

FAA Access to Flight Data Recorder and Cockpit Voice Recorder Tapes

Thursday
August 28, 1980

Part VI

Department of Transportation

Federal Aviation Administration

FAA Access to Flight Data Recorder and
Cockpit Voice Recorder Tapes

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 121 & 135**

[Docket No. 20661; Notice No. 80-14]

FAA Access to Flight Data Recorder and Cockpit Voice Recorder Tapes**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: These proposals will allow the Administrator to obtain flight data recorder information and cockpit voice recorder information at any time and at any place. This information will be used to study the human factor element associated with aircraft operation and design to determine what, if any, regulatory changes should be made to enhance aviation safety. These proposals are responsive to public and Congressional interest in the subject, and more particularly result from the technical arguments of the Air Line Pilots Association (ALPA) in its criticism of the FAA's crew complement certification process. These proposals will not in any way change the Administrator's policy regarding use of information derived from flight data recorders and cockpit voice recorders in enforcement proceedings.

DATES: Comments must be received on or before October 27, 1980.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No., 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C.

Comments may be examined in the Rules Docket weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Norman C. Miller, Regulatory Projects Branch (AVS-24); Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate 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 Docket No. 20661. The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket for examination both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the 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, DC 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 procedure.

Discussion of the Proposed Amendment

Historically, human factors in aviation have received ever-increasing attention as airplanes have flown faster, higher, and in a more complex environment. As the complexities of aviation operations increase, the FAA recognizes the need for enhanced knowledge of human factors requirements in aircraft operations and design. Approximately one and one-half years ago the Administrator established a human factors task force under the direction of the Associate Administrator for Aviation Standards. Based upon the analysis of this task force to date, the FAA is now prepared to launch a broader based effort to further the available knowledge on the subject of human factors. This proposal is but one small part of that effort.

Predicated upon the insight the FAA has secured from the intense examination of the crew complement issue during the DC-9-80 certification process, and, particularly in recognition of the arguments raised by ALPA to the effect that the FAA lacks hard statistical data on day-to-day working conditions

in the cockpit, the FAA recognizes the need to collect data as herein proposed. This proposal is a crucial part of the human factors program because the FAA has found that neither ALPA nor any other segment of the industry or government has hard statistical data as to what goes on in the cockpit when FAA inspectors are not on board and under the plethora of circumstances that occur in the everyday air transportation environment. Enactment of this proposal will enable the FAA to establish a data base that significantly advances the state of aviation human factors knowledge and, allow the agency to increase the thoroughness of its crew complement certification process. It should be noted that the United Kingdom has studied such inflight data for years. In 1979, for example, the United Kingdom collected samples of 140,000 flights, automatically evaluated 85,000 tapes, and identified 4,700 events which called for further investigation and analysis.

The FAA is fully aware of the opposition which has come from the pilot segment of the aviation community when proposals similar to this have been discussed previously. However in light of the arguments advanced by ALPA in the DC-9-80 certification process it would seem that the pilots have now come to recognize the need to establish the data based that this proposal envisions. As Captain Geoffrey F. Mussett stated in an article on crew complement in the August 1980 issue of Air Line Pilot magazine, "What the manufacturers and authorities so studiously ignore is the real world of aviation, which is a complex, varied, and everchanging scenario in time and place. This is the world into which we, the pilots, have to pitch our fallibility." In correspondence, ALPA has on various occasions referred to "deficiencies in the FAA certification process" and "unsubstantiated conclusions" reached by the FAA on the subject of crew workload. ALPA has stated that the FAA has "no specific workload data" to justify some of its conclusions, and that "man's limitations are not given sufficient weight in the FAA's certification process." In a similar vein, in an article appearing in the July 29, 1980 issue of Aviation Daily entitled "FAA Must Recognize 'Real World' Company Cockpit Duties—ALPA", ALPA spokesman John LeRoy stated, "FAA should recognize that flying an airliner requires the cockpit crew to perform many duties not directly related to safety, but which nonetheless distract from flying duties." Obtaining the data which currently exists on cockpit voice

recorders and flight data recorders is the one way to satisfy all of these ALPA demands.

The FAA's "Human Factors Program" includes a major emphasis on identification and reduction of factors causing crew errors. One aspect of the program is a human factors workshop scheduled for October, 1980 at which the FAA, industry and consumers will come together to further study human factors. The program has also generated FAA proposed rulemaking designed to eliminate flight crewmember performance of duties and activities which are not required for the safe operation of aircraft. The program also includes a rulemaking proposal which provides for the periodic review of aircraft type certification, including amendments to those type certificates and supplemental type certificates. A fourth aspect of the program involves development of a notice of proposed rulemaking requiring line oriented flight training (LOFT) as part of air carrier simulator recurrent training programs. LOFT can be a means to correct problems identified in human factor studies through flight crew simulator training.

Study of on-board recording of flight data and cockpit voice recorder tapes offers an opportunity to further our understanding of the human factors at play in the cockpit environment. Use of inflight data derived from flight data recorders and cockpit voice recorders should assure that air carrier operations in years to come are at the highest level of human factors technology. Such data will provide valuable information for future studies affecting many areas of aviation safety and might be used in assisting in the evaluation of such important issues as minimum flights crew complement and pilot workload, pilot training, pilot/controller interface in the National Aviation System, Air Traffic Control (ATC) systems employing increased automation, and aircraft performance, and pilot response.

Current FAA study of the subject of flightcrew complement has spawned complex questions about flightcrew workload and the impact on workload of FAA-mandated systems and procedures. To make determinations regarding flightcrew workload and crew complement, it will be necessary to have improved, validated, and standardized workload assessment techniques which have sufficient objectivity to be used in the development of guidelines or standards. Since accident investigations and studies of violations provide no adequate data to support allegations of excessive workload in particular

operations, these questions require analysis of a significant sample of actual line flights. Flight data recorder and cockpit voice recorder data would be invaluable in such an analysis.

Examination of the cockpit environment through use of flight data recorder and cockpit voice recorder data will aid in evaluating the relationship between total workload and safety, thereby attempting to establish the level of workload that is conducive to optimum safety. Considerations to be made in this study include the division of responsibilities between crewmembers, the effects of command responsibility, and the effects of increased airborne system automation and integration on planning, problem solving, systems monitoring, and external surveillance. Consideration may be given to possible flightcrew over-reliance on automated devices and complacency in the face of malfunctions.

The inflight data acquired may be used, for example, to determine how equipment or procedural changes affect workload. Such information can be used to determine if some system change or presumed improvement actually aids the pilot or if it saddles him with additional monitoring functions and responsibilities to revert to manual control in case of an equipment failure.

The inflight data base will provide essential information for the human engineering of new cockpit layouts and cockpit displays. New cockpit design and display concepts can be evaluated against the empirically derived workload baselines.

Inflight data derived from flight data recorders and cockpit voice recorders will address the controversy which has been generated regarding the safety of two-member versus three-member crews. Civil aviation authorities in many countries have studied and certificated two-pilot operations in turbojet aircraft, yet important segments of both U.S. and overseas pilot groups maintain that such two-member crew operations are potentially less safe than three-member crew operations. Proponents of the two-member crew concept argue, for example, that crew coordination with a three-member crew is more complex than with a two-member crew. They cite the cockpit conversation of the three-member crew aircraft that had a midair collision in San Diego as an example of lack of proper crew coordination with three-member crews that has not occurred with two-member crews. Increased study of flight data and cockpit voice recordings will enhance the knowledge of all segments of the aviation industry regarding crew coordination problems.

Those who favor three-member crews are concerned with what they consider to be excessive cockpit workloads for two-member crews. Research of this point is difficult at present because when FAA inspectors are on board a flight, cockpit work follows standard procedures and workload patterns appear to duplicate those found during certification flight tests. Charges by crew associations that workload distributions in actual line operations are higher than those experienced during FAA enroute inspections and line checks cannot be evaluated without the review of flight data and cockpit voice recordings to determine the existence or causes of the stated problems.

Equally important, an examination of the accident data for two versus three crew aircraft reveals that there is no significant difference between the two. This leads to the conclusion that there is some generic human factor problems that the FAA needs to understand. Put somewhat differently, there is an unproven assumption that three is safer than two. More may not necessarily be better. This proposal will provide the tools to make the proper analysis.

Study of the human factors present in the cockpit environment, through use of flight data recorder and cockpit voice recorder data, may also shed light on pilot training effectiveness.

Human factor data derived from flight data recorders and cockpit voice recorders might also be used in determinations of the workload impact and coordination effectiveness between the pilot and air traffic controller. This evaluation will be particularly useful in assessing the effectiveness of ATC data line use in pilot/controller communications.

Now that the ability to provide traffic information to the cockpit exists, it is unclear what the pilot's ability is to use this information or what the impact of using it is on the ATC system. The benefits and deficiencies of various types of traffic information are unknown. Access to flight data and cockpit voice recorder tapes could assist in a possible evaluation of Cockpit Display Traffic Information (CDTI) configurations and applications from both a cockpit and ATC system viewpoint. Such access will aid with evaluation of the impact of CDTI on the pilot, controller, and the ATC system.

Runway/taxiway transgressions are a pervasive problem throughout the airport system. A number of accidents and incidents have been caused by aircraft taxiing onto active runways during takeoff, landing, or taxiing operations. FAA and NASA records indicate that 279 cases of this type have

been recorded over the past 10 years, and recent investigations indicate that many such incidents go unreported. The FAA desires to learn more about why these incidents occur and for that reason also access to cockpit voice recorder information is sought.

With the use of flight data recorder and cockpit voice recorder data, studies related to aircraft performance and pilot response may be implemented and furthered. Possible areas which may be explored include the takeoff and landing of aircraft, go-around, overrun, forces on the aircraft and origin of such forces, adherence to desired flight path, abrupt maneuvers for collision avoidance, and pilot reaction to turbulence and inadvertent vortex encounters.

An examination of aviation accidents over the past decade indicates a need to more thoroughly study the human factors aspect of aviation safety, particularly with regard to the flight cockpit environment. Instances of laxity in following prescribed procedures and flightcrew inattentiveness have suggested a need for more discipline in the cockpit.

Inadequate cockpit discipline is a commonly cited cause of accidents. For example, when an Eastern Airlines airplane crashed short of a runway in Charlotte, North Carolina, the National Transportation Safety Board (NTSB) determined that the probable cause of the accident was the flightcrew's lack of altitude awareness at critical points during the approach due to poor cockpit discipline. The NTSB found that company required callouts were not made. The extraneous conversation conducted by the flightcrew during the descent, said the NTSB, was symptomatic of a lax atmosphere in the cockpit which continued throughout the approach.

The need to study human factors in the cockpit environment is supported by findings of the NTSB that errors of judgment or management in the cockpit play an important role in airline accidents. In May 1978, for example, a National Airlines jet crashed into Escambia Bay while executing an approach to the Pensacola, Florida, regional airport. The NTSB determined that the probable cause of the accident was the flightcrew's unprofessionally conducted nonprecision instrument approach in that the captain and the crew failed to monitor the descent rate and altitude and the first officer failed to provide the captain with required altitude and approach performance callouts. The crew failed to check and utilize all instruments available for altitude awareness, turned off the ground proximity warning system, and

failed to configure the aircraft properly in a timely manner for the approach.

Although the majority of fatal aviation accidents involve some element of crew error such as these, categorization of accidents as to the nature of the crew error and the identification of underlying human problems has never been accomplished. Utilization of flight data and cockpit voice recorder tapes will enable the FAA to study and analyze the complex interactions between the man-machine environment.

Description of the Proposed Amendments

These proposals would require that the recorded data be made available to the Administrator at such time and place as the Administrator may designate. Since the flight data recorder may have many hours remaining on it (25 in the case of the digital flight data recorder or several hundred in the case of the metal foil type), the certificate holder would be allowed to continue to use it until reaching a point where it could be replaced. However, if the Administrator determines that the recorded data requested will be erased or otherwise obliterated or will be needed before the aircraft reaches a point where the recorder can be replaced he may request the information immediately.

Since the cockpit voice recorder has only a 30-minute tape in it, the Administrator, in most cases, will request that the recording data be made available immediately. This will necessitate the removal of the cockpit voice recorder in order to obtain the recorder magazine containing the recorded data. In such cases the proposal would allow the aircraft to be operated without the cockpit voice recorder for up to 8 hours which is the maximum most aircraft operate in a day. However, it would not be authorized to depart an airport where a replacement was available. This would preclude an operator from operating an aircraft for several days without the cockpit voice recorder just because it never landed at an airport where a replacement was available. If the airplane was scheduled to embark on a flight which would cause it to exceed the 8-hour limit then it may not depart unless a cockpit voice recorder has first been installed. The aircraft minimum equipment lists (MEL) will be amended to authorize such operations when the cockpit voice recorder or flight data recorder is removed at the request of the Administrator.

The FAA is concerned that operation of an aircraft without a cockpit voice recorder may result in the loss of

valuable data should an accident occur, and therefore will attempt to remove the cockpit voice recorder at an airport where a replacement is available. In this regard it appears that cockpit voice recorders are easily accessible and require no special instruments to remove and install. Furthermore, it appears that such removal and installation can be accomplished in approximately 15 minutes, with only an additional 30 minutes required to remove and replace the magazine containing the recorded data. Therefore, if the air carriers maintained one spare cockpit voice recorder at each of their stops in addition to a number of spare magazines containing the recorded tape, the necessity of operating an aircraft without a cockpit voice recorder would be eliminated. The FAA solicits comments on the availability of cockpit voice recorders and cockpit voice recorder magazines at the various air carriers stations, and possible problems with removal and installation of the cockpit voice recorder and its magazine which would make the 15 and 30 minute time-frame mentioned above unreasonable.

The proposed rule, with respect to the cockpit voice recorder, requires the pilot in command to ensure that the power source to the cockpit voice recorder is disconnected when notified and so instructed by the certificate holder (by means of a dispatcher or other appropriate company employee or by the Administrator. This could be done, for example, by pulling a circuit breaker or activating a switch, as the case may be. Because of the location of the cockpit voice recorder circuit breakers or switches, it may be necessary for the first officer or flight engineer to disconnect the power source. This would be done at the pilot in command's direction. The notification to the pilot in command would also include the time and or place at which the power source is to be disconnected. For example, the disconnect may be requested immediately or it may be at some point in the future such as after completion of the landing roll. Advanced notification that the cockpit voice recorder must be deactivated would prevent unnecessary communications between the cockpit and the ground personnel at a time when the flightcrew may be busy conducting other duties such as obtaining a clearance.

These proposals would also prohibit the erasure or obliteration of any previously recorded information. This prohibition would include actuating any erasure device such as a button on the cockpit voice recorder, if so equipped, or

permitting the cockpit voice recorder to continue to run so as to record over the requested information.

These proposals will not in any way change the Administrator's policy regarding use of information derived from flight data recorders and cockpit voice recorders in enforcement proceedings. The only records the FAA has never used in any civil penalty or certificate action are the cockpit voice recorder records and reports submitted to the National Aeronautics and Space Administration (NASA) under the Aviation Safety Reporting Program (with the exception of criminal offenses and accidents). Sections 121.359(e) and 135.151(e) of the Federal Aviation Regulations prohibit the use of cockpit voice recorder data in any civil penalty or certificate action. However, as noted in the Preamble to Amendment 13-14 (44 FR 63720, Nov. 5, 1979) which adopted § 13.7 of the regulations, flight recorder data are no different from any other record or report required by the regulations, and information from these recorders may be reviewed and used in investigations and enforcement actions. The fact that information in records and reports required by regulations may provide information which might be useful for a specified purpose does not preclude its use for another safety purpose; i.e., to ensure compliance with the Federal Aviation Regulations.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend Parts 121 and 135 of the Federal Aviation Regulations (14 CFR 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. By revising § 121.343 by redesignating paragraphs (d), (e), (f), and (g) as (e), (f), (g), and (h) respectively, and adding a new paragraph (d) to read as follows:

§ 121.343 Flight recorders.

(d) The recorded data prescribed in paragraph (a) of this section shall be made available to the Administrator at such time and place as the Administrator may designate.

2. By revising § 121.359 by adding new paragraphs (f), (g), and (h) to read as follows:

§ 121.359 Cockpit voice recorders.

(f) The recorded data prescribed by this section shall be made available to the Administrator at such time and place as the Administrator may designate.

(g) Notwithstanding paragraph (a) of this section, an airplane which has had its cockpit voice recorder or cockpit voice recorder magazine removed under paragraph (f) of this section in order for the Administrator to obtain the recorded data may be operated without an operative cockpit voice recorder provided: (1) The airplane may not depart an airport where a replacement cockpit voice recorder or cockpit voice recorder magazine is available.

(2) The cockpit voice recorder or cockpit voice recorder magazine must be replaced prior to the airplane exceeding 8 additional hours of flight time.

(h) The pilot in command shall ensure that: (1) Upon notification by the Administrator or the certificate holder, the power source to the cockpit voice recorder is disconnected at the time and place designated, and

(2) The previously recorded information is not erased or otherwise obliterated.

(i) No person may erase or otherwise obliterate recorded data which the Administrator has requested.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. By revising § 135.151 by adding new paragraphs (c), (d), and (e) to read as follows:

§ 135.151 Cockpit voice recorders.

(c) The recorded data prescribed by this section shall be made available to the Administrator at such time and place as the Administrator may designate.

(d) Notwithstanding paragraph (a) of this section, an airplane which has had its cockpit voice recorder or cockpit voice recorder magazine removed under paragraph (c) of this section in order for the Administrator to obtain the recorded data may be operated without an operative cockpit voice recorder provided: (1) The airplane may not depart an airport where a replacement cockpit voice recorder magazine is available.

(2) The cockpit voice recorder or cockpit voice recorder magazine must be replaced prior to the airplane exceeding 8 additional hours of flight time.

(e) The pilot in command shall ensure that: (1) Upon notification by the Administrator or the certificate holder,

the power source to the cockpit voice recorder is disconnected at the time and place designated, and

(2) The previously recorded information is not erased or otherwise obliterated.

(f) No person may erase or otherwise obliterate recorded data which the Administrator has requested.

(Secs. 313(a), 601, and 604, Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1354(a), 1421, and 1424); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); and 14 CFR Part 11)

Note.—The Federal Aviation Administration has determined that this document involves proposed regulations which are not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "For Further Information Contact."

Issued in Washington, D.C., on August 25, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-26490 Filed 8-27-80; 8:45 am]

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Reader Aids

Federal Register

Vol. 45, No. 169

Thursday, August 28, 1980

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- 523-5237 Corrections
- 633-6930 Public Inspection Desk
- 523-5227 Index and Finding Aids
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- 523-5239 TTY for the Deaf
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- 523-3408 Automation
- 523-4534 Special Projects
- 523-3517 Privacy Act Compilation

FEDERAL REGISTER PAGES AND DATES, AUGUST

51167-51538.....1	54299-54710.....15
51539-51754.....4	54711-55136.....18
51755-52138.....5	55137-55418.....19
52139-52354.....6	55419-55688.....20
52355-52768.....7	55689-56004.....21
52769-53074.....8	56005-56328.....22
53074-53436.....11	56329-56790.....25
53437-53800.....12	56791-57108.....26
53801-54008.....13	57109-57358.....27
54009-54298.....14	57359-57698.....28

¹Note: Between 45 FR 55433 and 55465, August 20, 1980, there were several pagination errors. Please refer to the cover of the issue for Thursday, August 21, 1980, for explanation.

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

- Executive Orders:
- 11790 (See 12231)..... 52139
- 12230.....51167
- 12231.....52139
- 12232.....53437

Proclamations:

- 4776.....51539
- 4777.....53075
- 4778.....53445
- 4779.....53439
- 4780.....53441
- 4781.....53443
- 4782.....57109
- 4783.....57111
- 4784.....57359
- 4785.....57361

Administrative Orders:

- Presidential Determinations:
- No. 80-25 of August 8, 1980..... 54299

Memorandums:

- July 31, 1980..... 51169, 51171, 51173

4 CFR

- 21.....55689

5 CFR

- Ch. XIV..... 51541
- 213..... 55137-55140, 56791-56793
- 297.....52769
- 410.....51755
- 534.....56793
- 581.....53447

Proposed Rules:

- Ch. I..... 56816
- 339.....53481
- 359.....51214
- 432.....53481
- 752.....53481
- 831.....53481
- 930.....53485

6 CFR

- 705.....51175
- 706.....51541, 52769

7 CFR

- 2.....52355, 57363
- 6.....54301
- 210.....51175
- 245.....52770
- 272.....53448
- 273.....53448
- 282.....54638
- 301.....51176
- 319.....53449
- 331.....51755, 53450, 54302
- 401.....54711

418.....	54718
419.....	54720
427.....	54722
430.....	54723
437.....	54711
722.....	51755
725.....	56005
760.....	56007
800.....	55118
801.....	55118
802.....	55118
908.....	52356, 53801, 54063, 55140, 55692, 57363
910.....	51177, 52771, 54304, 56007
911.....	57364
916.....	53450
917.....	51179, 53450, 54724
919.....	54305
921.....	51180
922.....	53451
924.....	51180
926.....	52772, 56008
946.....	52141
948.....	51182
958.....	52141
967.....	52143
981.....	56794
985.....	56329
991.....	55419
993.....	54064, 54725
1137.....	51542
1421.....	53801, 54305, 55141-55159
1427.....	53077, 55166
1446.....	51756
1474.....	56329
1701.....	54307
1862.....	56794
2853.....	51757
2871.....	56794
2890.....	54307
2891.....	54307
2892.....	54307
2893.....	54307
2894.....	54307
2895.....	54307
2896.....	54307
2897.....	54307
2898.....	54307
2899.....	54307

Proposed Rules:

- 29.....51572
- 250.....56817
- 272.....51216, 53792, 56316
- 273.....51216, 53066, 53792
- 301.....52816
- 319.....56817
- 404.....51573
- 427.....54346
- 431.....53486
- 722.....52817
- 726.....56067

800..... 52339
 910..... 53487
 926..... 56069
 985..... 51818
 1001..... 54066
 1030..... 56818
 1065..... 55213
 1435..... 54347
 1464..... 51579
 1701..... 54354
 1492..... 52342
 1990..... 51818
 2858..... 51217
 2871..... 51217

8 CFR

238..... 54310
 264..... 52143

Proposed Rules:

Ch. I..... 51832
 204..... 57432
 214..... 51580

9 CFR

78..... 52772
 92..... 52773
 318..... 54310
 381..... 54310

Proposed Rules:

94..... 52818
 317..... 53002
 318..... 51832
 381..... 53002

10 CFR

2..... 54725
 40..... 55419
 50..... 55402, 55413
 70..... 55402
 110..... 51184
 211..... 55374, 56732, 56788
 212..... 52112, 54325
 220..... 55374
 430..... 53488
 445..... 51763
 456..... 53434
 500..... 53682
 501..... 53682
 504..... 53682
 1050..... 53972

Proposed Rules:

2..... 53972
 50..... 54708, 54709
 205..... 51833
 210..... 57138
 211..... 54662, 56070
 212..... 54069, 54688, 54694, 55467
 378..... 51581
 430..... 53714
 456..... 53422
 500..... 53368, 55467
 503..... 53368, 55467
 504..... 53368, 55467
 505..... 53368, 55467
 506..... 53368, 55467
 799..... 54264

11 CFR

100..... 52356
 110..... 52356

Proposed Rules:

114..... 56349

12 CFR

7..... 53080, 57113
 201..... 52144, 54009
 204..... 56009
 217..... 55692
 220..... 53452
 225..... 54326
 226..... 56795
 265..... 54011
 303..... 54326
 399..... 56027
 523..... 57113
 543..... 57114
 545..... 56029
 552..... 57114
 563..... 55693, 56031
 578..... 56031
 701..... 57365

Proposed Rules:

Ch. I..... 52166
 Ch. II..... 51581
 Ch. VI..... 55213
 Ch. VII..... 55214
 202..... 56818
 205..... 54070
 303..... 52819
 309..... 52819
 525..... 52173
 541..... 52173, 52177, 55750
 544..... 55750
 545..... 52173, 52177, 55750
 561..... 52177, 55750
 563..... 52173, 52177, 55750
 563c..... 55750
 569a..... 55750
 577..... 55750
 578..... 55750

13 CFR

301..... 55696
 303..... 55696
 304..... 55696
 307..... 55696
 309..... 55420
 311..... 55696

Proposed Rules:

101..... 51763, 53081
 107..... 55468
 108..... 53835
 124..... 55468

14 CFR

39..... 51543-51546, 52357, 53081, 53084, 53086, 54012-54014, 54725-54732, 55704-55710, 56331-56334, 57366-57369
 71..... 51546, 53086-53090, 54015, 54027, 54028, 54733, 55710, 55711, 56335-56337, 57370-57372
 73..... 54028, 56337
 91..... 51547
 95..... 57373
 97..... 52358, 56338
 121..... 51547
 127..... 51547
 135..... 51547
 152..... 56620
 154..... 56620
 155..... 56620
 201..... 53453
 204..... 57377
 207..... 53358
 208..... 53363

211..... 53453
 212..... 53364
 214..... 53365
 241..... 53366
 374a..... 53453
 375..... 51838
 385..... 53454

Proposed Rules:

Ch. I..... 53161, 53162, 54766, 56538
 21..... 57688
 39..... 53162, 54071, 54072, 55754, 56351, 57688
 45..... 53163, 54766
 71..... 51587-51590, 52396, 53163, 54072-54080, 54766, 55755-55760, 56352, 57434
 73..... 51591, 56352
 75..... 52396, 54081, 56353, 56354
 91..... 57688
 121..... 53316, 55760, 57684, 57694
 123..... 55760
 127..... 55760
 135..... 53316, 55760, 57684, 57694
 207..... 53488
 208..... 53488
 212..... 53488
 214..... 53488
 221..... 56821
 222..... 57435
 241..... 56822
 255..... 52820, 56821
 298..... 56821
 314..... 56822
 385..... 57435

15 CFR

17a..... 54028
 200..... 55166
 359..... 55711
 372..... 57116
 373..... 54031, 57117
 378..... 53090

Proposed Rules:

19..... 51592
 970..... 57436
 934..... 56355

16 CFR

13..... 52776, 52778, 53455, 55171, 55421, 56034
 305..... 53340
 419..... 57378, 57380
 436..... 51763, 51765
 455..... 52750
 460..... 54702
 1019..... 53036
 1201..... 57383

Proposed Rules:

13..... 51593, 51596, 55219
 239..... 51838
 406..... 55223
 441..... 53839
 444..... 56070
 705..... 51218

17 CFR

Ch. I..... 54032
 1..... 57117
 7..... 51520
 140..... 57118
 240..... 57389

Proposed Rules:

Ch. I..... 55469
 1..... 51598, 56071
 4..... 51600, 56071
 15..... 57141
 16..... 57141
 17..... 57141
 18..... 57141
 21..... 57141
 240..... 56822
 250..... 57436

18 CFR

2..... 53091, 53099
 35..... 55714
 141..... 56340
 154..... 53091
 270..... 53091, 53099
 271..... 53099, 56034
 273..... 56034
 274..... 56034
 277..... 53116
 281..... 54733
 282..... 52359, 54741
 284..... 56046
 290..... 54033
 292..... 52779
 375..... 53456

Proposed Rules:

2..... 54354, 55761
 154..... 54354
 260..... 54082
 271..... 51219, 54085, 56072, 56823
 273..... 51219, 54085, 56823
 274..... 51219, 54085, 56823
 286..... 56073
 301..... 51614
 703..... 56355
 740..... 56355

19 CFR

353..... 52780
 355..... 54035

Proposed Rules:

Ch. I..... 51490
 123..... 55474
 177..... 54085
 207..... 54086, 57147

20 CFR

Ch. III..... 53806
 404..... 52078, 55566
 416..... 52078, 54742, 55566

Proposed Rules:

Ch. II..... 51615
 410..... 56074
 655..... 56074

21 CFR

172..... 51766, 56051
 175..... 51184, 56796
 176..... 51767, 56052
 178..... 56052, 56796, 56797
 193..... 51768, 53457, 53458, 54035, 57391
 510..... 54327, 54328, 56798
 520..... 52781, 56798
 522..... 56798
 524..... 56798, 56799
 526..... 56798
 540..... 54329
 555..... 54327
 558..... 53457, 54328, 56798-56800

561.....	55715	865.....	51228	29 CFR	117.....	51550
740.....	55170	866.....	51615	11.....	124.....	57392
884.....	51185, 51186	886.....	51228	40.....	126.....	57392
1306.....	54329	888.....	51228	102.....	161.....	53135, 57392
Proposed Rules:		889.....	51229	575.....	164.....	54037, 57392
Ch. II.....	51832, 52397			1440.....	165.....	53158
101.....	53023	25 CFR		1601.....	175.....	54042
145.....	56823	221.....	57392	1625.....	204.....	57125
310.....	54354	Proposed Rules:		1910.....	207.....	51551, 51555, 57125
320.....	56075, 56832	171.....	53164	1913.....	230.....	56760
346.....	54354	172.....	53164	1952.....	401.....	52376, 56342
600.....	52821	173.....	53164		Proposed Rules:	
606.....	52821	177.....	53164	1999.....	Ch. I.....	56538
610.....	51226	182.....	53164	2520.....	Ch. IV.....	56538
660.....	51226	231.....	54331	2550.....	117.....	51617, 51618, 56364
22 CFR				2617.....	162.....	56365
2.....	55716	26 CFR		Proposed Rules:	174.....	55768
42.....	57119	1.....	52373, 52782, 56802	Ch. XIV.....	209.....	54770
220.....	54751		57122	1960.....		
221.....	54751	26.....	53123	2520.....	34 CFR	
222.....	54751	26a.....	51771	51231, 52824, 54370,	64.....	353412, 53414
Proposed Rules:		31.....	57122	56843	709.....	53788
Ch. II.....	53164-53182	48.....	52800	2530.....	Proposed Rules:	
23 CFR		53.....	56802	51231, 52824, 54370	100.....	52052, 53841
657.....	52365, 55716	54.....	56802	51231, 51840	797.....	54000
658.....	52365, 55716	301.....	57122	30 CFR		
Proposed Rules:		Proposed Rules:		Ch. VII.....	36 CFR	
Ch. I.....	55763, 56538	1.....	52399, 52824, 56358	211.....	7.....	56054, 56342
Ch. II.....	56538	14.....	52824	700.....	1228.....	54334
625.....	51720	26.....	51840	715.....	Proposed Rules:	
652.....	51720	48.....	56364	762.....	7.....	51618
660.....	56355	53.....	56358, 56840	785.....	14.....	54771
663.....	51720	54.....	56358	800.....	221.....	56082
		301.....	55764, 56358	805.....	1190.....	55006
24 CFR				806.....	1202.....	51843
109.....	57102	27 CFR		807.....		
200.....	54198	Proposed Rules:		808.....	37 CFR	
203.....	51769, 51770, 56341,	Ch. I.....	51496	816.....	4.....	56343
	56800	5.....	54087	817.....	304.....	51197
207.....	51769, 51771	13.....	54087	820.....		
213.....	51771, 56341	19.....	52407, 54087	Proposed Rules:	38 CFR	
220.....	51769, 51770	70.....	52407	Ch. VII.....	17.....	53807, 55716
221.....	51770, 51771	170.....	54087	52407, 52408, 53180,	21.....	51777
222.....	51770	173.....	54087	53839, 54371, 54372, 55477-	36.....	53807, 55720, 56343
226.....	51770	186.....	54087	55479, 55767	Proposed Rules:	
234.....	56341	194.....	54087		1.....	56082
235.....	51770, 53806	195.....	54087	23.....	19.....	56093
265.....	54204	196.....	54087	36.....		
279.....	51510	197.....	54087	104.....	39 CFR	
570.....	55968, 57120	200.....	54087	211.....	111.....	56054, 56057
571.....	51516	201.....	54087	250.....	Proposed Rules:	
590.....	52762	211.....	54087	700.....	111.....	51846, 56367
803.....	54330	212.....	54087	701.....		
869.....	52371	213.....	54087	715.....	40 CFR	
883.....	56324	231.....	54087	732.....	35.....	51484, 53382
885.....	51186	240.....	52407, 54087	784.....	51.....	52676
888.....	54330	245.....	52407	785.....	52.....	51198, 51199, 52148,
1710.....	52144	250.....	52407, 54087	816.....		52676, 53460, 53475, 53476,
Proposed Rules:		251.....	54087	817.....		53809, 54042, 54336, 55178-
25.....	57437	252.....	54087	884.....		55180, 55197, 55422, 55720,
26.....	57440	270.....	52407	890.....		56060, 56344
51.....	55223	275.....	52407	924.....		80.....
200.....	57444, 57457			926.....		55136
220.....	56080	28 CFR		31 CFR		81.....
221.....	56080, 56081	0.....	52145	341.....		53147, 54052
231.....	56080	18.....	54752	346.....		53393, 55178
234.....	56081	42.....	54036	32 CFR		
235.....	56081, 57149, 57458	31.....	53772	706.....		54753
236.....	56080	45.....	57125	763.....		51776
570.....	51227, 56839	Proposed Rules:		853.....		52800
804.....	54087	Ch. I.....	51506, 51832	865.....		55422
805.....	54087	16.....	52183	888d.....		52145
841.....	54087	42.....	54770	33 CFR		
		50.....	52183	110.....		54754, 54755

35..... 53187, 56104
 50..... 55066, 55083
 51..... 56845
 52..... 51619, 51620, 52184,
 52834, 52841, 53490, 53491,
 54088, 54089, 54372, 54772,
 55227-55230, 55480, 55484,
 56369, 56845, 56847, 57458,
 57459, 57461
 58..... 54772, 54773, 55230
 60..... 54385, 56375
 61..... 53842
 80..... 54090
 81..... 52841, 55230, 55231,
 56104, 56848
 122-124..... 55237
 162..... 52628, 54094, 57461
 164..... 52628, 57461
 167..... 52184
 169..... 52184
 180..... 51854, 57461
 228..... 56375
 260-265..... 55232
 408..... 52411
 410..... 52185
 435..... 56115
 717..... 51855
 720..... 54642, 57150

41 CFR

Ch. 44..... 55346
 Ch. 101..... 51201, 53149, 56807
 1-1..... 55721
 1-3..... 55721
 1-4..... 56805
 3..... 53806
 5-1..... 56806, 56807
 5A-7..... 55723
 5A-26..... 55723
 5A-76..... 55723
 7-6..... 55724
 7-7..... 55724
 7-12..... 54755
 8-3..... 55425
 101-26..... 55726
 101-44..... 56808
 128-1..... 55727
Proposed Rules:
 Ch. 12..... 56538
 101-6..... 55769
 101-17..... 52842

42 CFR

Ch. I..... 53806
 Ch. III..... 53806
 Ch. IV..... 53806
 38..... 57395
 57..... 51201, 51205, 55727
 58..... 51209, 51556
 62..... 55426
 110..... 55122
 405..... 51783, 54757, 56060
 57126
 455..... 51559
Proposed Rules:
 51..... 53492
 72..... 51241
 405..... 54774, 57150
 460..... 53189
 461..... 53189

43 CFR

4..... 56347
 4100..... 53154
 8351..... 51740

Proposed Rules:

2560..... 52303
Public Land Orders:
 5741..... 53155
 5742..... 51787, 57396
 5743..... 51787, 57397
 5744..... 51788, 57397
 5745..... 52382, 57398
 5746..... 52382, 57398
 5747..... 57398
 5748..... 57398
 5749..... 57397
 5750..... 57396
 5751..... 57397

44 CFR

64..... 52383, 55433, 55436
 65..... 51212, 51788, 52384,
 55438
 67..... 51213, 51559, 51789,
 51796, 55448, 56062
 70..... 54760-54764, 57398-
 57401
 205..... 53334, 53956
 322..... 53479
Proposed Rules:
 6..... 51426
 67..... 51855-51858, 52416,
 52417, 52422, 52427, 54774-
 54776, 55232-55236, 55483,
 57462-57465

45 CFR

Subtitle A..... 53806
 Ch. II..... 53806, 56682
 Ch. III..... 53806
 Ch. XIII..... 53806, 56682
 64..... 53412
 71..... 54765
 151..... 53996
 185..... 54004
 121i..... 52130
 121o..... 52130
 121p..... 52130
 121q..... 52130
 121r..... 52130
 228..... 55382
 801..... 52800
 1050..... 53155
 1060..... 51561
 1061..... 56348
 1151..... 57129
 1480..... 52782

Proposed Rules:

16..... 57466
 121q..... 52136
 190..... 51243

46 CFR

30..... 52386
 44..... 57401
 61..... 52386
 151..... 52386
 520..... 55729
Proposed Rules:
 Ch. I..... 56538
 Ch. III..... 56538
 11..... 54776
 93..... 54095
 151..... 56378
 536..... 57152

47 CFR

Ch. I..... 52389
 1..... 55200

13..... 52154
 22..... 52149
 64..... 56810
 68..... 52151, 54341
 73..... 51561-51563, 52152,
 52800, 52801, 53156, 53818,
 53821, 55201-55205, 55731,
 57466
 74..... 51563
 76..... 52153
 81..... 52154
 83..... 52154
 87..... 52154
 90..... 51811, 55200
 94..... 55731
 95..... 55200
 97..... 51564

Proposed Rules:

Ch. I..... 51251, 56111
 2..... 51251, 51252, 53843
 13..... 54778
 15..... 51251, 54784, 55775
 21..... 51252
 22..... 53843
 63..... 55777
 73..... 51624, 52843, 52845,
 52846, 52848, 53843, 54786,
 55237-55244, 55491, 56116
 74..... 51252
 81..... 54778
 83..... 54778
 87..... 54778
 90..... 53843, 53844, 55245
 94..... 51252, 55775

48 CFR

Proposed Rules:
 9..... 51253

49 CFR

1..... 54054, 57674
 172..... 55734
 193..... 57402
 301..... 57674
 571..... 51569, 52365, 53157
 840..... 54055
 941..... 52389
 1002..... 51213, 52158, 52802
 1033..... 55213, 51812-51815,
 52158, 52160, 52161, 52803,
 53157, 53824, 53826, 54344,
 56810, 57129, 57419, 57422
 1045A..... 51213, 52158
 1056..... 51213, 52158, 55465
 1062..... 51213, 52158
 1100..... 51213, 52158
 1120A..... 53827, 55205, 57129
 1130..... 51213, 52158
 1150..... 51213, 52158
 1249..... 55209
 1270..... 57422
 1271..... 57422
 1272..... 57422
 1273..... 57422
 1274..... 57422
 1275..... 57422
 1276..... 57422
 1277..... 57422
 1278..... 57422
 1279..... 57422
 1309..... 52161
 1310..... 52161
 1331..... 55734

Proposed Rules:

Ch. I..... 56538
 Ch. II..... 56538

Ch. III..... 56538, 57676
 Ch. IV..... 56538
 Ch. V..... 56538
 Ch. VI..... 56538
 Ch. X..... 53846
 171..... 54097
 173..... 54097
 178..... 54097
 398..... 51625
 571..... 51626, 51628, 57466
 650..... 56742
 1039..... 54111, 54385
 1080..... 53190
 1100..... 55246
 1102..... 51858
 1111..... 56849
 1116..... 52186
 1201..... 57153
 1241..... 57153

50 CFR

10..... 56668
 13..... 56668
 14..... 56668
 17..... 52803, 52807, 53968
 54678, 55654
 18..... 54056
 20..... 55960
 26..... 52391, 55742
 27..... 55742
 32..... 52392, 52393, 54057-
 54060, 54344, 55210, 55743,
 55746-55749, 56063, 56813,
 56814, 57129, 57422-57430
 217..... 57132
 222..... 57132
 285..... 53479
 611..... 53831, 57136
 652..... 53480
 653..... 52810
 661..... 53832
Proposed Rules:
 13..... 52849
 17..... 52849, 53495, 54111,
 54112, 54682, 54685, 56117,
 57680
 20..... 53982
 32..... 52163
 80..... 57471
 216..... 51254
 265..... 51858
 285..... 52853
 611..... 51254, 53500, 53847
 655..... 51254
 661..... 51861, 54113

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS*		DOT/COAST GUARD	USDA/APHIS*
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HHS/FDA		DOT/SLSDC	HHS/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

*NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today**AGRICULTURE DEPARTMENT**

Agricultural Marketing Service—

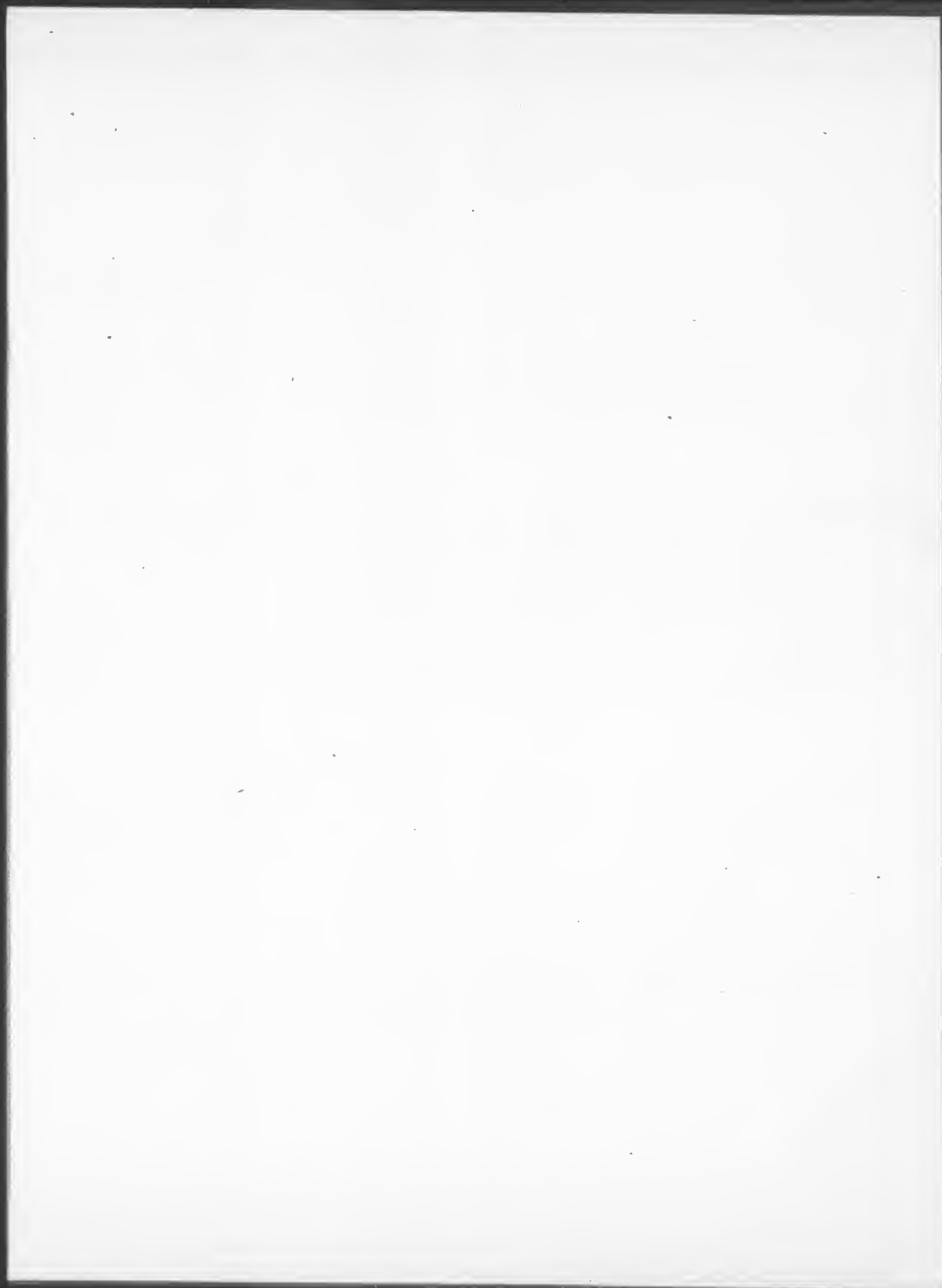
50324 7-28-80 / Papayas grown in Hawaii; handling regulations

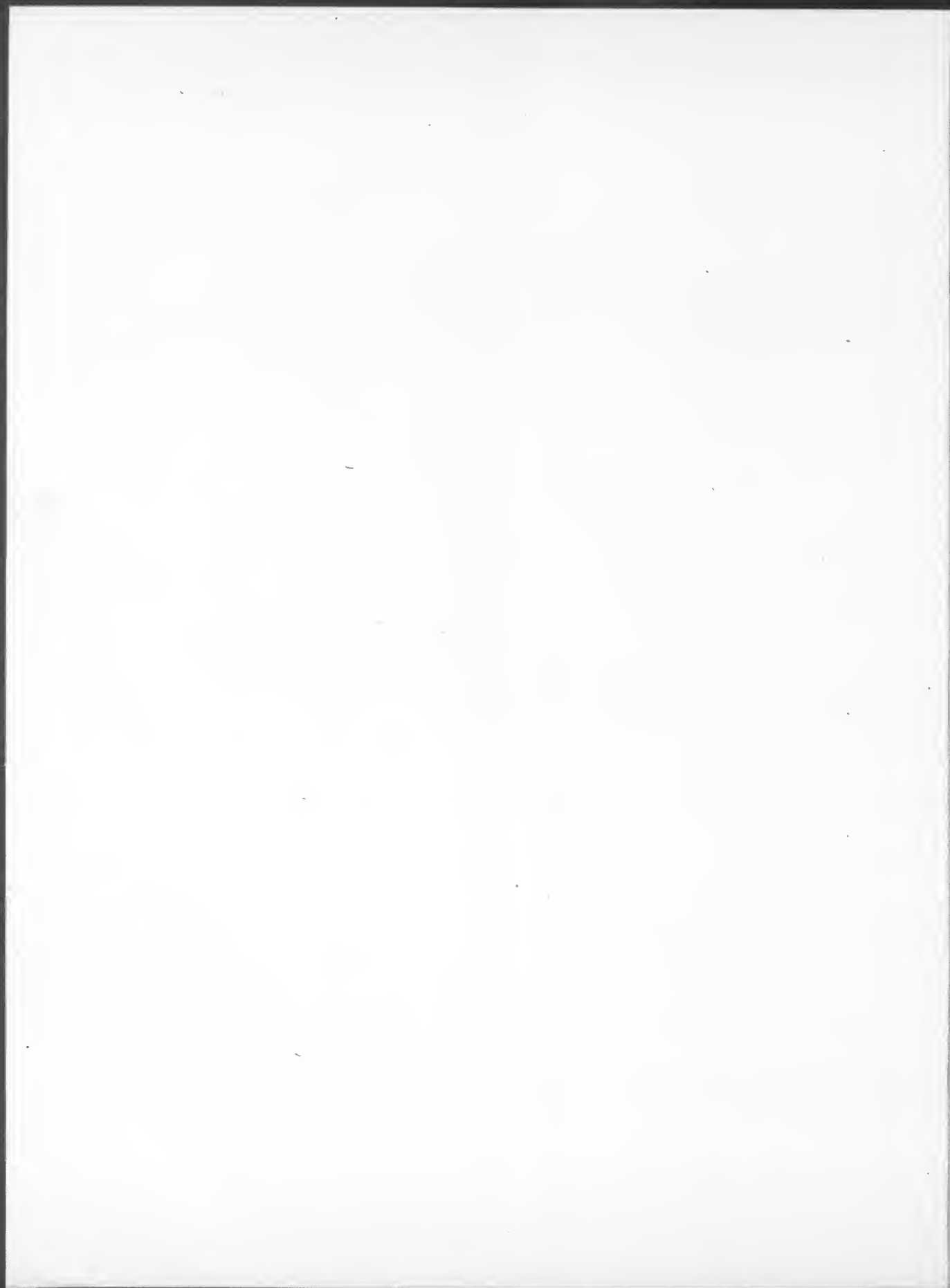
List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last Listing August 14, 1980









Just Released

CODE OF FEDERAL REGULATIONS

(Revised as of April 1, 1980)

<u>Quantity</u>	<u>Volume</u>	<u>Price</u>	<u>Amount</u>
_____	Title 21—Food and Drugs (Parts 1 to 99)	\$6.00	\$ _____
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