 C.F.R. 6.604(g). The "third party" is EPA which, under Section 1506.5(c), must select the consulting firm, even though the applicant pays for the cost of preparing the EIS. The consulting firm is responsible to EPA for preparing an EIS that meets the requirements of the NEPA regulations and EPA's NEPA procedures. It is in the applicant's interest that the EIS comply with the law so that EPA can take prompt action on the NPDES permit application. The "third party contract" method under EPA's NEPA procedures is purely voluntary, though most applicants have found it helpful in expediting compliance with NEPA.

If a federal agency uses "third party contracting," the applicant may undertake the necessary paperwork for the solicitation of a field of candidates under the agency's direction, so long as the agency complies with Section 1506.5(c). Federal procurement requirements do not apply to the agency because it incurs no obligations or costs under the contract, nor does the agency procure anything under the contract.

17a. Q. If an EIS is prepared with the assistance of a consulting firm, the firm must execute a disclosure statement. What criteria must the firm follow in determining whether it has any "financial or other interest in the outcome of the project" which would cause a conflict of interest?

A. Section 1506.5(c), which specifies that a consulting firm preparing an EIS must execute a disclosure statement, does not define "financial or other interest in the outcome of the project." The Council interprets this term broadly to cover any known benefits other than general enhancement of professional reputation. This includes any financial benefit such as a promise of future construction or design work on the project, as well as indirect benefits the consultant is aware of (e.g., if the project would aid proposals sponsored by the firm's other clients). For example, completion of a highway project may encourage construction of a shopping center or industrial park from which the consultant stands to benefit. If a consulting firm is aware that it has such an interest in the decision on the proposal, it should be disqualified from preparing the EIS, to preserve the objectivity and integrity of the NEPA process.

When a consulting firm has been involved in developing initial data and plans for the project, but does not have any financial or other interest in the outcome of the decision, it need not be disqualified from preparing the EIS. However, a disclosure statement in the draft EIS should clearly state the scope and extent of the firm's prior involvement to expose any potential conflicts of interest that may exist.

17b. Q. If the firm in fact has no promise of future work or other interest in the outcome of the proposal, may the firm later bid in competition with others for future work on the project if the proposed action is approved?

A. Yes.

18. Q. How should uncertainties about indirect effects of a proposal be addressed, for example, in cases of disposal of federal lands, when the identity or plans of future landowners is unknown?

A. The EIS must identify all the indirect effects that are known, and make a good faith effort to explain the effects that are not known but are "reasonably foreseeable." Section 1508.8(b). In the example, if there is total uncertainty about the identity of future land owners or the nature of future land uses, then of course, the agency is not required to engage in speculation or contemplation about their future plans. But, in the ordinary course of business, people do make judgments based upon reasonably foreseeable occurrences. It will often be possible to consider the likely purchasers and the development trends in that area or similar areas in recent years; or the likelihood that the land will be used for an energy project, shopping center, subdivision, farm or factory. The agency has the responsibility to make an informed judgment, and to estimate future impacts on that basis, especially if trends are ascertainable or potential purchasers have made themselves known. The agency cannot ignore these uncertain, but probable, effects of its decisions.

19a. Q. What is the scope of mitigation measures that must be discussed?

A. The mitigation measures discussed in an EIS must cover the range of impacts of the proposal. The measures must include such things as design alternatives that would decrease pollution emissions, construction impacts, esthetic intrusion, as well as relocation assistance, possible land use controls that could be enacted, and other possible efforts. Mitigation measures must be considered even for impacts that by themselves would not be considered "significant." Once the proposal itself is considered as a whole to have significant effects, all of its specific effects on the environment (whether or not "significant") must be considered, and mitigation measures must be developed where it is feasible to do so. Sections 1502.14(f), 1502.16(h), 1508.14.

19b. Q. How should an EIS treat the subject of available mitigation measures that are (1) outside the jurisdiction of the lead or cooperating agencies, or (2) unlikely to be adopted or enforced by the responsible agency?

A. All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies. Sections 1502.16(h), 1505.2(c). This will serve to

alert agencies or officials who *can* implement these extra measures, and will encourage them to do so. Because the EIS is the most comprehensive environmental document, it is an ideal vehicle in which to lay out not only the full range of environmental impacts but also the full spectrum of appropriate mitigation.

However, to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies. Sections 1502.16(h), 1505.2. If there is a history of nonenforcement or opposition to such measures, the EIS and Record of Decision should acknowledge such opposition or nonenforcement. If the necessary mitigation measures will not be ready for a long period of time, this fact, of course, should also be recognized.

20a. Q. When must a worst case analysis be included in an EIS?

A. If there are gaps in relevant information or scientific uncertainty pertaining to an agency's evaluation of significant adverse impacts on the human environment, an agency must make clear that such information is lacking or that the uncertainty exists. An agency must include a worst case analysis of the potential impacts of the proposal and an indication of the probability or improbability of their occurence if (a) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining the information are exorbitant, or (b) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known.

NEPA requires that impact statements, at a minimum, contain information to alert the public and Congress to all known *possible* environmental consequences of agency action. Thus, one of the federal government's most important obligations is to present to the fullest extent possible the spectrum of consequences that may result from agency decisions, and the details of their potential consequences for the human environment.

20b. Q. What is the purpose of a worst case analysis? How is it formulated and what is the scope of the analysis?

A. The purpose of the analysis is to carry out NEPA's mandate for full disclosure to the public of the potential consequences of agency decisions, and to cause agencies to consider those potential consequences when acting on the basis of scientific uncertainties or gaps in available information. The analysis is formulated on the basis of available information, using reasonable projections of the worst possible consequences of a proposed action.

For example, if there are scientific uncertainty and gaps in the available information concerning the numbers of juvenile fish that would be entrained in a cooling water facility, the responsible agency must disclose and consider the possibility of the loss of the commercial or sport fishery.

In addition to an analysis of a low probability/catastrophic impact event, the worst case analysis should also include a spectrum of events of higher probability but less drastic impact.

21. Q. Where an EIS or an EA is combined with another project planning document (sometimes called "piggybacking"), to what degree may the EIS or EA refer to and rely upon information in the project document to satisfy NEPA's requirements?

A. Section 1502.25 of the regulations requires that draft EISs be prepared concurrently and integrated with environmental analyses and related surveys and studies required by other federal statutes. In addition, Section 1506.4 allows any environmental document prepared in compliance with NEPA to be combined with any other agency document to reduce duplication and paperwork. However, these provisions were not intended to authorize the preparation of a short summary or outline EIS, attached to a detailed project report or land use plan containing the required environmental impact data. In such circumstances, the reader would have to refer constantly to the detailed report to understand the environmental impacts and alternatives which should have been found in the EIS itself.

The EIS must stand on its own as an analytical document which fully informs decisionmakers and the public of the environmental effects of the proposal and those of the reasonable alternatives. Section 1502.1. But, as long as the EIS is clearly identified and is self-supporting, it can be physically included in or attached to the project report or land use plan, and may use attached report material as technical backup.

Forest Service environmental impact statements for forest management plans are handled in this manner. The EIS identifies the agency's preferred alternative, which is developed in detail as the proposed management plan. The detailed proposed plan accompanies the EIS through the review process, and the documents are appropriately cross-referenced. The proposed plan is useful for EIS readers as an example, to show how one choice of management options translates into effects on natural resources. This procedure permits initiation of the 90-day public review of proposed forest plans, which is required by the National Forest Management Act.

All the alternatives are discussed in the EIS, which can be read as an independent document. The details of the management plan are not repeated in the EIS, and vice versa. This is a reasonable functional separation of the documents: the EIS contains information relevant to the choice among alternatives; the plan is a detailed description of proposed management activities suitable for use by the land managers. This procedure provides for concurrent compliance with the public review requirements of both NEPA and the National Forest Management Act.

Under some circumstances, a project report or management plan may be totally merged with the EIS, and the one document labeled as both "EIS" and "management plan" or "project report." This may be reasonable where the documents are short, or where the EIS format and the regulations for clear, analytical EISs also satisfy the requirements for a project report.

22. Q. May state and federal agencies serve as joint lead agencies? If so, how do they resolve law, policy and resource conflicts under NEPA and the relevant state environmental policy act? How do they resolve differences in perspective where, for example, national and local needs may differ?

A. Under Section 1501.5(b), federal, state or local agencies, as long as they include at least one federal agency, may act as joint lead agencies to prepare an EIS. Section 1506.2 also strongly urges state and local agencies and the relevant federal agencies to cooperate fully with each other. This should cover joint research and studies, planning activities, public hearings, environmental assessments and the preparation of joint EISs under NEPA and the relevant "little NEPA" state laws, so that one document will satisfy both laws.

The regulations also recognize that certain inconsistencies may exist between the proposed federal action and any approved state or local plan or law. The joint document should discuss the extent to which the federal agency would reconcile its proposed action with such plan or law. Section 1506.2(d). (See Question 23).

Because there may be differences in perspective as well as conflicts among

federal, state and local goals for resources management, the Council has advised participating agencies to adopt a flexible, cooperative approach. The joint EIS should reflect all of their interests and missions, clearly identified as such. The final document would then indicate how state and local interests have been accommodated, or would identify conflicts in goals (e.g., how a hydroelectric project, which might induce second home development, would require new land use controls). The EIS must contain a complete discussion of scope and purpose of the proposal, alternatives, and impacts so that the discussion is adequate to meet the needs of local, state and federal decisionmakers.

23a. Q. How should an agency handle potential conflicts between a proposal and the objectives of Federal, state or local land use plans, policies and controls for the area concerned? See Sec. 1502.16(c).

A. The agency should first inquire of other agencies whether there are any potential conflicts. If there would be immediate conflicts, or if conflicts could arise in the future when the plans are finished (see Question 23(b) below), the EIS must acknowledge and describe the extent of those conflicts. If there are any possibilities of resolving the conflicts, these should be explained as well. The EIS should also evaluate the seriousness of the impact of the proposal on the land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area. Comments from officials of the affected area should be solicited early and should be carefully acknowleged and answered in the EIS.

23b. Q. What constitutes a "land use plan or policy" for purposes of this discussion?

A. The term "land use plans," includes all types of formally adopted documents for land use planning, zoning and related regulatory requirements. Local general plans are included, even though they are subject to future change. Proposed plans should also be addressed if they have been formally proposed by the appropriate government body in a written form, and are being actively pursued by officials of the jurisdiction. Staged plans, which must go through phases of development such as the Water Resources Council's Level A, B and C planning process should also be included even though they are incomplete.

The term "policies" includes formally adopted statements of land use policy as embodied in laws or regulations. It also includes proposals for action such as the initiation of a planning process, or a formally adopted policy statement of the local, regional or state executive branch, even if it has not yet been formally adopted by the local, regional or state legislative body.

23c. Q. What options are available for the decisionmaker when conflicts with such plans or policies are identified?

A. After identifying any potential land use conflicts, the decisionmaker must weigh the significance of the conflicts, among all the other environmental and non-environmental factors that must be considered in reaching a rational and balanced decision. Unless precluded by other law from causing or contributing to any inconsistency with the land use plans, policies or controls, the decisionmaker retains the authority to go forward with the proposal, despite the potential conflict. In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to explain any decision to override land use plans, policies or controls for the area.

24a. Q. When are EISs required on policies, plans or programs?

A. An EIS must be prepared if an agency proposes to implement a specific policy, to adopt a plan for a group of related actions, or to implement a specific statutory program or executive directive. Section 1508.18. In addition, the adoption of official policy in the form of rules, regulations and interpretations pursuant to the Administrative Procedure Act, treaties, conventions, or other formal documents establishing governmental or agency policy which will substantially alter agency programs, could require an EIS. Section 1508.18. In all cases, the policy, plan, or program must have the potential for significantly affecting the quality of the human environment in order to require an EIS. It should be noted that a proposal "may exist in fact as well as by agency declaration that one exists." Section 1508.23.

24b. Q. When is an area-wide or overview EIS appropriate?

A. The preparation of an area-wide or overview EIS may be particularly useful when similar actions, viewed with other reasonably foreseeable or proposed agency actions, share common timing or geography. For example, when a variety of energy projects may be located in a single watershed, or when a series of new energy technologies may be developed through federal funding, the overview or area-wide EIS would serve as a valuable and necessary analysis of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographical area.

24c. Q. What is the function of tiering in such cases?

A. Tiering is a procedure which allows an agency to avoid duplication of paperwork through the incorporation by reference of the general discussions and relevant specific discussions from an environmental impact statement of broader scope into one of lesser scope or vice versa. In the example given in Question 24b, this would mean that an overview EIS would be prepared for all of the energy activities reasonably foreseeable in a particular geographic area or resulting from a particular development program. This impact statement would be followed by site-specific or project-specific EISs. The tiering process would make each EIS of greater use and meaning to the public as the plan or program develops, without duplication of the analysis prepared for the previous impact statement.

25a. Q. When is it appropriate to use appendices instead of including information in the body of an EIS?

A. The body of the EIS should be a succinct statement of all the information on environmental impacts and alternatives that the decisionmaker and the public need, in order to make the decision and to ascertain that every significant factor has been examined. The EIS must explain or summarize methodologies of research and modeling, and the results of research that may have been conducted to analyze impacts and alternatives.

Lengthy technical discussions of modeling methodology, baseline studies, or other work are best reserved for the appendix. In other words, if only technically trained individuals are likely to understand a particular discussion then it should go in the appendix, and a plain language summary of the analysis and conclusions of that technical discussion should go in the text of the EIS.

The final statement must also contain the agency's responses to comments on the draft EIS. These responses will be primarily in the form of changes in the document itself, but specific answers to each significant comment should also be included. These specific responses may be placed in an appendix. If the comments are especially voluminous, summaries of the comments and responses will suffice. (See Question 29 regarding the level of detail required for responses to comments.)

25b. Q. How does an appendix differ from incorporation by reference?

A. First, if at all possible, the appendix accompanies the EIS, whereas the material which is incorporated by reference does not accompany the EIS. Thus the appendix should contain information that reviewers will be likely to want to examine. The appendix should include material that pertains to preparation of a particular EIS. Research papers directly relevant to the proposal, lists of affected species, discussion of the methodology of models used in the analysis of impacts, extremely detailed responses to comments, or other information, would be placed in the appendix.

The appendix must be complete and available at the time the EIS is filed. Five copies of the appendix must be sent to EPA with five copies of the EIS for filing. If the appendix is too bulky to be circulated, it instead must be placed in conveniently accessible locations or furnished directly to commentors upon request. If it is not circulated with the EIS, the Notice of Availability published by EPA must so state, giving a telephone number to enable potential commentors to locate or request copies of the appendix promptly.

Material that is not directly related to preparation of the EIS should be incorporated by reference. This would include other EISs, research papers in the general literature, technical background papers or other material that someone with technical training could use to evaluate the analysis of the proposal. These must be made available, either by citing the literature, furnishing copies to central locations, or sending copies directly to commentors upon request.

Care must be taken in all cases to ensure that material incorporated by reference, and the occasional appendix that does not accompany the EIS, are in fact available for the full minimum public comment period.

26a. Q. How detailed must an EIS index be?

A. The EIS index should have a level of detail sufficient to focus on areas of the EIS of reasonable interest to any reader. It cannot be restricted to the most important topics. On the other hand, it need not identify every conceivable term or phrase in the EIS. If an agency believes that the reader is reasonably likely to be interested in a topic, it should be included.

26b. Q. Is a keyword index required?

A. No. A keyword index is a relatively short list of descriptive terms that identifies the key concepts or subject areas in a document. For example it could consist of 20 terms which describe the most significant aspects of an EIS that a future researcher would need: type of proposal, type of impacts, type of environment, geographical area, sampling or modelling methodologies used. This technique permits the compilation of EIS data banks, by facilitating quick and inexpensive access to stored materials. While a keyword index is not required by the regulations, it could be a useful addition for several reasons. First, it can be useful as a quick index for reviewers of the EIS, helping to focus on areas of interest. Second, if an agency keeps a listing of the keyword indexes of the EISs it produces, the EIS preparers themselves will have quick access to similar research data and methodologies to aid their future EIS work. Third, a keyword index will be needed to make an EIS available to future researchers using EIS data banks that are being developed. Preparation of such an index now when the document is produced will save a later effort when the data banks become operational.

27a. Q. If a consultant is used in preparing an EIS, must the list of preparers identify members of the consulting firm as well as the agency NEPA staff who were primarily responsible?

A. Section 1502.17 requires identification of the names and qualifications of persons who were primarily responsible for preparing the EIS or significant background papers, including basic components of the statement. This means that members of a consulting firm preparing material that is to become part of the EIS must be identified. The EIS should identify these individuals even though the consultant's contribution may have been modified by the agency.

27b. Q. Should agency staff involved in reviewing and editing the EIS also be included in the list of preparers?

A. Agency personnel who wrote basic components of the EIS or significant background papers must, of course, be identified. The EIS should also list the technical editors who reviewed or edited the statements.

27c. Q. How much information should be included on each person listed?

A. The list of preparers should normally not exceed two pages. Therefore, agencies must determine which individuals had *primary* responsibility and need not identify individuals with minor involvement. The list of preparers should include a very brief identification of the individuals involved, their qualifications (expertise, professional disciplines) and the specific portion of the EIS for which they are responsible. This may be done in tabular form to cut down on length. A line or two for each person's qualifications should be sufficient.

28. Q. May an agency file xerox copies of an EIS with EPA pending the completion of printing the document?

A. Xerox copies of an EIS may be filed with EPA prior to printing only if the xerox copies are simultaneously made available to other agencies and the public. Section 1506.9 of the regulations, which governs EIS filing, specifically requires Federal agencies to file EISs with EPA no earlier than the EIS is distributed to the public. However, this section does not prohibit xeroxing as a form of reproduction and distribution. When an agency chooses xeroxing as the reproduction method, the EIS must be clear and legible to permit ease of reading and ultimate microfiching of the EIS. Where color graphs are important to the EIS, they should be reproduced and circulated with the xeroxed copy.

29a Q. What response must an agency provide to a comment on a draft EIS which states that the EIS's methodology is inadequate or inadequately explained? For example, what level of detail must an agency include in its response to a simple postcard comment making such an allegation?

A. Appropriate responses to comments are described in Section 1503.4. Normally the responses should result in changes in the text of the EIS, not simply a separate answer at the back of the document. But, in addition, the agency must state what its response was, and if the agency decides that no substantive response to a comment is necessary, it must explain briefly why.

An agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS if the only comment addressing the methodology is a simple complaint that the EIS methodology is inadequate. But agencies must respond to comments, however brief, which are specific in their criticism of agency methodology. For example, if a commentor on an EIS said that an agency's air quality dispersion analysis or methodology was inadequate, and the agency had included a discussion of that analysis in the EIS, little if anything need be added in response to such a comment. However, if the commentor said that the dispersion analysis was inadequate because of its use of a certain computational technique, or that a dispersion analysis was inadequately explained because computational techniques were not included or referenced, then the agency would have to respond in a substantive and meaningful way to such a comment.

If a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous. The comments or summaries must be attached to the EIS regardless of whether the agency believes they merit individual discussion in the body of the final EIS.

29b. Q. How must an agency respond to a comment on a draft EIS that raises a new alternative not previously considered in the draft EIS?

A. This question might arise in several possible situations. First, a commentor on a draft EIS may indicate that there is a possible alternative which, in the agency's view, is not a reasonable alternative. Section 1502.14(a). If that is the case, the agency must explain why the comment does not warrant further agency response, citing authorities or reasons that support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response. Section 1503.4(a). For example, a commentor on a draft EIS on a coal fired power plant may suggest the alternative of using synthetic fuel. The agency may reject the alternative with a brief discussion (with authorities) of the unavailability of synthetic fuel within the time frame necessary to meet the need and purpose of the proposed facility.

A second possibility is that an agency may receive a comment indicating that a particular alternative, while reasonable, should be modified somewhat, for example, to achieve certain mitigation benefits, or for other reasons. If the modification is reasonable, the agency should include a discussion of it in the final EIS. For example, a commentor on a draft EIS on a proposal for a pumped storage power facility might suggest that the applicant's proposed alternative should be enhanced by the addition of certain reasonable mitigation measures, including the purchase and setaside of a wildlife preserve to substitute for the tract to be destroyed by the project. The modified alternative including the additional mitigation measures should be discussed by the agency in the final EIS.

A third slightly different possibility is that a comment on a draft EIS will raise an alternative which is a minor variation of one of the alternatives discussed in the draft EIS, but this variation was not given any consideration by the agency. In such a case, the agency should develop and evaluate the new alternative, if it is reasonable, in the final EIS. If it is qualitatively within the spectrum of alternatives that were discussed in the draft, a supplemental draft will not be needed. For example, a commentor on a draft EIS to designate a wilderness area within a National Forest might reasonably identify a specific tract of the forest, and urge that it be considered for designation. If the draft EIS considered designation of a range of alternative tracts which encompassed forest area of similar quality and quantity, no supplemental EIS would have to be prepared. The agency could fulfill its obligation by addressing that specific alternative in the final EIS.

As another example, an EIS on an urban housing project may analyze the alternatives of constructing 2,000, 4,000, or 6,000 units. A commentor on the draft EIS might urge the consideration of constructing 5,000 units utilizing a different configuration of buildings. This alternative is within the spectrum of alternatives already considered, and, therefore, could be addressed in the final EIS.

A fourth possibility is that a commentor points out an alternative which is not a variation of the proposal or of any alternative discussed in the draft impact statement, and is a reasonable alternative that warrants serious agency response. In such a case, the agency must issue a supplement to the draft EIS that discusses this new alternative. For example, a commentor on a draft EIS on a nuclear power plant might suggest that a reasonable alternative for meeting the projected need for power would be through peak load management and energy conservation programs. If the permitting agency has failed to consider that approach in the Draft EIS, and the approach cannot be dismissed by the agency as unreasonable, a supplement to the Draft EIS, which discusses that alternative, must be prepared. (If necessary, the same supplement should also discuss substantial changes in the proposed action or significant new circumstances or information, as required by Section 1502.9(c)(1) of the Council's regulations.)

If the new alternative was not raised by the commentor during scoping, but could have been, commentors may find that they are unpersuasive in their efforts to have their suggested alternative analyzed in detail by the agency. However, if the new alternative is discovered or developed later, and it could not reasonably have been raised during the scoping process, then the agency must address it in a supplemental draft EIS. The agency is, in any case, ultimately responsible for preparing an adequate EIS that considers all alternatives.

30. Q. When a cooperating agency with jurisdiction by law intends to adopt a lead agency's EIS and it is not satisfied with the adequacy of the document, may the cooperating agency adopt only the part of the EIS with which it is satisfied? If so, would a cooperating agency with jurisdiction by law have to prepare a separate EIS or EIS supplement covering the areas of disagreement with the lead agency?

A. Generally, a cooperating agency may adopt a lead agency's EIS without recirculating it if it concludes that its NEPA requirements and its comments and suggestions have been satisfied. Section 1506.3(a), (c). If necessary, a cooperating agency may adopt only a portion of the lead agency's EIS and may reject that part of the EIS with which it disagrees, stating publicly why it did so. Section 1506.3(a).

A cooperating agency with jurisidiction by law (e.g., an agency with independent legal responsibilities with respect to the proposal) has an independent legal obligation to comply with NEPA. Therefore, if the cooperating agency determines that the EIS is wrong or inadequate, it must prepare a supplement to the EIS, replacing or adding any needed information, and must circulate the supplement as a draft for public and agency review and comment. A final supplemental EIS would be required before the agency could take action. The adopted portions of the lead agency EIS should be circulated with the supplement. Section 1506.3(b). A cooperating agency with jurisdiction by law will have to prepare its own Record of Decision for its action, in which it must explain how it reached its conclusions. Each agency should explain how and why its conclusions differ, if that is the case, from those of other agencies which issued their Records of Decision earlier.

An agency that did not cooperate in preparation of an EIS may also adopt an EIS or portion thereof. But this would arise only in rare instances, because an agency adopting an EIS for use in its own decision normally would have been a cooperating agency. If the proposed action for which the EIS was prepared is substantially the same as the proposed action of the adopting agency, the EIS may be adopted as long as it is recirculated as a final EIS and the agency announces what it is doing. This would be followed by the 30-day review period and issuance of a Record of Decision by the adopting agency. If the proposed action by the adopting agency is not substantially the same as that in

the EIS (i.e., if an EIS on one action is being adapted for use in a decision on another action), the EIS would be treated as a draft and circulated for the normal public comment period and other procedures. Section 1506.3(b).

31a. Q. Do the Council's NEPA regulations apply to independent regulatory agencies like the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission?

A. The statutory requirements of NEPA's Section 102 apply to "all agencies of the federal government." The NEPA regulations implement the procedural provisions of NEPA as set forth in NEPA's Section 102(2) for all agencies of the federal government. The NEPA regulations apply to independent regulatory agencies, however, they do not direct independent regulatory agencies or other agencies to make decisions in any particular way or in a way inconsistent with an agency's statutory charter. Sections 1500.3, 1500.6, 1507.1, and 1507.3.

31b. Q. Can an Executive Branch agency like the Department of the Interior adopt an EIS prepared by an independent regulatory agency such as FERC?

A. If an independent regulatory agency such as FERC has prepared an EIS in connection with its approval of a proposed project, an Executive Branch agency (e.g., the Bureau of Land Management in the Department of the Interior) may, in accordance with Section 1506.3, adopt the EIS or a portion thereof for its use in considering the same proposal. In such a case the EIS must, to the satisfaction of the adopting agency, meet the standards for an adequate statement under the NEPA regulations (including scope and quality of analysis of alternatives) and must satisfy the adopting agency's comments and suggestions. If the independent regulatory agency fails to comply with the NEPA regulations, the cooperating or adopting agency may find that it is unable to adopt the EIS, thus forcing the preparation of a new EIS or EIS Supplement for the same action. The NEPA regulations were made applicable to all federal agencies in order to avoid this result, and to achieve uniform application and efficiency of the NEPA process.

32. Q. Under what circumstances do old EISs have to be supplemented before taking action on a proposal?

A. As a rule of thumb, if the proposal has not yet been implemented, or if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an EIS supplement.

If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal. Section 1502.9(c).

33a. Q. When must a referral of an interagency disagreement be made to the Council?

A. The Council's referral procedure is a *pre-decision* referral process for interagency disagreements. Hence, Section 1504.3 requires that a referring agency must deliver its referral to the Council not later than 25 days after publication by EPA of notice that the final EIS is available (unless the lead agency grants an extension of time under Section 1504.3(b)).

33b. Q. May a referral be made after this issuance of a Record of Decision?

A. No, except for cases where agencies provide an internal appeal procedure which permits simultaneous filing of the final EIS and the record of decision (ROD). Section 1506.10(b)(2). Otherwise, as stated above, the process is a pre-decision referral process. Referrals must be made within 25 days after the notice of availability of the final EIS, whereas the final decision (ROD) may not be made or filed until after 30 days from the notice of availability of the EIS. Sections 1504.3(b), 1506.10(b). If a lead agency has granted an extension of time for another agency to take action on a referral, the ROD may not be issued until the extension has expired.

34a. Q. Must Records of Decision (RODs) be made public? How should they be made available?

A. Under the regulations, agencies must prepare a "concise *public* record of decision," which contains the elements specified in Section 1505.2. This public record may be integrated into any other decision record prepared by the agency, or it may be separate if decision documents are not normally made public. The Record of Decision is intended by the Council to be an environmental document (even though it is not explicitly mentioned in the definition of "environmental document" in Section 1508.10). Therefore, it must be made available to the public through appropriate public notice as required by Section 1506.6(b). However, there is no specific requirement for publication of the ROD itself, either in the **Federal Register** or elsewhere.

34b. Q. May the summary section in the final Environmental Impact Statement substitute for or constitute an agency's Record of Decision?

A. No. An environmental impact statement is supposed to inform the decisionmaker before the decision is made. Sections 1502.1, 1505.2. The Council's regulations provide for a 30-day period after notice is published that the final EIS has been filed with EPA before the agency may take final action. During that period, in addition to the agency's own internal final review, the public and other agencies can comment on the final EIS prior to the agency's final action on the proposal. In addition, the Council's regulations make clear that the requirements for the summary in an EIS are not the same as the requirements for a ROD. Sections 1502.12 and 1505.2.

34c. Q. What provisions should Records of Decision contain pertaining to mitigation and monitoring?

A. Lead agencies "shall include appropriate conditions [including mitigation measures and monitoring and enforcement programs] in grants, permits or other approvals" and shall "condition funding of actions on mitigation." Section 1505.3. Any such measures that are adopted must be explained and committed in the ROD.

The reasonable alternative mitigation measures and monitoring programs should have been addressed in the draft and final EIS. The discussion of mitigation and monitoring in a Record of Decision must be more detailed than a general statement that mitigation is being required, but not so detailed as to duplicate discussion of mitigation in the EIS. The Record of Decision should contain a concise summary identification of the mitigation measures which the agency has committed itself to adopt.

The Record of Decision must also state whether all practicable mitigation measures have been adopted, and if not, why not. Section 1505.2(c). The Record of Decision must identify the mitigation measures and monitoring and enforcement programs that have been selected and plainly indicate that they are adopted as part of the agency's decision. If the proposed action is the issuance of a permit or other approval, the specific details of the mitigation measures shall then be included as appropriate conditions in whatever grants, permits, funding or other approvals are being made by the federal agency. Section 1505.3 (a), (b). If the proposal is to be carried out by the

federal agency itself, the Record of Decision should delineate the mitigation and monitoring measures in sufficient detail to constitute an enforceable commitment, or incorporate by reference the portions of the EIS that do so.

34d. Q. What is the enforceability of a Record of Decision?

A. Pursuant to generally recognized principles of federal administrative law, agencies will be held accountable for preparing Records of Decision that conform to the decisions actually made and for carrying out the actions set forth in the Records of Decision. This is based on the principle that an agency must comply with its own decisons and regulations once they are adopted. Thus, the terms of a Record of Decision are enforceable by agencies and private parties. A Record of Decision can be used to compel compliance with or execution of the mitigation measures identified therein.

35. Q. How long should the NEPA process take to complete?

A. When an EIS is required, the process obviously will take longer than when an EA is the only document prepared. But the Council's NEPA regulations encourage streamlined review, adoption of deadlines, elimination of duplicative work, eliciting suggested alternatives and other comments early through scoping, cooperation among agencies, and consultation with applicants during project planning. The Council has advised agencies that under the new NEPA regulations even large complex energy projects would require only about 12 months for the completion of the entire EIS process. For most major actions, this period is well within the planning time that is needed in any event, apart from NEPA.

The time required for the preparation of program EISs may be greater. The Council also recognizes that some projects will entail difficult long-term planning and/or the acquisition of certain data which of necessity will require more time for the preparation of the EIS. Indeed, some proposals should be given more time for the thoughtful preparation of an EIS and development of a decision which fulfills NEPA's substantive goals.

For cases in which only an environmental assessment will be prepared, the NEPA process should take no more than 3 months, and in many cases substantially less, as part of the normal analysis and approval process for the action.

36a. Q. How long and detailed must an environmental assessment (EA) be?

A. The environmental assessment is a concise public document which has three defined functions. (1) It briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; (2) it aids an agency's compliance with NEPA when no EIS is necessary, i.e., it helps to identify better alternatives and mitigation measures; and (3) it facilitates preparation of an EIS when one is necessary. Section 1508.9(a).

Since the EA is a concise document, it should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. Section 1508.9(b).

While the regulations do not contain page limits for EA's, the Council has generally advised agencies to keep the length of EAs to not more than approximately 10–15 pages. Some agencies expressly provide page guidelines (e.g., 10–15 pages in the case of the Army Corps). To avoid undue length, the EA may incorporate by reference background data to support its concise discussion of the proposal and relevant issues.

36b. Q. Under what circumstances is a lengthy EA appropriate?

A. Agencies should avoid preparing lengthy EAs except in unusual cases, where a proposal is so complex that a concise document cannot meet the goals of Section 1508.9 *and* where it is extremely difficult to determine whether the proposal could have significant environmental effects. In most cases, however, a lengthy EA indicates that an EIS is needed.

37a. Q. What is the level of detail of information that must be included in a finding of no significant impact (FONSI)?

A. The FONSI is a document in which the agency briefly explains the reasons why an action will not have a significant effect on the human environment and, therefore, why an EIS will not be prepared. Section 1508.13. The finding itself need not be detailed, but must succinctly state the reasons for deciding that the action will have no significant environmental effects, and, if relevant, must show which factors were weighted most heavily in the determination. In addition to this statement, the FONSI must include, summarize, or attach and incorporate by reference, the environmental assessment.

37b. Q. What are the criteria for deciding whether a FONSI should be made available for public review for 30 days before the agency's final determination whether to prepare an EIS?

A. Public review is necessary, for example, (a) if the proposal is a borderline case, i.e., when there is a reasonable argument for preparation of an EIS; (b) if it is an unusual case, a new kind of action, or a precedent setting case such as a first intrusion of even a minor development into a pristine area; (c) when there is either scientific or public controversy over the proposal; or (d) when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS. Sections 1501.4(e)(2), 1508.27. Agencies also must allow a period of public review of the FONSI if the proposed action would be located in a floodplain or wetland. E.O. 11988, Sec. 2(a)(4); E.O. 11990, Sec. 2(b).

38. Q. Must (EAs) and FONSIs be made public? If so, how should this be done?

A. Yes, they must be available to the public. Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs and FONSIs. These are public "environmental documents" under Section 1506.6(b), and, therefore, agencies must give public notice of their availability. A combination of methods may be used to give notice, and the methods should be tailored to the needs of particular cases. Thus, a **Federal Register** notice of availability of the documents, coupled with notices in national publications and mailed to interested national groups might be appropriate for proposals that are national in scope. Local newspaper notices may be more appropriate for regional or site-specific proposals.

The objective, however, is to notify all interested or affected parties. If this is not being achieved, then the methods should be reevaluated and changed. Repeated failure to reach the interested or affected public would be interpreted as a violation of the regulations.

39. Q. Can an EA and FONSI be used to impose enforceable mitigation measures, monitoring programs, or other requirements, even though there is no requirement in the regulations in such cases for a formal Record of Decision?

A. Yes. In cases where an environmental assessment is the appropriate environmental document, there still may be mitigation measures or alternatives that would be desirable to consider and adopt even though the impacts of the proposal will not be "significant." In such cases, the EA should include a discussion of these measures or alternatives to "assist

agency planning and decisionmaking" and to "aid an agency's compliance with [NEPA] when no environmental impact statement is necessary." Section 1501.3(b), 1508.9(a)(2). The appropriate mitigation measures can be imposed as enforceable permit conditions, or adopted as part of the agency final decision in the same manner mitigation measures are adopted in the formal Record of Decision that is required in EIS cases.

40. Q. If an environmental assessment indicates that the environmental effects of a proposal are significant but that, with mitigation, those effects may be reduced to less than significant levels, may the agency make a finding of no significant impact rather than prepare an EIS? Is that a legitimate function of an EA and scoping?

A. Mitigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement. Sections 1508.8, 1508.27.

If a proposal appears to have adverse effects which would be significant, and certain mitigation measures are then developed during the scoping or EA stages, the existence of such *possible* mitigation does not obviate the need for an EIS. Therefore, if scoping or the EA identifies certain mitigation possibilities without altering the nature of the overall proposal itself, the agency should continue the EIS process and submit the proposal, and the potential mitigation, for public and agency review and comment. This is essential to ensure that the final decision is based on all the relevant factors and that the full NEPA process will result in enforceable mitigation measures through the Record of Decision.

In some instances, where the proposal itself so integrates mitigation from the beginning that it is impossible to define the proposal without including the mitigation, the agency may then rely on the mitigation measures in determining that the overall effects would not be significant (e.g., where an application for a permit for a small hydro dam is based on a binding commitment to build fish ladders, to permit adequate down stream flow, and to replace any lost wetlands, wildlife habitat and recreational potential). In those instances, agencies should make the FONSI and EA available for 30 days of public comment before taking action. Section 1501.4(e)(2).

Similarly, scoping may result in a redefinition of the entire project, as a result of mitigation proposals. In that case, the agency may alter its previous decision to do an EIS, as long as the agency or applicant resubmits the entire proposal and the EA and FONSI are available for 30 days of review and comment. One example of this would be where the size and location of a proposed industrial park are changed to avoid affecting a nearby wetland area.

[FR Doc. 81-8734 Filed 3-20-81; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 77-05; Notice 5]

Passenger Automobile Average Fuel Economy Standards; Exemption From Average Fuel Economy Standards

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Final decision to grant exemption from fuel economy standards.

SUMMARY: This notice exempts Excalibur Automobile Corporation (Excalibur) from the generally applicable average fuel economy standards of 19.0 miles per gallon (mpg) and 20.0 mpg for 1979 and 1980 model year passenger automobiles, respectively, and establishes alternative standards. The alternative standards are 11.5 mpg in the 1979 model year and 16.2 mpg in the 1980 model year.

DATES: The exemptions and alternative standards set forth in this notice apply in the 1979 and 1980 model years.

FOR FURTHER INFORMATION CONTACT: Robert Mercure, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-755-9384).

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration (NHTSA) is exempting Excalibur from the generally applicable average fuel economy standards for the 1979 and 1980 model year and establishing alternative standards applicable to that company in those model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act) (15 U.S.C. 2002(c)). Section 502(c) provides that a manufacturer of passenger automobiles that manufactures fewer than 10,000 passenger automobiles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if the NHTSA establishes an alternative standard applicable to that manufacturer at the low volume manufacturer's maximum feasible average fuel economy. Section 502(e) of the Act (15 U.S.C. 2002(e)) requires the NHTSA to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final rule was preceded by a notice announcing the NHTSA's proposed decision to grant an exemption to Excalibur for the 1979 and 1980 model years (45 FR 50840, July 31, 1980). No comments were received during the 45-day comment period.

Based on its conclusions that it is not technologically feasible and economically practicable for Excalibur to improve the fuel economy of its 1979 and 1980 model year automobiles above an average of 11.5 and 16.2 mpg, respectively, that other Federal automobile standards did not affect achievable fuel economy beyond the extent considered in this analysis, and that the national effort to conserve energy will be negligibly affected by the granting of the requested exemptions, this agency concludes that the maximum feasible average fuel economy for Excalibur in the 1979 and 1980 model years is 11.5 mpg and 16.2 mpg, respectively. Therefore, NHTSA is exempting Excalibur from the generally applicable standards and is establishing alternative standards of 11.5 mpg for the 1979 model year and 16.2 mpg for the 1980 model year.

In consideration of the foregoing, 49 CFR Part 531 is amended by revising § 531.5(b)(5) to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the fuel economy standards indicated below for the specified model years:

* * * * *

(5) Excalibur Automobile Corporation.

Model year	Average[1]
1978	11.5
1979	11.5
1980	16.2

[1] Average fuel economy standard (miles per gallon).

* * * * *

The program official and attorney principally responsible for the development of this decision are Robert Mercure and Stephen Kratzke, respectively.

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

Issued on March 13, 1981.

Diane Steed,

Acting Administrator.

[FR Doc. 81-8661 Filed 3-20-81; 8:45 am]

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Proposed Rules

Federal Register
Vol. 46, No. 55
Monday, March 23, 1981

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

Filberts Grown in Oregon and Washington; Decision and Referendum Order on Proposed Further Amendment of the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision proposes an amendment of the filbert marketing agreement and order program, and provides filbert producers the opportunity to vote in a referendum on the proposed amendment. The proposed amendment would change the method for adopting and implementing the marketing policy and volume regulation. Other changes include a definition of the new term "marketing year," setting new beginning and ending dates for that year which would change some marketing order operations, and renaming the Board which works with AMS in administering the program. The main purpose of the proposed amendment is to improve the operation and effectiveness of the program.

DATE: The representative period for purposes of the referendum herein ordered is August 1, 1979, through July 31, 1980.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447-5697. An impact statement relative to this action is available on request from J. S. Miller.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued June 18, 1980, and published June 24, 1980 (45 FR 42315).

Notice of Recommended Decision—Issued January 7, 1981, and published January 12, 1981 (46 FR 2622).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code, and therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated nine handlers.

Preliminary Statement. This proposed amendment was formulated on the record of a public hearing held at Portland, Oregon, July 9, 1980. Notice of the hearing was published in the June 24, 1980, issue of the **Federal Register** (45 FR 42315). The notice contained proposals submitted by the Filbert Control Board. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900).

On the basis of the evidence introduced at the hearing and the record thereof, Deputy Administrator Manley, on January 7, 1981, filed with the Hearing Clerk, U.S. Department of Agriculture, a recommended decision which contained notice of the opportunity to file by January 30, 1981, written exceptions thereto. One exception was filed by Larry L. Holden, General Manager of the Oregon Division of the Robert L. Berner Company. The Berner Company is a handler under the filbert marketing agreement and order program.

Findings and Conclusions. The material issues, findings and conclusions, rulings, general findings, and regulatory provisions of the recommended decision published in the January 12, 1981, issue of the **Federal Register** (46 FR 2622) are hereby incorporated herein and made a part hereof subject to the following modifications and corrections:

In Material Issue (1)(a), 13 new paragraphs are added after the fourth paragraph as follows:

"The exceptor was against changing the marketing policy year to May 1 through April 30, and beginning the 1981–82 marketing policy year on May 1, 1981."

"The exceptor's main objection to beginning the 1981–82 marketing policy year on May 1, 1981, was a matter of preparation. The exceptor stated that shortening the current 1980–81 marketing policy year by three months from July 31, 1981, to April 30, 1981, would not give handlers adequate notice to plan their processing, shelling, and marketing operations, and that Berner Company has been operating as if the current marketing year would end July 31, not April 30."

"The provisions of the proposed order amendment, including the proposed change in the marketing policy year, are well known to handlers of filberts grown in the production area. Considerable effort was made by the Department to bring the hearing to the attention of all handlers, producers, and others. The hearing on the proposed amendment began July 9, 1980, at Portland, Oregon. A pre-notice press release announcing the proposed order amendment and inviting public comment was released April 9, 1980. A notice of hearing was published in the **Federal Register** June 24, 1980, in accordance with the Department's Rules of Practice and Procedure Governing Proceedings to Formulate Marketing Agreements and Marketing Orders (7 CFR Part 900). A copy of this notice was mailed to all known handlers, producers, and to the Governors of the States of Oregon and Washington. Press releases concerning the proceeding were issued and made available to the media. The intent of the extensive notification process was to give all interested persons, including handlers, as much notice as possible, that the current 1980–81 marketing policy year might end April 30, not July 31, and afford them opportunity to respond."

"No opposition to changing the beginning of the marketing policy year to May 1 was presented as a result of the prenotice press release and at the hearing, and no briefs containing proposed findings and conclusions were submitted after the hearing opposing the proposed change in the marketing policy year. The result is a compilation of evidence which provides a basis to change the beginning of the marketing policy year to May 1."

"Up to the time of the exception, there appeared to be no opposition to changing the beginning of the marketing policy year from August 1 to May 1, and it appeared that all of the handlers were planning their operations accordingly.

However, as discussed in Material Issue (7), there could be some inequities as a result of this change with respect to the last date handlers can defer temporarily their 1980–81 marketing policy year withholding obligations. For the reasons discussed in that Material Issue, the last date for deferments during the current 1980–81 marketing policy year should continue to be April 30, 1981. Hence, the marketing policy year change should have no impact on handlers meeting their 1980–81 withholding obligations."

"The exceptor agreed with those findings and conclusions of the recommended decision that excessive supplies of inshell filberts carried over into the new marketing policy year have resulted in price weakness in that year but cautioned that beginning the marketing policy year May 1 would actually tend to increase the amount of inshell filberts carried over into the next year and thereby act contrary to the declared policy of the order. The purpose of the order is to establish and maintain orderly marketing conditions."

"The main cause of the excessive inshell filbert carryovers in the last few seasons has been ineffective marketing policies which caused market uncertainty. That is, buyers purchased only enough filberts to cover their immediate needs in anticipation of later price reductions. This action has been reinforced because handlers have in fact reduced prices following the peak shipping season in six of the last ten years in order to sell excessive supplies and avoid the high costs associated with carrying the supplies until August 1."

"As discussed in Material Issue (5), the recommended change in setting marketing policy is intended to provide filbert growers and handlers with a marketing policy mechanism which will reduce the risk of underestimated crops and overly optimistic trade demand estimates. In other words, a marketing policy which will contribute toward the establishment and maintenance of orderly marketing conditions and fair returns for growers, handlers, and reasonable prices to consumers."

"The change to a marketing policy year beginning May 1 is intended to reinforce the recommended change in the method of setting marketing policy. As indicated previously, the proposed marketing policy year change would encourage handlers to shell or export filberts not needed for the inshell market earlier and avoid the cost of carrying excessive inventory until August 1. It will also reduce the chances of excessive carryovers burdening the next crop."

"Under the current August 1–July 31 marketing policy year some handlers have shelled or exported inshell filberts during the months of May, June, and July. These are outlets eligible for the disposition of restricted filberts. However, as the exceptor pointed out, these dispositions generally were in excess of any withholding obligation incurred by handlers during that year. Under the proposed marketing policy year, these dispositions would occur early in the year before the peak inshell shipping season and credit for the disposition in restricted outlets would be available for use if volume regulations were established later for that marketing policy year. Thus, the chances that some handlers would lower prices during January through April would be lessened as would late year inventory buildups which burden new crop sales."

"While changing the beginning date of the marketing policy year to May 1 will reflect current industry marketing operations, the fact that changes may occur which would necessitate a different period of operation has been recognized. Authority to make such a needed change by informal rulemaking has been retained, and any needed changes in the date could be made in a timely fashion."

"Also, a marketing policy year beginning May 1 gives handlers additional time to plan their marketing strategies for the new crop. Since inshell filberts have a limited domestic market of short duration, a well formulated marketing plan is very critical."

"In view of all the foregoing, the exceptor's request to retain the August 1–July 31 marketing policy year, is denied."

The first and second sentences of the fourth paragraph of Material Issue (1)(a) are removed and replaced with the following sentence: "May 1 should be selected initially for the beginning of the marketing policy year because handlers generally have completed processing by May 1, and most have satisfied their withholding obligations by then." The deleted sentences referred to an inventory tax which has been abolished.

In Material Issue (3), two new paragraphs are added after paragraph (4) as follows:

"The exceptor pointed out that because § 982.32(e) would require nominations for Board membership to be submitted at least 60 days prior to the beginning of the marketing year, the order would have to be amended by February 28, for this deadline to be met. Because of time limitations and equity considerations, the earliest the order can be amended is May 1, 1981. Therefore, the nominations of the members and alternate members whose terms would begin May 1, 1981, should be submitted as soon as practicable following the beginning of the marketing year and paragraph (e) is revised accordingly."

"Moreover, it is not likely that the new Board will be selected and organized for some time after May 1. Therefore, § 982.32(f) should be revised so that the Board can submit its nominations for public and alternate public members for the term of office beginning May 1, 1981, as soon as practicable following the beginning of the marketing year. This change would give the newly selected Board the time it needs to find qualified persons interested in serving as public and alternate public members."

In Material Issue (7), a new paragraph is added after paragraph (2) as follows:

"The exceptor pointed out that a marketing year beginning May 1, 1981, would require handlers to meet their 1980–81 withholding obligations by February 28, 1981. For the 1980–81 marketing policy year, the deadline date should be April 30, 1981. Under the current order, handlers could have deferred temporarily their 1980–81 withholding obligations until April 30, 1981. Consequently, some handlers may have posted bonds maturing on April 30, 1981, as a surety that they will have satisfied fully their 1980–81 withholding obligations by that date. Thus, it would be inequitable to require handlers to satisfy their 1980–81 marketing policy year obligations earlier than April 30, 1981, especially since the earliest any order amendment resulting from the hearing could be effectuated would be May 1, 1981. Paragraph (a) is revised accordingly."

In addition, the following amendments correcting and clarifying the recommended decision and order are made:

Page	Column	Paragraph	Line	Correction
2622	2	9	1	Insert "in" after "specified".
2623	1	3	21	Change "revised" to "amended".
2623	2	3	10	Change "demonstrates" to "indicates".
2623	2	3	11	Change "purposes" to "purpose".
2624	3	2	21	Delete "and" and add a period after "prices".
2624	3	2	22	Change "the" to "The".
2625	2	3	10	Change "that" to "such".
2625	3	____	16	Change "carrying" to "carryin".
2626	2	1	22	Change "handles" to "handled".
2628	1	5	1	Insert "public" before "member".
2628	2	____	16	Change "presentation" to "representation".
2628	2	3	1	Change "any" to "no".
2628	2	3	2	Delete "not".
2628	2	3	3	Delete "direct".

Page	Column	Paragraph	Line	Correction
2628	3	3	5	Change "That" to "The".
2628	3	3	6	Delete "be" and "to".
2628	3	3	12	Insert "more representative" before "prior".
2629	1	6	4	Insert "to the Secretary", after "thereof".

Another correction is needed on page 2623, column 2, paragraph 5. That paragraph should be changed to read as follows: "So that the "public member" would be truly representative of the public and represent its views, that member should not have any financial interest in the growing or handling of filberts. A "public member" should not have any business dealing with any handler or grower and should not receive any remuneration directly from a grower or handler. For example, this would preclude a banker making loans to filbert growers or handlers from serving as a "public member", but would not disqualify University personnel receiving grants for studies of agricultural products from serving in this capacity. This qualification should be added as a new paragraph (b) in § 982.34. Paragraph (b) should provide that no person nominated to serve as a public member or alternate shall have a financial interest in any filbert growing or handling operation."

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, the exception to the recommended decision was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with the exception, such exception is hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Filberts Grown in Oregon and Washington", and "Order Amending the Order, as Amended, Regulating the Handling of Filberts Grown in Oregon and Washington", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

Referendum order. It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order as amended and as hereby proposed to be further amended, regulating the handling of filberts grown in Oregon and Washington, is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production area in the production of the regulated commodity for market.

The representative period for the conduct of such referendum is hereby determined to be August 1, 1979, through July 31, 1980.

The agents of the Secretary to conduct such referendum are hereby designated to be Joseph C. Perrin, Dennis West, and J. S. Miller, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture.

Signed at Washington, D.C. on March 18, 1981.

C. W. McMillan,

Assistant Secretary for Marketing and Transportation Services.

ORDER [1] AMENDING THE ORDER, AS AMENDED, REGULATING THE HANDING OF FILBERTS GROWN IN OREGON AND WASHINGTON

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed amendment of the marketing agreement, as amended, and Order No. 982, as amended (7 CFR Part 982), regulating the handling of filberts grown in Oregon and Washington.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Upon the basis of the record it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The order, as amended, and as hereby further amended, regulates the handling of filberts grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of filberts grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of filberts grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of filberts grown in Oregon and Washington shall be in conformity to and in compliance with the following terms and conditions of the order, as hereby amended.

Except for the previously noted corrections and modifications, the provisions of the proposed marketing agreement and order, amending the order, contained in the recommended decision issued by the Deputy Administrator on January 7, 1981, and published in the **Federal Register** on January 12, 1981 (46 FR 2622), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

1. The title of the order is revised to read as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

2. Section 982.17 is revised to read as follows:

§ 982.17 Marketing year.

"Marketing year" means the 12 months from May 1 to the following April 30, both inclusive, or such other period of time as may be recommended by the Board and established by the Secretary.

§§ 982.1–982.88 [Nomenclature change.]

3. The terms "marketing policy year" and "fiscal year" are changed in "marketing year" wherever they appear in §§ 982.1 through 982.88.

4. Section 982.18 is revised to read as follows:

§ 982.18 Board.

"Board" means the Filbert/Hazelnut Marketing Board established pursuant to § 982.30.

5. Section 982.19 is redesignated § 982.20 and a new § 982.19 is added to read as follows:

§ 982.19 Disappearance.

"Disappearance" means the difference between orchard-run production and the available supply of merchantable filberts and merchantable equivalent of shelled filberts.

§ 982.20 [Renumbered from § 982.19]

6. Section 982.30(g) is revised to read as follows:

§ 982.30 Establishment and membership.

* * * * *

(g) One public member who is neither a grower nor a handler.

7. Section 982.32 (e) and (f) are revised to read as follows:

§ 982.32 Nomination.

* * * * *

(e) All votes cast by cooperative handlers, independent handlers, or for cooperative growers, shall be weighted according to the tonnage of certified merchantable filberts and, when shelled filbert grade and size regulations are in effect, the inshell equivalent of certified shelled filberts (computed to the nearest whole ton) recorded by the Board as handled by each such handler or cooperative grower group during the preceding marketing year and if less than one ton is recorded for any such handler or cooperative grower group, the vote shall be weighted as one vote. All votes cast by independent growers shall be given equal weight. Nominations received in the foregoing manner by the Board shall be reported to the Secretary at least 60 days prior to the beginning of each marketing year, together with a certificate of all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary: *Provided,* That the nominations of the persons who would serve for terms beginning May 1, 1981, together with such certificate and other information, shall be reported as soon as practicable after May 1. If such nominations of any group are not submitted to the Secretary by that time, the Secretary may select the representatives of that group without nomination.

(f) Nominees for the public member and alternate member positions specified in § 982.30(g) shall be chosen by the other eight members who are to serve on the Board during the ensuing marketing year. If nominations for such member or alternate are not submitted within 30 days after the beginning of the marketing year, the Secretary may select such member or alternate without nomination: *Provided,* That the nominations for such member and alternate member whose terms would begin May 1, 1981, shall be submitted as soon as practicable after May 1.

* * * * *

8. Section 982.33(b)(1) is revised to read as follows:

§ 982.33 Selection and term of office.

* * * * *

(b) *Term of office.* (1) The term of office of each member and alternate member shall be two marketing years from the beginning of the marketing year, except that (i) the terms of office of one of the grower members and the member's alternate specified in § 982.30 (a) and (b) shall expire at the end of the first even numbered marketing year following the year of selection, and the terms of office of all other members and alternate members shall expire at the end of the first odd-numbered marketing year following the year of selection; (ii) if the representation on the Board in an ensuing marketing year will, by reason of change in representation pursuant to § 982.30 (c) and (f), be different from that in the current marketing year, the terms of office of all grower and handler members and alternate members shall expire at the end of the current marketing year and successor members and alternate members shall be nominated and selected in conformance with §§ 982.30 and 982.33; (iii) if the districts for independent grower representation in an ensuing marketing year will be different from that in the current marketing year, the terms of office of all independent grower members and alternate members specified in § 982.30 (e) and (f) shall expire at the end of the current marketing year, and persons nominated to succeed them shall be nominated and selected so as to conform with such changed representation.

* * * * *

9. Section § 982.34 is revised to read as follows:

§ 982.34 Qualification.

(a) Any person selected to serve as a member or an alternate member of the Board shall qualify by filing with the Secretary a written acceptance of appointment. Any member or alternate member who at the time of selection was a member or employed by a member of the group which nominated that person shall, upon ceasing to be such a member or employee, become disqualified to serve further and that position on the Board shall be deemed vacant. In the event any member or alternate member of the Board qualified and selected, in accordance with the provisions of §§ 982.30 and 982.32, to represent independent growers should during that person's term of office handle filberts produced by other growers or become an employee of a handler, that position on the Board shall thereupon be deemed to be vacant.

(b) No person nominated to serve as a public member or alternate shall have a direct financial interest in any filbert growing or handling operation.

10. Section 982.39(f) is revised to read as follows:

§ 982.39 Duties.

* * * * *

(f) To cause the books of the Board to be audited by one or more public accountants approved by the Board at least once for each marketing year and at such other times as the Board deems necessary or as the Secretary may request, and to file with the Secretary reports of all audits made;

* * * * *

11. Section 982.40 is revised to read as follows:

§ 982.40 Marketing policy and volume regulation.

(a) *General.* As provided in this section, for each marketing year the Board may hold meetings for the purpose of computing its marketing policy for that year and shall do so for the purpose of submitting any recommendations on its policy to the Secretary. The Board may designate one of its employees to compute and announce the preliminary computed and final computed free and restricted percentages.

(b) *Trade demand.* Prior to August of a marketing year, the Board shall recommend establishment of an inshell trade demand for that year to the

Secretary. The inshell trade demand shall equal the average of the trade acquisitions of inshell filberts during the preceding three years. If the trade acquisitions during any one or all of those years was abnormally low because of crop conditions, the Board may use more representative prior year or years in determining the three-year average. If the Secretary finds, on the basis of the Board's recommendation or other information that limiting the quantity of merchantable filberts which may be handled during a marketing year through application of the free and restricted percentages to that trade demand as provided in paragraph (c) of this section would tend to effectuate the declared policy of the act, the Secretary shall establish that trade demand.

(c) *Inshell allocation*—(1) *Preliminary computed percentages.* Prior to September 20 of that marketing year, the Board shall compute and announce preliminary computed free and restricted percentages for that year, to release 70 percent of the inshell trade demand computed for that year. The preliminary computed free percentage shall be computed by multiplying that trade demand, adjusted by the declared carryin, by 70 percent and dividing by the most recent official estimate of orchard-run production less the average disappearance during the preceding three years, plus the undeclared carryin. The difference between 100 percent and the preliminary free percentage shall be the preliminary computed restricted percentage.

(2) *Final computed percentages.* The Board upon determining that a firm field price has been established for filberts for that marketing year shall compute and announce final computed free and restricted percentages for that year, to release 80 percent of the inshell trade demand computed for that year. The final computed free percentage shall be computed by multiplying that trade demand, adjusted by the declared carryin, by 80 percent and dividing by the most recent official estimate of orchard-run production less the average disappearance during the preceding three years plus the undeclared carryin. The difference between 100 percent and the final computed free percentage shall be the final computed restricted percentage.

(3) *Final percentages.* On or before November 15 the Board shall meet to recommend to the Secretary the final free and restricted percentages to release 100 percent or up to 110 percent if market conditions justify of the inshell trade demand previously established by the Secretary for the marketing year. The recommendation shall include the following:

(i) The estimated tonnage of merchantable filberts expected to be produced during the marketing year.

(ii) The estimated tonnage of inshell filberts held by handlers on the first day of the marketing year which may be available for handling as inshell filberts thereafter.

(iii) Any other pertinent factors bearing on the marketing of filberts during the marketing year.

Whenever the Secretary finds, on the basis of the recommendation of the Board or other available information that to establish the final free and restricted percentages would tend to effectuate the declared policy of the act, the Secretary shall establish such percentages.

(d) *Grade and size regulations.* Prior to September 20 the Board may consider grade and size regulations in effect and may recommend modifications thereof to the Secretary.

(e) *Revision of marketing policy.* At any time prior to February 15 of the marketing year the Board may recommend to the Secretary revisions in the marketing policy for that year: *Provided,* That in no event shall any revision result in free and restricted percentages which would release more than 110 percent of the inshell trade demand computed for that marketing year. At any time during the period December 1 through February 10 at the request of two or more handlers who during the preceding marketing year handled at least 10 percent of all filberts handled the Board shall meet to determine whether the marketing policy should be revised.

12. Section 982.41 is revised to read as follows:

982.41 Free and restricted percentages.

The free and restricted percentages computed by the Board or established by the Secretary pursuant to § 982.40, shall apply to all merchantable filberts handled during the current marketing year. Until the preliminary or final computed free and restricted percentages are computed by the Board for the current marketing year, the percentages in effect at the end of the previous marketing year shall be applicable.

§ 982.50 [Amended]

13. Sections 982.50(a)(1) and (d) are amended by adding the word "applicable" before the words "free percentage" and "reserve percentage" wherever they appear.

14. Sections 982.54(a) and (c) are revised to read as follows:

§ 982.54. Deferment of restricted obligation.

(a) *Bonding.* Compliance by any handler with the requirements of § 982.50 as to the time when restricted filberts shall be withheld shall be temporarily deferred to any date required by the handler, but not later than 60 days prior to the end of the marketing year, upon the voluntary execution and delivery by such handler to the Board before handling any merchantable filberts of such marketing year of a written undertaking secured by a bond or bonds with a surety or sureties acceptable to the Board that on or prior to such date the handler will have fully satisfied the restricted obligation required by § 982.50: *Provided,* That for the marketing period August 1, 1980, through April 30, 1981, compliance with any restricted obligation may be deferred to April 30, 1981.

* * * * *

(c) *Bonding rate.* Said bonding rate for each pack shall be an amount per pound representing the season's domestic price for such pack net to handler f.o.b. shipping point which shall be computed at the opening price for such pack announced by the handler or handlers who during the preceding marketing year handled more than 50 percent of the total volume handled. If such opening prices involve different prices announced by two or more handlers for respective packs the price so announced shall be averaged on the basis of the quantity of such packs handled during the preceding marketing year by each such handler. Until bonding rates for a marketing year are fixed the rates in effect for the preceding marketing year shall continue in effect, and when such new rates are fixed necessary adjustments should be made.

* * * * *

15. Section 982.62(a) and (b) are revised to read as follows:

§ 982.62 Accounting.

(a) *Operating reserve.* The Board with the approval of the Secretary may establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses or such lower limits as the Board with the approval of the Secretary may establish.

(b) *Refunds.* At the end of a marketing year funds in excess of the marketing

year's expenses and reserve requirements shall be refunded to handlers from whom collected and each handler's share of such excess funds shall be the amount of assessments the handler paid in excess of the handler's pro rata share of expenses of the Board. However, excess funds may be maintained and used by the Board until December 1 following the end of any such marketing year: *Provided,* That the Board shall refund to each handler upon request, or credit to the handler's account with the Board, the handler's share of such excess prior to January 1.

* * * * *

16. Section 982.65 is revised to read as follows:

§ 982.65 Carryover reports.

As of January 1, May 1, and August 1, or such other dates as the Board may recommend and the Secretary approve, each handler shall report within 10 days to the Board the handler's inventory of inshell and shelled filberts. Such reports shall be certified to the Board and the Secretary as to their accuracy and completeness and shall show, among other items, the following: (a) Certified mechantable filberts on which the restricted obligation has been met; (b) merchantable filberts on which the restricted obligation has not been met; (c) the merchantable equivalent of any filberts intended for handling as inshell filberts; and (d) restricted filberts withheld.

17. Section 982.86(b)(3) is revised to read as follows:

§ 982.86 Effective time, termination or suspension.

* * * * *

(b) *Suspension or termination.* * * *

(3) The Secretary shall terminate the provisions of this subpart at the end of any marketing year whenever the Secretary finds that such termination is favored by a majority of the producers of filberts who during the preceding marketing year have been engaged in the production for marketing of filberts in the States of Oregon and Washington: *Provided,* That such majority have during such period produced for market more than 50 percent of the volume of such filberts produced for market within said States; but such termination shall be effected only if announced 30 days or more before the end of the then current marketing year.

* * * * *

[FR Doc. 81-8852 Filed 3-20-81; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Licensing Requirements for Pending Construction Permit and Manufacturing License Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to add to its power reactor safety regulations a set of licensing requirements applicable only to construction permit and manufacturing license applications pending at the effective date of the rule. The requirements stem from the Commission's ongoing effort to apply the lessons learned from the accident at Three Mile Island to power plant licensing. Each applicant covered by the rule would have to meet these requirements, together with the existing regulations, in order to obtain a permit or license. Comments are particularly sought on whether the rule should be applied to the pending manufacturing license application.

DATES: Comments must be received on or before April 13, 1981.

ADDRESSES: Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Robert A. Purple, Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: 301-492-7980.

SUPPLEMENTARY INFORMATION:

Background of the Rulemaking

The events leading up to the issuance of this proposed rule were discussed in detail in the Notice of Proposed Rulemaking, which appeared in the **Federal Register** on October 2, 1980, at pages 65247-65248. In that notice the Commission reviewed some of the actions it had already taken in response to the accident at Three Mile Island, and outlined the options it was considering in regard to the review of construction permit and manufacturing license applications. The Commission proposed to resume licensing using pre-TMI requirements augmented as necessary by selected new requirements from the Commission's TMI Action Plan, NUREG-0660. In connection with a request for public comments on these new requirements, the Commission noted that final rules might be issued on some or all of the matters discussed in that notice.

The Commission held a series of meetings regarding this proposed rule in January, February, and March of 1981. At its March 12 meeting the Commission decided that a further brief period of public comment was desirable prior to promulgation of a final rule to ensure that all interested persons have an opportunity ot review the contents of the proposed rule and, in particular, have the opportunity to comment on the applicability of the proposed rule to the pending manufacturing license application.

Justification of 20-day Comment Period

As stated above, a Notice of Proposed Rulemaking has already been published and comments have been received and analyzed. In addition, the Commission wishes to issue a final rule at the earliest possible date. The Commission has therefore concluded that a 20-day comment period is appropriate at this time. It is not expected that extensions will be granted since the Commission intends to act on a final rule soon after close of the comment period.

Comments on Inclusion of the Manufacturing License Application

While the Commission will review all aspects of comments received in response to this notice, the Commission particularly desires comment on whether or not the pending manufacturing license application, filed by Offshore Power Systems, Inc., should be covered by the proposed rule. At issue is whether the rule's requirements for the capacity of containments to withstand the effects of accident-generated hydrogen are sufficient when applied to floating nuclear power plants. (Refer to subsection (3)(v) of the proposed rule.)

Substance of the Rule

This rule, which has been drawn from NUREG-0718, Licensing Requirements for Pending Applications for Construction Permits and Manufacturing License, March 1981, imposes new safety requirements on pending construction permit and manufacturing license applications. The Commission has determined that these requirements must be met by all applicants for construction permits or manufacturing licenses whose applications are pending as of the effective date of the rule. It should be noted, however, that there are some elements in the TMI Action Plan (NUREG-0660), not included in NUREG-0718, that have not yet been acted upon by the Commission. These are items that

the Commission has directed be subject to further study before taking approval action. It is possible, therefore, that some of these items will be approved for implementation prior to completion of the licensing review of the pending construction permits or manufacturing license. In that event, such items might be added to this rule. The Commission is aware, however, that the applications covered by this rule have already been substantially delayed and the facility designs may be further advanced than normally expected at the construction permit and manufacturing license review stage. The Commission will take this into account as further requirements are considered. Full opportunity for public comment will be provided if additional requirements are contemplated which would apply to these applications.

While this rule contains the basic requirements set out in NUREG–0718, it does not incorporate the entirety of the document. In particular, the rule does not contain the detailed criteria contained in Appendix B to NUREG–0718, for satisfying many of the requirements. To have included such detail would have resulted in a rule that would be excessively detailed and restrictive. In addition, this rule does not identify, as does NUREG–0718, the items from the TMI–2 Action Plan, NUREG–0660, that are considered either not applicable to pending construction permit and manufacturing license applications, or to be requirements of the type customarily left for the operating license stage. However, the Commission has reviewed NUREG–0718, and has concluded that the list of TMI-related requirements contained therein can provide a baiss for responding to the TMI–2 accident. Applicants may, of course, propose to satisfy the rule's requirements by a method other than that detailed in NUREG–0718, but in such cases must provide a basis for determining that the requirements of the rule have been met.

Based upon its extensive review and consideration of the issues arising as a result of the Three Mile Island accident, the Commission has decided that pending applications for a construction permit or manufacturing license should be measured by the NRC staff and Presiding Officers in adjudicatory proceedings against the existing regulations, as augmented by this rule. It is the Commission's view that this new rule, together with the existing regulations, form a set of regulations, conformance with which meets the requirements of the Commission for issuance of a construction permit or manufacturing license.

Some of the proposed rule's provisions deal with studies to be conducted by the license applicants. The Commission intends to impose license conditions upon all permits and licenses covered by this rule which will require submittal of these studies to the NRC for review and appropriate action. The license conditions will specify due dates or may require that studies be submitted prior to hardware procurement or other construction events.

Regulatory Flexibility Statement

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant impact on a substantial number of small entities. This proposed rule affects six applicants for construction permits and one applicant for a manufacturing license. These applications are for permits or a license for plants that do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act in the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 552 and 553 of Title 5 of the United States Code, the Commission proposes to amend Part 50 of Chapter 1, Title 10 of the Code of Federal Regulations as follows:

1. A new paragraph (e) is added to § 50.34 to read as follows:

§ 50.34 Contents of applications; technical information.

* * * * *

(e) *Additional TMI-related requirements.* In addition to the requirements of paragraph (a) of this section, each applicant for a construction permit or manufacturing license whose application was pending as of (insert effective date of rule) shall meet the requirements in the following paragraphs (e) (1) through (3).

(1) To satisfy the following requirements, the application shall provide sufficient information to describe the nature of the studies, how they are to be conducted, estimated submittal dates, and a program to ensure that the results of such studies are factored into the final design:

(i) Perform a plant/site specific probabilistic risk assessment, the aim of which is to seek such improvements in the reliability of core and containment heat removal systems as are significant and practical and do not impact excessively on the plant. (II.B.8)[1]

(ii) Perform an evaluation of the proposed auxiliary feedwater system (AFWS), to include (applicable to PWR's only). (II.E.1.1)

(A) A simplified AFWS reliability analyses using event-tree and fault-tree logic techniques.

(B) A design review of AFWS.

(C) An evaluation of AFWS flow design bases and criteria.

(iii) Perform an evaluation of the potential for an impact of reactor coolant pump seal damage following small-break LOCA with loss of offsite power. If damage cannot be precluded, provide an analysis of the limiting small-break loss-of-coolant accident with subsequent reactor coolant pump seal damage. (II.K.2.16 and II.K.3.25)

(iv) Perform an analysis of the probability of a small-break loss-of-coolant accident (LOCA) caused by a stuck-open power-operated relief valve (PORV). If this probability is a significant contributor to small-break LOCA's from all causes, provide an evaluation of the effect of an automatic PORV isolation system that would operate when the reactor coolant system pressure falls after the PORV has opened (Applicable to PWR's only.) (II.K.3.2)

(v) Perform an evaluation of the safety effectiveness of providing for separation of high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) system initiation levels so that the RCIC system initiates at a higher water level than the HPCI system, and of providing that both systems restart on low water level. (Applicable to BWR's only.) (II.K.3.13)

(vi) Perform a study to identify practicable system modifications that would reduce challenges and failures of relief valves, without compromising the performance of the valves or other systems. (Applicable to BWR's only.) (II.K.3.16)

(vii) Perform a feasibility and risk assessment study to determine the optimum automatic depressurization system (ADS) modifications that would eliminate the need for manual activation to ensure adequate core cooling. (Applicable to BWR's only.) (II.K.3.18)

(viii) Perform a study of the effect of designing the core spray and low pressure coolant injection systems so that they will automatically restart on loss of water level, after having been

[1] Alphanumeric designations correspond to the related action plan items in NUREG 0718 and NUREG 0660, "NRC Action Plan Developed as a Result of the TMI–2 Accident." They are provided herein for information only.

manually stopped, if an initiation signal is still present. (Applicable to BWR's only.) (II.K.3.21)

(ix) Perform a study to determine the need for space cooling for the long-term operation of the reactor core isolation cooling (RCIC) and high-pressure coolant injection (HPCI) systems, to verify the acceptability of the consequences on these systems of a loss of alternating current power, and to demonstrate that the RCIC and HPCI systems can withstand a loss of off-site power to their support systems, including coolers, for at least two hours. (Applicable to BWR's only.) (II.K.3.24)

(x) Perform a study to ensure that the Automatic Depressurization System, valves, accumulators, and associated equipment and instrumentation will be capable of performing their intended functions during and following an accident situation, taking no credit for non-safety related equipment or instrumentation, and accounting for normal expected air (or nitrogen) leakage through valves. (Applicable to BWR's only.) (II.K.3.28)

(xi) Perform a study to demonstrate that, for anticipated transients combined with the worst single failure, and assuming proper operator actions, the core remains covered or no significant fuel damage results from core uncovery. (Applicable to BWR's only.) (II.K.3.44)

(xii) Provide an evaluation of depressurization methods, other than by full actuation of the automatic depressurization system, that would reduce the possibility of exceeding vessel integrity limits during rapid cooldown. (Applicable to BWR's only.) (II.K.3.45)

(2) To satisfy the following requirements, the application shall provide sufficient information to demonstrate that the required actions will be satisfactorily completed by the operating license stage. This information is of the type customarily required to satisfy 10 CFR 50.35(a)(2) or to address unresolved generic safety issues.

(i) Provide simulator capability that correctly models the control room and includes the capability to stimulate small-break LOCA's. (Applicable to construction permit applicants only.) (I.A.4.2)

(ii) Establish a program, to begin during construction and follow into operation, for integrating and expanding current efforts to improve plant procedures. The scope of the program shall include emergency procedures, reliability analyses, human factors engineering, crisis management, operator training, and coordination with INPO and other industry efforts. (I.C.9)

(iii) Provide, for Commission approval, a control room design that applies state-of-the-art human factor principles prior to committing to fabrication or revision of fabricated control room panels and layouts. (I.D.1)

(iv) Provide a plant safety parameter display console that will display to operators a minimum set of parameters defininig the safety status of the plant, capable of displaying a full range of important plant parameters and data trends on demand, and capable of indicating when process limits are being approached or exceeded. (I.D.2)

(v) Provide for automatic indication of the bypassed and operable status of safety systems. (I.D.3)

(vi) Provide the capability of venting noncondensible gases from the reactor coolant system, and other systems that may be required to maintain adequate core cooling. Systems to achieve this capability shall be capable of being operated from the control room and their operation shall not lead to an unacceptable increase in the probability of loss-of-coolant accident or an unacceptable challenge to containment integrity. (II.B.1)

(vii) Perform radiation and shielding design reviews of spaces around systems that may, as a result of an accident, contain highly radioactive fluids, and design as necessary to permit adequate access to important areas and to protect safety equipment from the radiation environment. (II.B.2)

(viii) Provide a capability to promptly obtain and analyze reactor coolant and containment atmosphere samples, without radiation exposures to any individual exceeding 5 rem to the whole-body or 75 rem to the extremities. Materials to be analyzed and quantified include certain radionuclides that are indicators of the degree of core damage (e.g., noble gases, iodines and cesiums, and non-volatile isotopes), hydrogen in the containment atmosphere, dissolved gases, chloride, and boron concentrations. (II.B.3)

(ix) Provide a system for hydrogen control capable of handling hydrogen generated by the equivalent of a 100% fuel-clad metal water reactor. (II.B.8)

(x) Provide a test program, and associated model development to qualify reactor coolant system relief and safety valves and, for PWR's, block valves, under expected operating conditions for design-basis transients and accidents, including anticipated-transient-without-scram conditions. (II.D.1)

(xi) Provide direct indication of relief and safety valve position (open or closed) in the control room. (II.D.3)

(xii) Provide automatically and manually initiated safety-grade auxiliary feedwater (AFW) system initiation, provide for safety-grade auxiliary feedwater system flow indication in the control room, and provide an analysis of the effect on containment integrity and return to reactor power of automatic AFW system initiation with a postulated main steam line leak inside containment. (Applicable to PWR's only) (II.E.1.2)

(xiii) Provide pressurizer heater power supply and associated motive and control power interfaces sufficient to establish and maintain natural circulation in hot standby conditions with only onsite power available. (Applicable to PWR's only) (II.E.3.1)

(xiv) Provide containment isolation systems that: (II.E.4.2)

(A) Ensure all non-essential systems are isolated automatically by the containment isolation system,

(B) For each non-essential penetration (except instrument lines), have two isolation barriers in series,

(C) Do not result in reopening of the containment isolation valves on resetting of the isolation signal.

(D) Utilize a containment set point pressure for initiating containment isolation as low as is compatible with normal operation.

(E) Include automatic closing on a safety–grade high radiation signal for all systems that provide an open path to the environs.

(xv) Provide a capability for containment purging/venting designed to minimize purging time consistent with ALARA principles for occupational exposure. Provide and demonstrate high assurance that the purge system will reliably isolate under accident conditions. (II.E.4.4)

(xvi) Establish a design criterion for the allowable number of actuation cycles of the emergency core cooling system and reactor protection system consistent with the expected occurrence rates of severe overcooling events (considering both anticipated transients and accidents). (Applicable to B&W designs only) (II.E.5.1)

(xvii) Design systems so as to reduce primary system sensitivity to transients. (Applicable to B&W designs only). (II.E.5.2)

(xviii) Provide instrumentation to measure: (A) containment pressure, (B) containment water level, (C) containment hydrogen concentration, (D) containment radiation intensity (high level), and (E) noble gas effluents. Provide for continuous sampling of plant gaseous effluents for post-accident releases of radioactive iodines and

particulates, and for onsite capability to analyze and measure these samples. (II.F.1)

(xix) Provide instruments that provide an unambiguous indication of inadequate core cooling, such as primary coolant saturation meters in PWR's, coolant level in the reactor vessel, core exit thermocouples, and core coolant flow rate. (II.F.2)

(xx) Provide instrumentation adequate for monitoring plant conditions following an accident that includes core damage. (II.F.3)

(xxi) Provide power supplies for pressurizer relief valves, block valves, and level indicators such that: (A) level indicators are powered from vital buses; (B) motive and control components are designed to safety-grade criteria; and (C) electric power is provided from emergency power sources. (Applicable to PWR's only) (II.G.1)

(xxii) Design auxiliary heat removal systems such that necessary automatic and manual actions can be taken to ensure proper functioning when the main feedwater system is not operable. (Applicable to BWR's only) (II.K.1.2)

(xxiii) Perform a failure modes and effects analysis of the integrated control system (ICS) to include consideration of failures and effects of input and output signals to the ICS. (Applicable to B&W-designed plants only) (II.K.2.9)

(xxiv) Provide a hard-wired safety grade reactor trip that would be actuated on loss of main feedwater and/or on turbine trip. (Applicable to B&W-designed plants only) (II.K.2.10)

(xxv) Provide complete justification for the use of the type of pressure-operated relief valve (supplied by Control Components, Inc.) that failed during hot functional testing at the McGuire plant, if such use is planned. (Applicable to PWR's only) (II.K.3.11)

(xxvi) Provide capability to record, in one location, on recorders that meet normal post-accident recording requirements, reactor vessel water level over the range from the top of the vessel dome to the lowest pressure tap. (Applicable to BWR's only) (II.K.3.23)

(xxvii) Provide a Technical Support Center, an onsite Operational Support Center, and an Emergency Operations Facility. (III.A.1.2)

(xxviii) Design systems outside containment that contain (or might contain radioactive material either during normal operations or following an accident so that exposure to workers and the public is maintained as low as reasonably achievable. (III.D.1.1)

(xxix) Provide for monitoring of inplant radiation and airborne radioactivity as appropriate for a broad range of routine and emergency conditions. (III.D.3.3)

(xxx) Evaluate potential pathways for radioactivity and radiation that may lead to control room habitability problems, and make necessary design provisions to preclude such problems. (III.D.3.4)

(3) To satisfy the following requirements, the application shall provide sufficient information to demonstrate that the requirement has been met. This information is of the type customarily required to satisfy 10 CFR 50.34(a)(1) or to address the applicant's technical qualifications and management structure and competence.

(i) Provide administrative procedures for evaluating operating, design and construction experience and for ensuring that applicable important industry experiences will be provided in a timely manner to those designing and constructing the plant. (I.C.5)

(ii) Ensure that the quality assurance (QA) list required by Criterion II, App. B, 10 CFR Part 50 includes all structures, systems, and components important to safety. (I.F.1)

(iii) Establish a quality assurance (QA) program based on consideration of: (A) ensuring independence of the organization performing checking functions from the organization responsible for performing the functions; (B) performing the entire quality assurance/quality control function at construction sites; (C) including QA personnel in quality-related procedures associated with design, construction, and installation; (D) establishing criteria for determining QA requirements for specific classes of equipment; (E) establishing minimum qualification requirements for QA and QC personnel; (F) sizing the QA staff commensurate with its duties, responsibilities, and importance to safety; (G) establishing procedures for maintenance of "as-built" documentation; and (H) providing a QA role in design and analysis activities. (I.F.2)

(iv) Provide one or more dedicated containment penetrations, equivalent in size to a single 3-foot diameter opening, in order not to preclude future installation of systems to prevent containment failure, such as a filtered vented containment system. (II.B.8)

(v) Provide preliminary design information at a level of detail consistent with that normally required at the construction permit stage of review sufficient to demonstrate that: (II.B.8)

(A) Containment integrity will be maintained (i.e., for steel containments by meeting the requirements of the ASME Boiler and Pressure Vessel Code, Section III, Division 1, Subsubarticle NE-3220, Service Level C Limits, except that evaluation of instability is not required, considering pressure and dead load alone. For concrete containments by meeting the requirements of the ASME Boiler and Pressure Vessel Code, Section III, Division 2, Subsubarticle CC-3720, Factored Load Category, considering pressure and dead load alone)[2] during an accident that releases hydrogen generated from 100% fuel clad metal-water reaction accompanied by either hydrogen burning or the added pressure from post-accident inerting assuming carbon dioxide is the inerting agent, depending upon which option is chose for control of hydrogen. As a minimum, the specific code requirements set forth above appropriate for each type of containment will be met for a combination of dead load and an internal pressure of 45 psig. Modest deviations from these criteria will be considered by the staff, if good cause is shown by an applicant. Systems necessary to ensure containment integrity shall also be demonstrated to perform their function under these conditions.

(B) The containment and associated systems will provide reasonable assurance that uniformly-distributed hydrogen concentrations do not exceed 10% during and following an accident that releases an equivalent amount of hydrogen as would be generated from a 100% fuel clad metal-water reaction, or that the post-accident atmosphere will not support hydrogen combustion.

(C) The facility design will provide reasonable assurance that, based on a 100% fuel clad metal-water reaction, combustible concentrations of hydrogen will not collect in areas where unintended combustion or detonation could cause loss of containment integrity or less of appropriate mitigating features.

(D) If the option chosen for hydrogen control is post-accident inerting: (*1*) Containment structure loadings produced by an inadvertent full inerting (assuming carbon dioxide), but not including seismic or design basis accident loadings will not produce stresses in steel containments in excess of the limits set forth in the ASME Boiler and Pressure Vessel Code, Section III, Division 1, Subsubarticle NE-3220, Service Level A Limits, except that evaluation of instability is not required (for concrete containments the loadings

[2] Approval for the incorporation by reference provisions in Division 2 is being sought from the Director of the Federal Register.

specified above will not produce strains in the containment liner in excess of the limits set forth in the ASME Boiler and Pressure Vessel Code, Section III, Division 2, Subsubarticle CC-3720, Service Load Category).[3] (2) A pressure test, which is required, of the containments, at 1.10 and 1.15 times (for steel and concrete containments, respectively) the pressure calculated to result from carbon dioxide inerting can be safely conducted, (3) Inadvertent full inerting of the containment can be safely accommodated during plant operation.

(E) If the option chosen for hydrogen control is a distributed ignition system, equipment necessary for achieving and maintaining safe shutdown of the plant shall be designed to perform its function during and after being exposed to the environmental conditions created by activation of the distributed ignition system.

(vi) For plant designs with external hydrogen recombiners, provide redundant dedicated containment penetrations so that the recombiner systems can be connected to the containment atmosphere without violating single-failure criteria. (II.E.4.1)

(vii) Provide a description of the management plan for design and construction activities, to include: (A) the organizational and management structure singularly responsible for direction of design and construction of the proposed plant; (B) technical resources directed by the applicant; (C) details of the interaction of design and construction within the applicant's organization and the manner by which the applicant will ensure close integration of the architect engineer and the nuclear steam supply vendor; (D) proposed procedures for handling the transition to operation; (E) the dedgree of top level management oversight and technical control to be exercised by the applicant during design and construction, including the preparation and implementation of procedures necessary to guide the effort. (II.J.3.1)

(Secs. 161b, 161i, Pub. L. 83-703, 68 Stat. 948, 42 U.S.C. 2201; Secs. 201, 204(b)(1), Pub. L. 93-438, 88 Stat. 1242, 1243, 1245, 42 U.S.C. 5841, 5844)

Dated at Washington, D.C., this 18th day of March 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-8733 Filed 3-20-81; 8:45 am]

BILLING CODE 7590-01-M

[3] Approval for the incorporation by reference provisions in Division 2 is being sought from the Director of the Federal Register.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 81-SO-8]

Proposed Alteration of Transition Area, Greenville, South Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will alter the Greenville, South Carolina, Transition Area by lowering the base of controlled airspace in the vicinity of the Donaldson Center Airport from 1200 to 700 feet AGL. A standard instrument approach procedure has been developed for the airport, and additional controlled airspace is required to protect aircraft Instrument Flight Rule (IFR) operations.

DATES: Comments must be received on or before: April 22, 1981.

ADDRESS: Send comments on the proposal to: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Federal Aviation Administration, Attention: Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. All communications received on or before April 17, 1981, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each public contact with FAA personnel concerned with this rulemaking will be filed in the public, regulatory docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Greenville, South Carolina, Transition Area. This Action will provide controlled airspace protection of IFR operations at the Donaldson Center Airport. The existing Donaldson Center Non-Directional Radio Beacon (non-federal) would support the NDB RWY 4 instrument approach procedure. The operating status of the NDB is being changed from VFR to IFR, and the airport is being changed from private use to public use.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Subpart G, § 71.181 (46 FR 540), of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by adding the following:

Greenville, South Carolina

"* * * within an 8.5-mile radius of Donaldson Center Airport (lat. 34°45'29" N., long. 82°22'35" W.); within 3 miles each side of the 210° bearing from Donaldson Center RBN (lat. 34°44'35" N., long. 82°23'31" W.), extending from the 8.5-mile radius area to 8.5 miles south of the RBN * * *".

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

Note.—The Federal Aviation Administration has determined that this document involves a proposed 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, and a comment period of less than 45 days is appropriate.

The FAA has also determined that this proposed regulation is *not* a major rule under Executive Order 12291 since the action only involves an established body of technical requirements for which frequent and routine

amendments are necessary to keep them operationally current.

Note.—It has been determined under the criteria of the Regulatory Flexibility Act that this proposed rule, at promulgation, will not have a significant impact on a substantial number of small entities.

Issued in East Point, Georgia, on February 20, 1981.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 81-8709 Filed 3-20-81; 8:45 am]

BILLING Code 4910-13-M

14 CFR Part 71

[Airspace Docket No. 81-AWE-6]

Proposed Establishment of 700 Foot Transition Area, Twentynine Palms, California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This notice proposes to add a 700 foot transition area for the Twentynine Palms Airport, Twentynine Palms, California, to provide controlled airspace for aircraft executing an instrument approach procedure to the Twentynine Palms Airport utilizing the Twentynine Palms, California VORTAC. The need for the transition area will be created when VOR instrument approach procedure is established for the airport.

DATES: Comments must be received on or before April 22, 1981.

ADDRESSES: Send comments on the proposal in triplicate to Director, Federal Aviation Administration, Attn: Chief, Airspace and Procedures Branch, AWE-530, 15000 Aviation Boulevard, Lawndale, California, 90261. A public docket will be available for examination in the Office of the Regional Counsel, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261: telephone (213) 536-6270.

FOR FURTHER INFORMATION: 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:

Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the Airspace Docket Number and be submitted in triplicate to the Chief, Airspace and Procedures Branch, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261. All communications received on or before March 26, 1981, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Chief, Airspace and Procedures Branch, AWE-530, 15000 Aviation Boulvard, Lawndale, California, 90261, of by calling (213) 536-6180. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NURMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700-foot transition area. This action will provide controlled airspace protection for IFR operations at the Twentynine Palms Airport.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Subpart G, § 71.181 (46 FR 540) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by adding the following:

§ 71.181 Twentynine Palms, California [Amended]

Preceding "That airspace extending upward from 1200 feet . . ." insert "That airspace extending upward from 700 feet above the surface within a 4-mile radius of Twentynine Palms Airport (latitude 34°07'46"N, longitude 115°56'22"W) and within 4 miles each side of the Twentynine Palms VORTAC 279°T (265°M) radials extending from the 4-mile radius area to the VORTAC, and * * *"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this document involves a proposed 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 and a comment period of less than 45 days is appropriate. The FAA has also determined that this proposed regulation is *not* a major rule under Executive Order 12291 and under the criteria of the Regulatory Flexibility act that this rule, at promulgation, will not have a significant impact on a substantial number of small entities since the action only involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current.

Issued in Los Angeles, California on February 9, 1981.

H. C. McClure,

Acting Director, Western Region.

[FR Doc. 81-8707 Filed 3-20-81; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 204

Danger Zone, Isle of Oahu, Hawaii

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is establishing danger zone regulations in navigable waters of the United States at the Marine Corps Air Station (MCAS) Kaneohe Bay, Island of Oahu, Hawaii. The danger zone is needed to outline the affected area and provide formal notice of potential hazards due to ricochet rounds and accidental firing from the existing Ulupau Crater Weapons Training Range at the MCAS.

DATE: Comments must be received on or before 30 April 1981.

ADDRESS: HQDA, DAEN-CWO-N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley T. Arakaki at (808) 438-9258 or Mr. Ralph T. Eppard at (202) 272-0199.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Marine Corps Air Station Kaneohe Bay, Hawaii has requested that danger zone regulations be established to designate an area considered unsafe for boaters when firing is in progress and provide formal notice of potential hazards associated with the existing tactical weapons training range in Ulupau Crater. Tactical