

Regulations is amended by adding the following new airworthiness directive:

PAPER. Applies to Piper PA-34-200 airplanes, Serial Numbers 34-E4, and 34-7250001 through 34-7250335, certificated in all categories.

Compliance required within the next 10 hours' time in service after the effective date of this AD, unless already accomplished.

To provide a positive means of attachment for stabilator tip balance weights accomplish the following:

- (a) Remove stabilator tips.
- (b) Check the balance weight assembly attached to each exposed stabilator rib for looseness. If outer lead weight can be moved rotationally against the rib by hand, it is considered loose.
- (c) If a balance weight is loose, accomplish paragraph (e) before further flight.
- (d) If balance weights are satisfactorily secured, accomplish paragraph (e) within the next 50 hours time in service after this inspection.
- (e) When required by paragraph (c) or (d), remove each balance weight assembly from its attach rib, by removing the three bolts attaching the balance weight assembly plate to the stabilator rib. Replace the AN 3E-26A bolts and the lock nuts which attach the balance weights to the assembly plate with AN3-27A bolts and new lock nuts with an AN970-3 washer under each bolt head and under each lock nut. MS21044N3 (AN365-1032) lock nuts or equivalent are required. A drilled head bolt and safety wire is not necessary. Torque the nuts to 35-40 inch-pounds. If balance weights show any signs of damage they must be replaced also.

NOTE: Attention must be given to insure that the bolt grip length is correct and the nut has proper engagement since the thickness of the lead weights may vary slightly. If necessary, AN3-30A bolts may be substituted for the AN3-27A bolts or AN960-10 washers may be used between the AN970-3 washer and the bolt head and/or between the AN970-3 washer and the lock nut to obtain proper thread engagement.

(f) Reinstall each balance weight assembly to the attach rib as originally installed and safety wire as required. Reinstall stabilator tips. This procedure will not require rebalancing of the stabilator.
- Piper Service Bulletin Number 367 pertains to this same subject.

This amendment becomes effective September 9, 1972, and was effective upon receipt for all recipients of the airmail letter dated August 30, 1972, which contained this amendment.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in East Point, Ga., on August 29, 1972.

P. M. SWATEK,
Director, Southern Region.

[FR Doc.72-15301 Filed 9-8-72;8:45 am]

[Airspace Docket No. 72-SO-12]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration and Revocation of Federal Airway Segments

On August 16, 1972, F.R. Doc. 72-12924 was published in the FEDERAL REGISTER (37 F.R. 16537) effective October 12, 1972.

This document amended Part 71 of the Federal Aviation Regulations, in part, by revoking a segment of VOR Federal Airway No. 54 among other actions. In Item 1. Fort Mill, S.C., was erroneously listed as Fort Mill, N.C. The purpose of this amendment is to correct this error.

Since this amendment is minor in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, effective upon publication in the FEDERAL REGISTER (9-9-72), F.R. Doc. 72-12924 (37 F.R. 16537) is amended as hereinafter set forth.

Item 1. is amended to read:
1. In V-54 "Fort Mill, S.C.; Pinehurst, N.C." is deleted and "Fort Mill, S.C." is substituted therefor.

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

Issued in Washington, D.C., on August 31, 1972.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-15302 Filed 9-8-72;8:45 am]

[Airspace Docket No. 72-SO-84]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Redesignation of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Selma, Ala., control zone.

The Selma control zone is described in § 71.171 (37 F.R. 2056 and 7387) and is presently effective 24 hours per day. Since the hours of operations of the control tower and weather observation and reporting services have been changed to "from 0600 to 2400 hours, local time, Monday through Friday; 0600 to 1800 hours, local time, Saturday and Sunday, and closed on holidays," it is necessary to alter the control zone description to redesignate it as part time. Since this amendment is less restrictive in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (37 F.R. 2056), the Selma, Ala., control zone (37 F.R. 7387) is amended as follows: "This control zone is effective from 0600 to 2400 hours, local time, Monday through Friday; 0600 to 1800 hours, local time, Saturday and Sunday, and closed on holidays." is added to the description.

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

Issued in East Point, Ga., on August 29, 1972.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.72-15303 Filed 9-8-72;8:45 am]

[Airspace Docket No. 72-WE-35]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the description of the Victorville, Calif. (George AFB) control zone by changing the effective hours of the zone.

Due to lack of qualified personnel and economic reasons including discontinuance of weather observations, the mission of George AFB will not be conducted during the hours of 0100 to 0700 local time daily. Since weather observations are a requisite for designation of a control zone, this airspace would no longer qualify as designated controlled airspace during these hours.

Since this action will result in a less restrictive designation of airspace than presently established and will impose no additional burden on any person, notice, and public procedure hereon are unnecessary and this amendment may be made effective in less than 30 days.

In consideration of the foregoing in § 71.171 (37 F.R. 2056) the description of the Victorville, Calif. (George AFB) control zone is amended in part by adding, "This control zone is effective from 0700 to 0100 hours local time daily."

Effective date. This amendment is effective 0901 G.m.t. September 14, 1972.

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

Issued in Los Angeles, Calif., on September 1, 1972.

ROBERT O. BLANCHARD,
Acting Director, Western Region.

[FR Doc.72-15304 Filed 9-8-72;8:45 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

[ER 1165-2-302]

PART 209—ADMINISTRATIVE PROCEDURE

Definition of Navigable Waters of the United States

This amendment modifies Corps of Engineers regulations by including a more complete discussion and legal analysis of the interpretation of the definition of navigable waters of the United States. That definition is dependent on doctrines established by Federal courts, and must therefore periodically be revised to reflect changes in the law. The amendment also reflects the administrative need for a more definitive and explanatory definition as increased and competing demands are made on the Nation's water resources.

This amendment is an interpretative rule of general applicability, formulated and adopted by the Corps of Engineers. Accordingly, it is promulgated without publication of a notice of proposed rule making and will supersede the definition presently located in § 209.260. It becomes effective on the date of publication (9-9-72).

§ 209.260 Definition of navigable waters of the United States.

(a) *Purpose and scope.* This section defines the term "navigable waters of the United States" as it is used to define authorities of the Corps of Engineers. It also prescribes the policy, practice, and procedure to be used in determining the extent of the jurisdiction of the Corps of Engineers and in answering inquiries concerning "navigable waters."

(b) *General policies.* The term "navigable waters of the United States" is used to define the scope and extent of the regulatory powers of the Federal Government. Precise definitions of "navigable waters" or "navigability" are ultimately dependent on judicial interpretation, and cannot be made conclusively by administrative agencies. However, the policies and criteria contained in this section are in close conformance with the tests used by the Federal courts and determinations made under this section are considered binding in regard to the activities of the Corps of Engineers.

(c) *General definition.* Navigable waters of the United States are those waters which are presently, or have been in the past, or may be in the future susceptible for use for purposes of interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the water body, and is not extinguished by later actions or events which impede or destroy navigable capacity.

(d) *General scope of determination.* The several factors which must be examined when making a determination whether a water body is a navigable water of the United States are discussed in detail below. Generally, the following conditions must be satisfied:

(1) Past, present, or potential presence of interstate or foreign commerce;

(2) Physical capabilities for use by commerce as in subparagraph (1) of this paragraph;

(3) Defined geographic limits of the water body.

(e) *Interstate or foreign commerce—*

(1) *Nature of commerce: type, means, and extent of use.* The types of commercial use of a waterway are extremely varied and will depend on the character of the region, its products, and the difficulties or dangers of navigation. It is the water body's capability of use by the public for purposes of transportation or commerce which is the determinative factor, and not the time, extent or manner of that use. As discussed in paragraph (h) of this section, it is sufficient to establish the potential for commercial use at any past, present, or future time. Thus, sufficient commerce may be shown by his-

torical use of canoes, bateaux, or other frontier craft, as long as that type of boat was common or well-suited to the place and period. Similarly, the particular items of commerce may vary widely, depending again on the region and period. The goods involved might be grain, furs, or other commerce of the time. Logs are a common example; transportation of logs has been a substantial and well recognized commercial use of many navigable waters. Note, however, that the mere presence of floating logs will not of itself make the river "navigable"; the logs must have been related to a commercial venture. Similarly, the presence of recreational craft may indicate that a waterbody is capable of bearing some forms of commerce, either presently, in the future, or at a past point in time.

(2) *Nature of Commerce: Interstate or intrastate.* Interstate commerce may of course be existent on an intrastate voyage which occurs only between places within the same State. It is only necessary that goods may be brought from, or eventually be destined to go to, another State. (For purposes of this section, the term "interstate commerce" hereinafter includes "foreign commerce" as well.)

(f) *Intrastate or interstate nature of waterway.* A water body may be entirely within a State, yet still be capable of carrying interstate commerce. This is especially clear when it physically connects with a generally acknowledged avenue of interstate commerce, such as the ocean or one of the Great Lakes, and is yet wholly within one State. Nor is it necessary that there be a physically navigable connection across a State boundary. Where a water body extends through one or more States, but substantial portions, which are capable of bearing interstate commerce, are located in only one of the States, the entirety of the waterway up to the head (upper limit) of navigation is subject to Federal jurisdiction.

(g) *Improved or natural condition of the water body.* Determinations are not limited to the natural or original condition of the water body. Navigability may also be found where artificial aids have been or may be used to make the water body suitable for use in navigation.

(1) *Existing improvements: Artificial water bodies.* (i) An artificial channel may often constitute a navigable water of the United States, even though it has been privately developed and maintained, or passes through private property. The test is generally as developed above; that is, whether the water body is capable of use for purposes of interstate commerce. Canals which connect two navigable waters of the United States and which are used for commerce clearly fall within the test, and themselves become navigable. A canal open to navigable waters of the United States on only one end is itself navigable where it in fact supports interstate commerce.

(ii) The artificial water body may be a major portion of a river or harbor area or merely a minor backwash, slip, or turning area.

(iii) Private ownership of the lands underlying the water body, or of the

lands through which it runs, does not preclude a finding of navigability. Ownership does become a controlling factor if a privately constructed and operated canal is not used for purposes of interstate commerce nor used by the public; it is then not considered to be a navigable water of the United States. However, a private water body, even though not itself navigable, may so affect the navigable capacity of nearby waters as to nevertheless be subject to certain regulatory authorities.

(2) *Nonexisting improvements, past or potential.* A water body may also be considered navigable depending on the feasibility of future use for interstate commerce after the construction of whatever "reasonable" improvements may potentially be made. The improvements need not exist, be planned, nor even authorized; it is enough that potentially they could be made. What is a "reasonable" improvement is always a matter of degree; there must be a balance between cost and need at a time when the improvement would be (or would have been) useful. Thus, if an improvement was "reasonable" at a time of past use, the water was therefore navigable in law from that time forward. The changes in engineering practices or the coming of new industries with varying classes of freight may affect the type of the improvement; those which may be entirely reasonable in a thickly populated, highly developed, industrial region may have been entirely too costly for the same region in the days of the pioneers. The determination of reasonable improvement is often similar to the cost analyses presently made in Corps of Engineers studies.

(h) *Time at which commerce exists or determination is made—*(1) *Past use.* A water body which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in paragraph (g) (2) of this section) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions. Nor does absence of use because of changed economic conditions affect the legal character of the water body. Once having attained the character of "navigable in law," the Federal authority remains in existence, and cannot be abandoned by administrative officers or court action. Nor is mere inattention or ambiguous action by Congress an abandonment of Federal control. However, express statutory declarations by Congress that described portions of a water body are nonnavigable, or have been abandoned, are binding upon the Department of the Army. Each statute must be carefully examined, since Congress often reserves the power to amend the Act, or assigns special duties of supervision and control to the Secretary of the Army or Chief of Engineers.

(2) *Future or potential use.* Navigability may also be found in a water body's susceptibility for future use for purposes of interstate commerce. This may be

either in its natural or improved condition, and may thus be existent although there has been no actual use to date. Nonuse in the past therefore does not prevent recognition of the potential for future use.

(i) *Existence of obstructions.* A stream may be navigable despite the existence of falls, rapids, sand bars, bridges, portages, shifting currents, or similar obstructions. Thus, a waterway in its original condition might have had substantial obstructions which were overcome by frontier boats and/or portages, and nevertheless be a "channel" for commerce, even though boats had to be removed from the water in some stretches, or logs be brought around an obstruction by means of artificial chutes. However, the question is ultimately a matter of degree, and it must be recognized that there is some point beyond which navigability could not be established.

(j) *Geographic and jurisdictional limits of rivers and lakes—(1) Jurisdiction over entire bed.* Federal regulatory jurisdiction, and powers of improvement for navigation, extend laterally to the entire water surface and bed of a navigable water body, which includes all the land and waters below the original high water mark.

(i) The "ordinary high water mark" on nontidal rivers must be determined by the ordinary flows of the river; neither peak nor flood stages can be included, nor the lowest stages of flow. Physical markings on the lands may be used in determining the mark only where, due to variations of flow, there is no absolute ascertainable level, and where more precise information is not available.

(ii) Ownership of a river or lake bed or of the lands between high and low water marks will vary according to State law; however, private ownership of the underlying lands has no bearing on the existence or extent of the dominant Federal jurisdiction over a navigable water body.

(2) *Upper limit of navigability.* The character of a river will, at some point along its length, change from navigable to nonnavigable. Very often that point will be at a major fall or rapids, or other place where there is a marked decrease in the navigable capacity of the river. The upper limit will therefore often be the same point traditionally recognized as the head of navigation, but may, under some of the tests described above, be at some point yet further upstream.

(k) *Geographic and jurisdictional limits of oceanic and tidal waters—(1) Ocean and coastal waters.* The navigable waters of the United States over which Corps of Engineers regulatory jurisdiction extends include all ocean and coastal waters within a zone 3 geographic (nautical) miles seaward from the coast line. Wider zones are recognized for special regulatory powers, such as those exercised over the Outer Continental Shelf.

(i) *Coast line defined.* Generally, where the shore directly contacts the open sea, the line on the shore reached by the ordinary low tides comprises the coast line from which the distance of 3 geo-

graphic miles is measured. On the Pacific coasts the line of mean lower low water is used. The line has significance for both domestic and international law (in which it is termed the "baseline"), and is subject to precise definitions. Special problems arise when offshore rocks, islands, or other bodies exist, and the line may have to be drawn to seaward of such bodies.

(ii) *Shoreward limit of jurisdiction.* Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water. However, on the Pacific coasts, the line reached by the mean of the higher high waters is used.

Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

(2) *Bays and estuaries.* Regulatory jurisdiction extends to the entire surface and bed of all water bodies subject to tidal action. Jurisdiction thus extends to the edge (as determined by paragraph (k) (1) (ii) of this section, "Shoreward Limit") of all such water bodies, even though portions of the water body may be extremely shallow, or obstructed by shoals, vegetation, or other barriers. Marshlands and similar areas are thus considered "navigable in law," but only so far as the area is subject to inundation by the mean high waters. The relevant test is therefore the presence of the mean high tidal waters, and not the general test described above, which generally applies to inland rivers and lakes.

(i) *Geographic limits: Shifting boundaries.* Permanent changes of the shoreline configuration result in similar alterations of the boundaries of the navigable water. Thus, gradual changes which are due to natural causes and are perceptible only over some period of time constitute changes in the bed of a water body which also change the shoreline boundaries of the navigable waters. However, an area will remain "navigable in law," even though no longer covered with water, whenever the change has occurred suddenly, or was caused by artificial forces intended to produce that change. For example, shifting sand bars within a river or estuary remain part of the navigable water, regardless that they may be dry at a particular point in time.

(m) *Determinations of navigability—*

(1) *Effect of determinations.* Although conclusive determinations of navigability can be made only by Federal courts, those made by Federal agencies are nevertheless accorded substantial weight by the courts. It is therefore necessary that when jurisdictional questions arise, district personnel carefully investigate those waters which may be subject to Federal regulatory jurisdiction under the guidelines set out above, as the resulting

determination may have substantial impact upon a judicial body. Official determinations by an agency made in the past can be revised or reversed as necessary to reflect changed rules or interpretations of the law.

(2) *Procedures of determination.* A determination whether a water body is a navigable water of the United States will be made by the Chief of Engineers, and will be based on a report of findings prepared at the District level in accordance with the criteria set out in this section. Each report of findings will be prepared by the District Engineer, accompanied by an opinion of the District Counsel, and forwarded through the Division Engineer to the Office of the Chief of Engineers, DAEN-GCZ, for a final determination. Each report of findings will be based substantially on applicable portions of the format in subparagraph (3) of this paragraph.

(3) *Suggested format of report of findings.*

- (1) Name of water body.
- (ii) Tributary to.
- (iii) Physical characteristics:
 - (a) Type (river, bay, slough, estuary, etc.).
 - (b) Length.
 - (c) Approximate discharge volumes:
 - Maximum.
 - Minimum.
 - Mean.
 - (d) Fall per mile.
 - (e) Extent of tidal influence.
 - (f) Range between ordinary high and ordinary low water.
 - (g) Description of improvements to navigation not listed in subdivision (v) of this subparagraph.
 - (iv) Nature and location of significant obstructions to navigation in portions of the water body used or potentially capable of use in interstate commerce.
 - (v) Authorized projects:
 - (a) Nature, condition, and location of any improvement made under projects authorized by Congress.
 - (b) Description of projects authorized but not constructed.
 - (c) List of known survey documents or reports describing the water body.
 - (vi) Past or present interstate commerce:
 - (a) General types, extent, and period in time.
 - (b) Documentation if necessary.
 - (vii) Potential use for Interstate Commerce, if applicable:
 - (a) If in natural condition.
 - (b) If improved.
 - (viii) Nature of jurisdiction known to have been exercised by Federal agencies, if any.
 - (ix) State or Federal court decisions relating to navigability of the water body, if any.
 - (x) Remarks.
 - (xi) Finding of navigability (with date) and recommendation for determination.

(n) *Inquiries regarding determinations.* (1) Findings and determinations should be made whenever a question arises regarding the navigability of a water body. Where no determination has been made a report of finding will be prepared and forwarded to the Chief of Engineers, as described above. Inquiries may be answered by an interim reply

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

SUBCHAPTER E—PESTICIDES PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

2-Chloro-1-(2,4,5-Trichlorophenyl) Vinyl Dimethyl Phosphate

A petition (PP 2F1187) was filed by Shell Chemical Co., Division of Shell Oil Co., 1700 K Street NW., Washington, DC 20006, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing establishment of tolerances for residues of the insecticide 2-chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate in or on the raw agricultural commodities bean forage, forage grasses, and pasture grass at 85 parts per million; beans in succulent form (green, field, and snap) at 5 parts per million; and cottonseed at 0.2 part per million (negligible residue).

Based on consideration given the data submitted in the petition and other relevant material, it is concluded that:

1. The insecticide is useful for the purpose for which the tolerances are being established.

2. There is no reasonable expectation of residues in eggs, meat, milk, or poultry, from the proposed uses and § 180.6 (a) (3) applies.

3. The tolerances established by this order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 16523), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038), § 180.252 is amended by adding two new paragraphs and by revising the paragraph "5 parts per million * * *", as follows:

§ 180.252 2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate; tolerances for residues.

85 parts per million in or on bean forage and grasses (pasture and rangeland).

5 parts per million in or on beans in succulent form (field, green, and snap) and tomatoes.

0.2 part per million (negligible residue) in or on cottonseed.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Environmental Protection Agency, Room 3125, South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (9-9-72).

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: August 29, 1972.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator
for Pesticides Programs.

[FR Doc.72-15334 Filed 9-8-72;8:48 am]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Interim Tolerances

Correction

In F.R. Doc. 72-14712 appearing at page 17554 of the issue for Wednesday, August 30, 1972, in the table for § 180.310, the 10th entry from the bottom in the third column ("Tolerance in parts per million"), reading "1.1", should read "0.1".

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Subpart D—Exemptions From Tolerances

α - HYDRO-OMEGA - HYDROXYPOLY(OXYETHYLENE); MOLECULAR WEIGHT 100,000 OR MORE

A petition (PP 2F1253) was filed by Union Carbide Corp., Tarrytown, N.Y.

which indicates that a final agency determination must be made by the Chief of Engineers. If a determination has not been obtained due to emergency or similar conditions in which expedited action is necessary, District Engineers may act in reliance on a finding prepared as in paragraph (m) of this section. The report of finding should then be forwarded to the Chief of Engineers on an expedited basis.

(2) Where determinations have been made by the Chief of Engineers, inquiries regarding the navigability of specific portions of water bodies covered by these determinations may be answered as follows:

This Department, in the administration of the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, has determined that the ----- (river) (bay) (lake, etc.) is a navigable water of the United States from ----- to ----- Actions which modify or otherwise affect those waters are subject to the jurisdiction of this Department, whether such actions occur within or outside the navigable areas.

(3) Specific inquiries regarding the jurisdiction of the Corps of Engineers can be answered only after a determination whether (i) the waters are navigable waters of the United States or (ii) if not navigable, whether the proposed type of activity may nevertheless so affect the navigable waters that the assertion of regulatory jurisdiction is deemed necessary. (See § 209.170.)

(o) *Use and maintenance of lists of determinations.* (1) Tabulated lists of final determinations of navigability are to be maintained in each District Office, and be updated as necessitated by court decisions, jurisdictional inquiries, or other changed conditions. Within the Office of the Chief of Engineers, DAEN-CWO-N will maintain all official records of findings and determinations.

(2) It should be noted that the lists represent only those water bodies for which determinations have been made; absence from that list should not be taken as an indication that the water body is not navigable.

(3) Deletions from the list are not authorized. If a change in status of a water body from navigable to nonnavigable is deemed necessary, an updated finding should be forwarded to Office, Chief of Engineers, DAEN-GCZ; changes are not considered final until a determination has been made by the Chief of Engineers.

[Regs., Sept 8, 1972, DAEN-GCZ-C] (Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012)

For the adjutant General.

R. B. BELNAP,
Special Advisor to TAG.

[FR Doc. 72-15309 Filed 9-8-72;8:46 am]