the State of West Virginia on June 14, 1984.

(B) Letter of December 16, 1985, in which the West Virginia Air Pollutant Control Commission committed to comply with the July 8, 1985 rulemaking notice concerning stack heights in its PSD permitting.

3. In § 52.2528 paragraphs (a) and (b) are revised to read as follows:

§ 52.2528 Significant Deterioration of Air Quality.

(a) The requirements of Sections 160 through 165 of the Clean Air Act are met since the plan includes approvable procedures for the Prevention of Significant Air Quality Deterioration.

(b) Regulations for Preventing Significant Deterioration of Air Quality, the provisions of §§ 52.21(p) (4), (5), (6), and (7) are hereby incorporated and made a part of the applicable state plan for the state of West Virginia.

[FR Doc. 86-6749 Filed 4-10-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 302

Civil Defense; State and Local Emergency Management Assistance Program (EMA)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule makes two substantive changes and other minor changes to 44 CFR Part 302.

One change is to rename and redefine operational plans as emergency operations plans (EOP's) and to add the requirement for EOP's to conform with the requirements for plan content as contained in Civil Preparedness Guide (CPG) 1-8, "Guide for the Development of State and Local Emergency Operations Plans," and CPG 1-8A, "Guide for the Review of State and Local Emergency Operations Plans."

The second change is to permit States to submit preliminary annual submission documents in amounts not to exceed their tentative allocation amounts and for those preliminary annual submissions to be approved as final annual submissions under certain prescribed conditions.

The change in procedures will allow States to accelerate the process for receiving FEMA approval of documents of obligation for all or a portion of their annual EMA fund allocation upon appropriation by Congress and allotment of the funds.

EFFECTIVE DATE: This rule is effective May 12, 1986.

FOR FURTHER INFORMATION CONTACT: John McKay, Office of Emergency Management Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202-646-4252).

SUPPLEMENTARY INFORMATION: On July 5, 1985, FEMA published for comment in the **Federal Register** (50 FR 27627-27628), with corrections on July 17, 1985 (50 FR 28959), and July 26, 1985 (50 FR 30480), a notice of proposed rulemaking on 44 CFR 302 under the Federal Civil Defense Act of 1950, as amended.

The change in procedures will allow States to accelerate the process for receiving FEMA approval of documents of obligation for all or a portion of their annual EMA fund allocation upon appropriation by Congress and allotment of the funds. The last sentence in § 302.5b(5) "Allocations and reallocations" is being revised. Rather than "certain standards applicable to the allocation of the reserve fund" being set forth in CPG 1-3 they will be promulgated annually. This change is being made based on the premise that the amount of the EMA appropriation will likely vary from year to year (and consequently the amount of the reserve fund) as will circumstances in the various States; therefore, the Director should have the option to annually determine the basis for distribution of the reserve fund in accordance with current information as to civil defense needs.

Implementing Guidance

These regulations refer to CPG 1-3 throughout and the fact that it is available from FEMA regional offices. FEMA is continuing to distribute CPG 1-3 and amendments to all participating State and local governments. FEMA expects to publish CPG 1-3 in the **Federal Register** in the future.

Nonapplicability

The regulation is applicable to States to which the funding is made available, and thus is not subject to the requirements of the Regulatory Flexibility Act to prepare regulatory flexibility analyses. That act is concerned with small entities. It is hereby certified that the rule change will not have a significant economic impact on a substantial number of small entities. This regulation is not considered to be a major rule under the terms of Executive Order 12291 as the rule change will not have an annual effect on the economy of $100,000,000 or more, nor will it have a major effect on costs or prices. Therefore, no regulatory flexibility analysis will be prepared.

Collection of Information

Sections 302.3 and 302.5 concern documentation of eligibility. These sections of the rule contain collection of information requirements which have been approved by Office of Management and Budget under the provisions of section 3504(h) of the Paperwork Reduction Act and have been assigned OMB control numbers 3067-0123 and 0138.

Comments and Considerations

A total of 24 responses with comments were received: one each from FEMA Regions VII and VIII and 22 from State officials. The substantive comments received are paraphrased below, in order of the pertinent sections or paragraphs of the rule, along with FEMA's response.

Nonapplicability

One State and one FEMA region questioned the statement that the rule was not a major rule requiring development of a regulatory analysis under E.O. 12291. The commentators claimed that the State share of EMA funding should be included along with the Federal share and that when these funds are taken into account the total program and the total effect on the economy exceed $100,000,000.

However, the test for determining the effect on the economy is the effect which the rule changes have on the economy, not the cost of the program involved. The effect of the rule changes, to the extent these can be measured, does not exceed $100,000,000. In this respect the applicability section of the preamble to the notice of proposed rulemaking is revised, and it has been restated above.

Section 302.2(p): Nine States and one FEMA region recommended changing "Emergency Operations Plan (EOP)" to read "Emergency Management Plan." The reasons given were that the EOP definition is too narrow and does not reflect an integrated emergency management approach; it places too much emphasis on operations at the expense of other phases of emergency management, i.e., mitigation, preparedness, response and recovery. Two States and one FEMA region concurred in the proposed rule change and definition for EOP's.

An EOP focuses on *how* a jurisdiction will respond to disaster events. Other plans may be used to deal with the predisaster activities associated with mitigation and the post-disaster activities related to long-term economic and social recovery. The title "Emergency Operations Plan" and the definition contained in paragraph 302.2(p) of the proposed rule are therefore retained as being descriptive of the plan that is required as an eligibility document for the EMA program.

Section 302.3(b)(1): Sixteen States and one FEMA region objected to the provision for the "approval" of State EOP's by FEMA.

The designated State official approves those plans for his purposes, including conformance with State laws, requirements, and criteria. FEMA approves those plans for compliance with the Federal Civil Defense Act of 1950, as amended, and with applicable FEMA regulations.

Section 205 of the act reads in part as follows:

Contributions for Personnel and Administrative Expenses

To further assist in carrying out the purposes of this Act, the Administrator is authorized to make financial contributions to the States (including interstate civil defense authorities established pursuant to section 201(g) of this Act) for necessary and essential State and local civil defense personnel and administrative expenses, on the basis of approved plans (which shall be consistent with the national plan for civil defense approved by the Administrator) for the civil defense of the States. . . .

(a) Plans submitted under the section shall—

* * * * *

(3) provide for the development of State and local civil defense operational plans, pursuant to standards approved by the Administrator.

In the case of State EOP's, the requirement for FEMA approval has been incorporated in governing regulations since the advent of the program in Fiscal Year 1961. The current EMA regulation, 44 CFR 302, published in the **Federal Register** September 28, 1983, includes the same requirement. The proposed rule does not change the existing, long-standing requirements mandated by the authorizing legislation for Federal approval of State plans.

Section 302.3(b)(2): Twelve States and one FEMA region disagreed with the words "conforms with" in line two relating to local EOP's and criteria contained in various civil preparedness guides.

Those words have been changed to "conforms with the requirements for plan content as set forth in CPG 1-3, CPG 1-8 and CPG 1-8A" in the final rule. This change accommodates the objections to EOP format being specified and/or mandated by the rule.

Seven States and two FEMA regions expressed the opinion that CPG 1-8, "Guide for the Development of State and Local Emergency Operations Plans," and CPG 1-8A, "Guide for the Review of State and Local Emergency Operations Plans," should not be cited in the rule for various reasons: their contents are contrary to the statutes of two States; both CPG's are primarily oriented toward large cities and counties, not State governments; and the CPG's had not been published.

Section 2 of the Federal Civil Defense Act of 1950, as amended, declares it is the policy and intent of Congress that the responsibility for civil defense shall be vested jointly in the Federal Government and the several States and their political subdivisions. The Federal role is to provide direction, coordination, guidance, and the assistance authorized by the act.

Civil defense is defined by the act to mean activities and measures designed or undertaken to minimize the effect upon the civilian population of the United States and to deal with the immediate emergency conditions created by an attack, natural disaster, or manmade catastrophe (50 U.S.C. APP. 2252(a)).

Thus, in an effort to enhance the civil defense readiness of the Nation as a whole, we are standardizing in the rule the definition of an EOP and are prescribing the review, updating, and and exercising of existing EOP's.

Our intention with CPG 1-8 is not to mandate an EOP format or title but to specify areas of content. CPG 1-8A is the checklist for content.

It was fully expected that CPG's 1-8 and 1-8A would be published and distributed to all EMA participating State and local jurisdictions by the dates contained in the proposed rule. That process was delayed but has been accomplished.

While none of the commentators objected specifically to the reference to CPG 1-5, "Objectives for Local Civil Preparedness," it was determined to remove the requirement for local EOP's to conform with CPG 1-5 since CPG 1-8 contains more current guidance for the development of local, as well as State, EOP's.

Section 302.5(f) through (m), Allocations and reallocations. One FEMA region and one State protested the removal of the phrase in the first sentence, "based on applications received and recommendations by the Regional Directors." This phrase was inadvertently omitted during the typing of the proposed rule and has been reinserted in the final rule. There was no intention of removing the Regional Directors from this process.

One FEMA region and one State concurred with submitting annual submission documents in amounts not to exceed their tentative allocation amounts *providing that tentative allocation amounts were increased over the previous year to allow for inflation and acquiring new eligible participants.*

The EMA tentative allocations to States are calculated by applying the formula factors contained in 44 CFR 302.5(b) (1) through (4) to the amounts budgeted annually for EMA, while withholding the supplement fund (2 percent reserve less the total of the amounts used for the insular areas) and based on applications received, regional recommendations made, and adjustments to the planning figures as appropriate. The formal allocations are made based on appropriation by Congress and allotment of the funds. This allocation for each State may include an additional amount from the reserve portion of the EMA funds. There is no provision in the EMA regulation that guarantees an increase in States' tentative allocations from year to year for any purpose. The amount of each State's tentative allocation is primarily dependent on the total amount appropriated for EMA annually by Congress.

One FEMA region and one State suggested that in lieu of the term "primary annual submission" the term "preliminary annual submission" be used throughout as a grammatical change more appropriately related to the term "final annual submission." This suggestion has been adopted.

One FEMA region and one State suggested that consideration be given to adopting language that would require the final annual submission to be due January 1 of each year in order to coincide with the fiscal year and budget cycle for many local government FMA participants.

Section 205 of the Federal Civil Defense Act of 1950, as amended, entitled "Contributions for Personnel and Administrative Expenses," authorizes the EMA Program. It states that in the event a State fails to submit an approvable plan (defined in 44 CFR 302.3(c) as *annual submission*), as required in that section within sixty days after the Director (of FEMA) notifies the States of their allocations, the Director may reallocate such funds, or portions thereof, among the States in such amounts as, in his judgment, will best assure the adequate development of the civil defense capability of the

Nation. Therefore, the timing for requiring receipt of the annual submission documentation is contingent on the timing of the annual EMA appropriation by Congress and allotment of the funds.

Implementing Guidance

One State questioned the authority by which FEMA mandates the certification of receipt of CPG 1-3 by all (EMA participant) State and local governments.

Under section 205 of the Federal Civil Defense Act of 1950, as amended, the Director (FEMA) has authority to make financial contributions to the States for necessary and essential State and local civil defense expenses on the basis of approved plans and such other terms and conditions as he may deem necessary and proper. One of the methods of promulgating such other terms and conditions is to issue guidance material (e.g., CPG 1-3) which is delivered to the States and participating political subdivisions in order to inform them as to the terms of the grants. The guidance material fleshes out in detail the skeletal criteria of the regulations published in the **Federal Register** and in the Code of Federal Regulations. This method of providing guidance in furtherance of, and detailing the criteria of, the regulations has been used since the inception of the civil defense grant programs. As in the case of the regulations, the manual provisions may be amended, but revised criteria are not applied retroactively. FEMA has determined that CPG 1-3 and any subsequent changes thereto will be published in the **Federal Register**, thus providing constructive (legal) notice to the public of its contents. This action precludes the requirement for submission of individual receipt forms to FEMA when the CPG 1-3 and changes thereto are issued.

One State expressed that the amendment serves a minor purpose; that it provides States that do not utilize all of their tentative allocation with a vehicle in the form of a primary submission to adjust to any overage in allocation and merely serves as a more immediate notice to FEMA of funds available for reallocation to other States along with the reserve. There was the question as to the juncture when this reallocation of unneeded funds takes place. The question was raised also as to what vehicle is provided States with initial funding needs above the formal allocation. The statement was made that paragraph (i) is too restrictive to this process and that, accordingly, the amendment gives the Director an excessive amount of discretionary authority as to the reserve fund use.

As to the point that the amendment is a minor one, some States may consider it to be to their advantage to be able to have their primary (or preliminary) annual submission approved, upon the appropriation becoming available, as the obligating document in an appropriate amount not to exceed the State's formal allocation. This allows them to receive funding in the approved amount for use during the 60-day interim in which they have to submit their final submission (which may or may not differ from their preliminary one). States are requested to indicate they will not be using the total of their State formula distribution (planning figures) *prior to* formulation of the tentative allocations. Any excesses so indicated are redistributed to other States that have indicated additional funding needs at that time. The States may apply for a portion of the reserve fund after being notified of their tentative allocation amounts. The total amount of EMA funds appropriated annually by Congress, including the reserve fund, must be allocated when the formal allocations are issued. Of course, even after approval of its final submission, a State may file to amend it to accommodate a request for additional funds turned back by other States as surplus to their needs. As to the Director's discretionary authority over the reserve fund, subsections 205(d) and (e) of the Federal Civil Defense Act, as amended, and paragraph 302.5, Allocations and reallocations, contain the authority for the Director to determine and make the State EMA allocations based on certain factors. The allocation formula that includes the 2 percent reserve is contained in paragraph 302.5(b).

List of Subjects in 44 CFR Part 302

Civil defense, Grants programs, National defense.

Accordingly, Chapter I, Subchapter E, part 302, Code of Federal Regulations, is amended as follows:

PART 302—CIVIL DEFENSE-STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)

1. The authority citation for Part 302 is revised to read as follows:

Authority: 50 U.S.C. App. 2251 et seq. Reorganization Plan No. 3 of 1978; E.O. 12148.

§ 302.2 [Amended]

2. In § 302.2, paragraph (n) is amended by removing the entire parenthetical phrase at the end of the paragraph and adding "(See CPG 1-32, Financial Assistance Guidelines)."

3. In § 302.2, paragraph (o) is amended by removing the entire parenthetical phrase at the end of the paragraph and adding "(See CPG 1-32, Financial Assistance Guidelines)."

4. In § 302.2, paragraph (p) is revised to read as follows:

(p) *Emergency Operations Plan (EOP).* State or local government Emergency Operations Plans identify the available personnel, equipment, facilities, supplies, and other resources in the jurisdiction and states the method or scheme for coordinated actions to be taken by individuals and government services in the event of natural, manmade and attack-related disasters.

5. In 302.2, paragraph (u) is amended by removing from the first sentence "existing operational plans" and adding "updated emergency operations plans" in place thereof.

§ 302.3 [Amended]

6. In § 302.3, the introductory paragraph is amended by removing "emergency operational plan" and adding "emergency operations plan" in place thereof.

7. In 302.3 paragraph (a)(3) is amended by removing "operational plans" and adding "emergency operations plans" in place thereof.

8. In § 302.3, paragraph (a)(15) is amended by removing, "and CPG 1-9, Non-discrimination in Federally Assisted Programs of FEMA."

9. In § 302.3, paragraph (a)(18) is amended by removing, "in accordance with Attachment P of OMB Circular A-102."

10. In § 302.3, paragraph (b) is revised to read as follows:

* * * * *

(b) Emergency Operations Plans (EOP's). (1) Each participating State shall have an EOP approved by the Regional Director and conforming with the requirements for plan content set forth in this part and in CPG 1-3, and in CPG 1-8 "Guide for the Development of State and Local Emergency Operations Plans" and in CPG 1-8A, "Guide for the Review of State and Local Emergency Operations Plans," which plan must provide for coordinated actions to be undertaken throughout the State in the event of attack and in the event of other disasters.

(2) Each subgrantee jurisdiction shall have a local EOP which conforms with the requirements for plan content as set forth in CPG 1-3 and CPG 1-8 and CPG 1-8A, and which has been approved by the local chief executive or other authorized official and accepted by the

Governor or other authorized State official as being consistent with the State's EOP.

* * * * *

§ 302.5 [Amended]

11. In § 302.5, paragraph (b)(5) is amended by revising the last sentence to read as follows: "Certain factors to be applicable to the allocation of the reserve fund will be determined and promulgated annually, based upon how such amount may best be used to increase the civil defense capability of the Nation."

12. In § 302.5, paragraphs (f) through (j) are revised and paragraphs (k) through (m) are added.

* * * * *

(f) In September of each year, based on applications received and recommendations by the Regional Directors, the Director will make a tentative allocation to the States. This will include adjustments for States that have indicated they will not be using the total of the formula distribution amount. States can then revise their earlier plans and applications to more nearly reflect the level of funding expected to become available.

(g) A State may provide to the Regional Director a preliminary annual submission in an amount not to exceed its tentative allocation.

(h) By September 30 (or as soon thereafter as feasible), the Director will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds. This allocation for each State may include any additional amounts from the reserve portion of the EMA funds, and shall be in accordance with the regulations in this part and CPG 1-3.

(i) Upon the appropriation becoming available, and if requested by a State, the Regional Director may approve such State's preliminary annual submission (if found to meet all requirements in this part and CPG 1-3) in an appropriate amount which does not exceed the amount of the State's share of the Director's formal allocation of the Federal appropriation. An award document obligating Federal funds on the basis of the approved preliminary annual submission may be executed in accordance with the provisions of CPG 1-3.

(j) Based on and within 60 days after notification of its formal allocation, each State must provide to the Regional Director a final annual submission which meets all requirements in this part and CPG 1-3. If no changes are necessary, a State and the Regional Director may adopt in writing the State's preliminary annual submission as its final annual submission. If no award document was executed based on a State's preliminary annual submission, such document will be executed on the basis of that State's approved final annual submission.

(k) With regard to any State whose award document was executed pursuant to a preliminary annual submission covering only part of its formal allocation, upon approval (by the Regional Director) of the final annual submission (including a revised statement of work supporting the additional funding request) the Regional Director shall execute an amended award document obligating the balance of such State's formal allocation.

(l) In the event a State fails to provide an approvable final annual submission on time, the Director may reallocate that State's share of the funds or portions thereof as appropriate among the other States in such amounts as in the Director's judgment will best assure adequate development of the civil defense capability of the Nation.

(m) In addition, the Director may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission and award document.

§ 302.8 [Amended]

13. 302.8, is amended by removing "50 U.S.C. App. 2251-2297" and adding in place thereof "50 U.S.C. App. 2251 et seq."

Dated: January 21, 1986.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 86-7962 Filed 4-10-86; 8:45 am]

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Proposed Rules

Federal Register

Vol. 51, No. 70

Friday, April 11, 1986

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Pistachio Nuts in the Shell

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes the establishment of voluntary United States Standards for Grades of Pistachio Nuts in the Shell. Industry has requested that standards be developed in order to provide a common trading language for this product. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and maintain current U.S. grade standards.

DATE: Comments must be received on or before May 27, 1986.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Michael V. Morrelli, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2011.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA Procedures and Executive Order 12291 and has been designated as "nonmajor." It would not result in an annual effect on the economy of $100 million or more. There would be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It would not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

The U.S. pistachio nut industry began in California in the late 1960's and early 1970's with the planting of several thousand acres of pistachio trees. Production began in 1977 and the first true commercial harvest of 17.2 million pounds occurred in 1979. Since that time, U.S. production has increased dramatically. In 1974, Iran, Turkey, and Syria accounted for 96% of the world pistachio crop. Eight years later, the U.S. industry harvested 43.4 million pounds, a record 32% of world production. The U.S. harvest increased to 63.1 million pounds in 1984, and it is predicted to grow to 80 million or more pounds in 1990.

The U.S. industry began working toward a uniform trading language in the form of industry standards as early as 1977. In 1979, The California Pistachio Association was formed. It began as a group of growers, collectively working together to investigate and solve the unknowns the new industry faced. The Association formed a Grades and Standards Committee to work out an industry standard that would be used by all. The majority of the industry recognized that a standard would provide a way to establish product quality and value. However, everyone had their own ideas of what should be in a standard. The first standards were subject to frequent changes, were not used industry-wide, and were not recognized internationally.

In late 1981, the California Pistachio Association formally asked the U.S. Department of Agriculture (USDA) to begin work on developing U.S. Standards for Grades of Pistachio Nuts in the Shell. The Association requested that such standards be based on the California Pistachio Industry Grades of Pistachios, as developed by their Grades and Standards Committee earlier that year. Staff members of the Fruit and Vegetable Division of AMS, in cooperation with the Grades and Standards Committee, developed an informal draft of possible grade standards. It was worded with the same type language used in other USDA fresh products standards and followed the official Uniform Grade Nomenclature Policy adopted in July 1976. The draft was revised several times before it was distributed for industry-wide comment in the summer of 1982.

The final draft, or "Market survey" as it is referred to, contained U.S. Fancy and U.S. No. 1 grade requirements, tolerances, definitions of terms, and an explanation of scoring defects. The two grades had the same requirements, but different tolerances. During the comment period, USDA was requested to make a number of changes, including the addition of a third grade designated as U.S. No. 2. It was felt that a U.S. No. 2 grade would provide an outlet for pistachio nuts that could not meet the requirements of the higher grades, but still have substantial commercial value.

AMS again worked in cooperation with the Grades and Standards Committee of the California Pistachio Association to add a U.S. No. 2 grade to the market survey. In May 1985, the revised market survey, containing a U.S. No. 2 grade designation, was circulated for industry-wide comment.

The comments received suggested a number of changes, but, overall, indicated that the industry was satisfied with the revised market survey. The following changes have been made in the proposed rule and are a result of the comments AMS received on the May 1985, market survey:

(a) The tolerance for non-split shells has been increased in the U.S. No. 2 grade.

(b) The Tolerance for nuts under 26/64 inch in diameter in the "Small" size designation has been increased to five percent in all grades.

(c) The tolerance for shell pieces and blanks has been set at one percent in all grades.

(d) The tolerance for loose kernels has been set at four percent for the lot.

(e) The "Definitions" section has been reorganized to make it easier to associate defects with the tolerance they are applied to.

(f) The section title "Qualifying Terms" has been deleted.

The following is the proposed voluntary United States Standards for Grades of Pistachio Nuts in the Shell.

List of Subjects in 7 CFR Part 51

Agricultural commodities

PART 51—[AMENDED]

It is proposed that 7 CFR Part 51 be amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended 1090 as amended, [7 U.S.C. 1622, 1624].

2. By adding a new subpart, Subpart—United States Standards for Grades of Pistachio Nuts in the Shell, as follows:

Subpart—United States Standards for Grades of Pistachio Nuts in the Shell

Subpart—United States Standards for Grades of Pistachio Nuts in the Shell

§ 51.2540 General.

(a) Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

(b) These standards are applicable to pistachio nuts in the shell which may be in a natural, dyed, raw, roasted, or salted state; or in any combination thereof.

§ 51.2541 Grades.

"U.S. Fancy," "U.S. No. 1", and "U.S. No. 2" consist of pistachio nuts in the shell which meet the following requirements.

(a) Basic requirements:
(1) Free from:
(i) Foreign material;
(ii) Loose kernels;
(iii) Shell pieces;
(iv) Particles and dust; and,
(v) Blanks.
(b) Shells:
(1) Free from:
(i) Non-split shells; and
(ii) Shells not split on suture.
(2) Free from damage by:
(i) Adhering hull material;
(ii) Light stained;
(iii) Dark stained; and,
(iv) Other External (shell) defects.
(c) Kernels:
(1) Well dried, or, very well dried when specified in connection with the grade.
(2) Free from damage by:
(i) Minor mold;
(ii) Immature kernels;
(iii) Kernel spots; and,
(iv) Other Internal (kernel) defects.
(3) Free from serious damage by:
(i) Minor insect or vertebrate injury;
(ii) Insect damage;
(iii) Mold;
(iv) Rancidity;
(v) Decay; and,
(vi) Other Internal (kernel) defects.
(d) The nuts are of a size not less than $^{25}/_{64}$ inch in diameter as measured by a round hole screen.
(e) For tolerances see § 51.2542.

§ 51.2542 Tolerances.

(a) In order to allow for variations incident to proper grading and handling, the tolerances in Tables I, II, III and paragraph (b) are provided.

TABLE I

Factor—External (shell) defects (tolerances by weight)	Percent		
	U.S. Fancy	U.S. No. 1	U.S. No. 2
(a) Non-split and not split on suture	2	3	6
(1) Non-split, included in (a)	1	2	4
(b) Adhering hull material	1	1	2
(c) Light stained	7	12	20
(1) Dark stained, included in (c)	2	3	4
(d) Damage by other means	1	1	1
(e) Less than $^{25}/_{64}$ inch in diameter,			
(1) Small size	5	5	5
(2) Medium, Large, Extra large sizes	1	1	1

TABLE II

Factor—Internal (kernel) defects (tolerances by weight)	Percent		
	U.S. Fancy	U.S. No. 1	U.S. No. 2
(a) Damage	3	6	8
(b) Serious Damage	3	4	5
(1) Insect damage, included in (b)	1	2	3
Total internal defects shall not exceed	5	9	10

TABLE III

Factor—Other defects (tolerances by weight)	Percent		
	U.S. Fancy	U.S. No. 1	U.S. No. 2
(a) Shell pieces and blanks	1	1	1
(b) Foreign material (No tolerance for glass, metal or live insects)	.25	.25	.25
(c) Particles and dust	.25	.25	.25

(b) No lot shall contain more than 4 percent loose kernels, by weight.

§ 51.2543 Application of Tolerances.

The tolerances for the grades apply to the entire lot and shall be based on a composite sample drawn from containers throughout the lot. Any container or group of containers which have nuts obviously different in quality or size from those in the majority of containers shall be considered a separate lot and shall be sampled separately.

§ 51.2544 Size.

Nuts may be considered as meeting a size designation specified in Table IV or a range in number of nuts per ounce, provided, the weight of 10 percent, by count, of the largest nuts in a sample does not exceed 1.70 times the weight of 10 percent, by count, of the smallest and the average number of nuts per ounce is not more than one-half nut above or below the extremes of the range specified.

TABLE IV

Size designation	Average No. of Nuts per ounce [1]
Extra Large	20 or less.
Large	21 to 25.
Medium	26 to 30.
Small	31 or more.

[1] Before roasting.

§ 51.2545 Definitions.

(a) "Well dried" means the kernel is firm and crisp.

(b) "Very well dried" means the kernel is firm and crisp and the average moisture content of the lot does not exceed 7.00 percent or is specified (See § 51.2546).

(c) "Loose kernels" means edible kernels or kernel portions which are out of the shell and which cannot be considered particles and dust.

(d) "External (Shell) Defects" means any blemish affecting the hard covering around the kernel. Such defects include, but are not limited to non-split shells, shells not split on suture, adhering hull material, light stained, or dark stained.

(1) "Damage" by external (shell) defects means any specific defect described in paragraph (d)(1) (i) through (v) of this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual shell or of the lot (For tolerances see § 51.2542, Table 1).

(i) "Non-split shells" when shells are not opened or are partially opened and will not allow an $^{18}/_{1000}$ (.018) inch thick by ¼ (.25) inch wide guage to freely slip into the opening.

(ii) "Not-split on suture" when shells are split other than on the suture and will allow an $^{18}/_{1000}$ (.018) inch thick by ¼ (.25) inch wide guage to freely slip into the opening.

(iii) "Adhering hull material" when an aggregate amount covers more than one-sixteenth of the total shell surface, or when readily noticable on dyed shells.

(iv) "Light stained," on raw or roasted nuts, when an aggregate amount of yellow to light brown or light gray discoloration is noticeably contrasting with the predominate color of the shell and affects more than one-fourth of the total shell surface, or, on dyed nuts, when readily noticeable.

(v) "Dark stained," on raw or roasted nuts, when an aggregate amount of dark brown, dark gray or black discoloration affects more than one-eighth of the total shell surface, or, on dyed nuts, when readily noticeable.

(e) "Internal (Kernel) Defects" means any blemish affecting the kernel. Such defects include, but are not limited to evidence of insects, immature kernels, rancid kernels, mold, or decay.

(1) "Damage" by internal (kernel) defects means any specific defect described in paragraphs (e)(1) (i) through (iii) of this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot (For tolerances see § 51.2542, TABLE II).

(i) "Minor white or gray mold" when not readily noticeable on the kernel and which can be easily rubbed off with the fingers.

(ii) "Immature kernels" when they are excessively thin or when a kernel fills less than three-fourths, but not less than one-half the shell cavity.

(iii) "Kernel spots" when dark brown or dark gray and aggregating more than one-eight of the surface of the kernel.

(2) "Serious damage" by internal (kernel) defects means any specific defect described in paragraph (e)(2) Ii) through (v) of this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or the marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2542, TABLE II).

(i) "Minor insect or vertebrate injury" when the kernel shows conspicuous evidence of feeding.

(ii) "Insect damage" when an insect, insect fragment, web or frass is attached to the kernel. No live insects shall be permitted.

(iii) "Mold" when any type is readily visible on the shell or kernel

(iv) "Rancidity" means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(v) "Decay" when any portion of the kernel is decomposed.

(f) "Other defects" means defects which cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces, blanks, foreign material or particles and dust. The following shall be considered other defects. (For tolerances see § 51.2542. TABLE III).

(1.) "Shell pieces" means half shells or pieces of shell which are loose in the sample.

(2) "Blank" means a split or a non-split shell not containing a kernel or containing a kernel that fills less than one-half the shell cavity.

(3) "Foreign material" means leaves, sticks, loose hulls or hull pieces, dirt, rocks insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. There shall be no tolerrance for glass, metal or live insects.

(4) "Particles and dust" means pieces of nut kernels which will pass through a 5/16 inch round opening.

§ 51.2546 Average moisture content determination.

(a) Determining average moisture content of the lot is not a requirement of the grades, except when nuts are specified as "very well dried." It may be carried out upon request in connection with grade analysis or as a separate determination.

(b) Nuts shall be obtained from a randomly drawn composite sample and only kernels shall be used for analysis. Shells and all non-kernel material shall be removed immediately before analysis. Official certification shall be based on the air-oven method or other officially approved methods or devices. Results obtained by methods or devices not offically approved may be reported and shall include a description of the method or device and the owner of any equipment used.

Done in Washington, DC, on April 7, 1986.

William T. Manley,
Deputy Administrator, Marketing Programs.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ANM-6]

Proposed Alternation of Malmstrom Air Force Base (AFB) Control Zone, Great Falls, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to redefine the Malmstrom AFB Control Zone, Great Falls, Montana. The current description contains a reference to the Sand Coulee VOR which has been decommissioned. In reviewing the description, it has been determined that it requires redefining not only due to the Sand Coulee VOR decommissioning but to ensure protection of instrument approaches from the southwest.

DATES: Comments must be received on or before June 9, 1986.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 86-ANM-6, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine G. Paul, ANM-535, Federal Aviation Administration, Docket No. 86-ANM-6, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ANM-6". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule.

The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for