requirement that plants operated by cooperative associations need to be located either in the marketing area or in a county adjacent to the marketing area to be eligible for regulation under the order. The continuing action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants and represents producers who supply the fluid milk needs of distributing plants located in southwest Missouri that became regulated under the Southwest Plains order when the adjacent St. Louis-Ozarks order was terminated on April 1, 1985. The action is needed to avoid costly and inefficient movements of milk through plants solely for the purpose of assuring that dairy farmers, who supply the fluid milk needs of southwest Missouri distributing plants, will continue to have their milk priced and pooled under the order.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 16, 1985; published August 22, 1985 (50 FR 33974).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to insure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order or suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 22, 1985 (50 FR 33974) concerning a proposed suspension of a certain provision of the order. Interested persons were given an opportunity to file written data, views, and arguments thereon. No comments opposing an extension of the prior suspension were received.

After consideration of all revelant information, including the proposal set forth in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September 1985 through February 1986 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1106.7(c) the words "located in the marketing area or in a county adjacent to the marketing area".

Statement of Consideration

The order provides for the pooling of cooperative association plants that are located in the marketing area or a county adjacent to the marketing area if 50 percent or more of the cooperative's producer milk is physically received at distributing plants. This action, for September 1985–February 1986, continues a prior suspension that removed the location requirement as a basis of pooling eligibility for plants operated by cooperative associations during the months of April–August 1985.

A continuation of the suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants and represents producers who supply the fluid milk needs of distributing plants located in southwest Missouri. Such plants, and the supplies of producer milk associated with such plants, became regulated under the Southwest Plains order when the adjacent St. Louis-Ozarks order was terminated on April 1, 1985. Supplemental milk has historically been furnished to these distributing plants from Mid-Am's supply plants, which also located in southwest Missouri.

Mid-Am indicates that during the upcoming fall and winter months there will be a sufficient supply of milk available to furnish the fluid milk needs of the distributing plants on a direct-shipped basis. However, since Mid-Am's supply plants are not located inside the marketing area or in a county adjacent to the marketing area, Mid-Am will not be able to pool the milk of its member producers without making costly and inefficient shipments of milk from the supply plants to the distributing plants. With a suspension action, the milk can be pooled on the basis of Mid-Am's total performance in supplying distributing plants with direct-shipped milk, thus eliminating the need to make costly and inefficient movements of milk through plants solely for the purpose of assuring that dairy farmers, who supply the fluid needs of southwest Missouri distributing plants, will continue to have their milk pooled and priced under the order.

Interested parties were given an opportunity to submit written data, views, or arguments concerning this action. No comments in opposition to a continuation of the suspension were received.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure the orderly marketing of milk in the marketing area in that without the suspension costly and inefficient movements of milk would be made solely for pooling purposes;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this suspension. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

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

It is therefore ordered, That the following language in § 1106.7 of the order is hereby further suspended for the months of September 1985 through February 1986.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

§ 1106.7 [Temporarily suspended in part]

In 7 CFR Part 1106 in § 1106.7(c), the words "located in the marketing area or in a county adjacent to the marketing area".

Effective date: September 17, 1985.

Signed at Washington, D.C., on September 11, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-22160 Filed 9-16-85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends, for the months of September through December 1985, provisions of the Eastern Colorado Federal milk order relating to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also suspended for the same period is the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February, and the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Suspension of the provisions was requested by a cooperative association representing producers supplying the market. The action is necessary to assure that the milk of producers who regularly have supplied the fluid milk needs of the market will continue to be priced and pooled under the order without requiring unnecessary and uneconomic movements of milk.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 19, 1985; published August 22, 1985, (50 FR 33976).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 22, 1985 (50 FR 33976) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September through December 1985 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In the second sentence of § 1137.7(b), the words "of March through August".

2. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

3. In the second sentence of § 1137.12(a)(1), the words "20 percent", "of", and "distributing".

Statement of Consideration

This action removes for the months of September through December 1985 the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants. Also suspended for the same period is the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February, and the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant.

The order now provides that a cooperative association may divert a quantity of milk not in excess of 20 percent of the cooperative association's member milk received at pool distributing plants. The suspension allows up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association of producers supplying the market. The cooperative association indicates that producer receipts on the Eastern Colorado order since April 1985 have exceeded those of the same months of 1984 by percentages ranging from 12.2 to 20.5 percent, while producer milk used in Class I has increased only slightly. Mid-Am estimates that during the September through December period, shipments to surplus handling plants in eastern Kansas and Nebraska will average approximately 100 loads per month. Without suspension of the requested provisions, qualification of Mid-Am member milk in western Kansas and western Nebraska under the provisions of the Eastern Colorado order would require approximately 40 loads of milk per month to be shipped to pool distributing plants. Such shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. The cooperative contends that suspension action therefore is necessary to prevent uneconomic movements of milk for the sole purpose of pooling the milk of producers historically associated with the Eastern Colorado order.

No comments in opposition to the proposed action were received. However, Mountain Empire Dairymen's Association, a cooperative association which represents a substantial majority of the producers on the market, filed comments supporting the suspension action as a means of avoiding costly and inefficient movements of milk.

Milk production is significantly above year-earlier levels and consequently a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses. Favorable weather conditions and ample feed supplies provide strong indications that current production trends will continue, without offsetting increases in Class I use. In view of these circumstances, it is concluded that the diversion limits and "touch-base" requirements of the Eastern Colorado milk order should be suspended for the months of September through December 1985 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

The authority citation for Part 1137 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended: 7 U.S.C. 601-674.

It is therefore ordered, That the following provisions of the Eastern Colorado order are hereby suspended for the months of September through December 1985:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

§ 1137.7 [Temporarily suspended in part]

In 7 CFR Part 1137, in the second sentence of § 1137.7(b), the words "of March through August".

§ 1137.12 [Temporarily suspended in part]

1. In 7 CFR Part 1137, in the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

2. In 7 CFR Part 1137, in the second sentence of § 1137.12(a)(1), the words "20 percent", "of", and "distributing".

Effective Date: September 17, 1985.

Signed at Washington, D.C., on September 11, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-22161 Filed 9-16-85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1150

Dairy Promotion Program; Determination of Approval; Order of Continuance

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Determination of approval and continuance of rule.

SUMMARY: This document orders the continuation of the Dairy Promotion and Research Order that became effective May 1, 1984. This program provides for dairy product promotion, research and nutrition education. It is funded by a mandatory 15-cent per hundredweight assessment on all milk marketed by producers in the 48 contiguous States. A referendum was conducted in August 1985 to determine whether producers favored continuation of the program. More than the necessary majority of the producers voting in the referendum favor continuation of the program. Thus, it is ordered that the Dairy Promotion Program shall remain in effect.

FOR FURTHER INFORMATION CONTACT: Richard M. McKee, Chief, Promotion and Research Staff, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6909.

SUPPLEMENTARY INFORMATION: Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, which authorized and mandated the implementation of the Dairy Promotion and Research Order, also provided that a referendum be conducted among producers within the 60-day period preceding September 30, 1985, to ascertain whether the Dairy Promotion and Research Order should be continued. Continuation of the program is authorized only if the Secretary determines that is has been approved by not less than a majority of the producers voting in the referendum, who during a representative period (as determined by the Secretary) were engaged in the production of milk for commercial use. The representative period for the purposes of this referendum was April 1985. Of the 120,330 producers voting, 107,926 or 89.69 percent favored continuation of the order.

It is hereby determined, That continuation of the Dairy Promotion and Research Order has been approved by not less than a majority of the producers voting in the referendum, who during the April 1985 representative period were engaged in the production of milk for commercial use.

It is therefore ordered, That the Dairy Promotion and Research Order, 7 CFR Part 1150, that is now in effect shall be continued.

List of Subjects in 7 CFR Part 1150

Milk, Dairy products, Promotion, Research.

The authority citation for 7 CFR Part 1150 continues to read as follows:

Authority: (Pub. L. 98-180, 97 Stat. 1128)

Signed at Washington, D.C., on: September 11, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-22162 Filed 9-16-85; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Procedures for Production or Disclosure of Records or Information in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) has added Subpart D to Part 9 of Chapter 10 of the Code of Federal Regulations to prescribe procedures with respect to the production of documents or disclosure of information in response to subpoenas or demands of courts or other judicial or quasi-judicial authorities in State and Federal proceedings (excluding Federal grand jury proceedings). This rule clarifies Commission procedures regarding subpoenas or other judicial or quasi-judicial demands on NRC employees to produce NRC records or to disclose information through testimony or depositions. The rule also ensures that the responsibility for determining the response to the demands is placed on the appropriate Commission official.

EFFECTIVE DATE: October 17, 1985.

FOR FURTHER INFORMATION CONTACT: Theresa W. Hajost, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634-1493.

SUPPLEMENTARY INFORMATION:

I. Background

Over the past several years there has been a substantial increase in the Nuclear Regulatory Commission's inspection and investigation functions resulting in enforcement actions taken against NRC licensees. As a result of this activity, and in the wake of many cancellations of nuclear power plants, there are now increasing demands for access to NRC records and for testimony by NRC employees by parties in litigation to which the NRC is not a party. This regulation is limited to situations where the NRC is not a party. NRC personnel have been and are expected to be subpoenaed for depositions or testimony in private actions and called upon to produce NRC records or to disclose information relating to licensing and enforcement activities. The NRC had not uniform written policies or procedures for dealing with these demands. It is the purpose of these amendments to prescribe a uniform policy to provide NRC personnel with clear guidance on how to respond to subpoenas or other demands for disclosure.

Following the lead of other Federal agencies that have established a "clearinghouse" or centralized decisionmaking approach to subpoenas, the amendments establish that copies of all subpoenas or other demands served on NRC employees will be referred to the General Counsel. A minor change requiring simultaneous service of such demands on the General Counsel was made in order to expedite this process and ensure efficient internal administration of subpoenas or other demands for production or disclosure. The General Counsel is to review the proposed discovery, ascertain the scope of the proposal, and decide on the approach to be followed in each case, including authorizing litigation, if necessary, to resolve disputes between the NRC and the party seeking the discovery. In addition, the amendments set forth the procedures to be followed in the event a response to a subpoena is required before instructions from the General Counsel are received. If a court or other authority declines to stay its demand pending the employee's receipt of instructions, the regulations direct the employee to invoke the case of *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951) and these regulations. *Touhy* holds that government agencies may lawfully establish housekeeping procedures to facilitate the orderly processing of requests for agency information. It further provides that a requesting party's failure to follow those procedures may be valid grounds for an agency and its employees to refuse to provide the requested information.

In deciding whether and to what extent to make documents or testimony available pursuant to a demand, the General Counsel is to consider, among other things, whether the discovery would be proper under the general provisions governing discovery set forth in Fed. R. Civ. P. 26(b) and under the rules of procedure governing the case or matter in which the demand arose. The General Counsel must also consider whether disclosure is appropriate under the relevant substantive law concerning various discovery privileges, including those unique to the government and its agencies, general statutes and regulations governing possession and use of government and corporate information; laws governing trade secret or proprietary information; policies governing ongoing investigations or concerning investigative methods, informants, or similar considerations. The General Counsel will advise the party seeking discovery of the results of the NRC's deliberations in writing as far in advance of the response date as is practicable. Any claim of privilege or assertions of unreasonable burden which cannot be resolved by the General Counsel and the requesting party will, as always, ultimately be reviewed and resolved by the appropriate court.

II. Comments

Four letters of comment were received, each containing several comments and suggestions. The individual comments and suggestions were considered by NRC and are discussed in terms of two categories: (A) those that led to a change in the regulations as proposed and (B) those that did not lead to any changes.

A. Comments That Led to a Change in the Regulations as Proposed

1. *Former employees should not be included within the scope for the rule.* Each of the four commenters responded to Commissioner Asselstine's request for comments on the desirability of applying these regulations to former employees. All four commenters opposed applying the rule to former employees. The Commission has decided not to extend these regulations to cover former employees.

2. *Before disclosing documents in its files which were submitted by contractors, applicants, or licensees and which may contain trade secrets or other privileged information, the NRC should contact the submitter.* In order to ensure, before disclosure of any information or production of documents, that the material is reviewed to see if it contains any trade secrets or proprietary information, the words "trade secrets or proprietary information" have been added to the list of items for the General Counsel to consider when he or she is deciding whether and to what extent to make documents or testimony available pursuant to a demand. The NRC already has a general policy of contacting the submitter of proprietary information before releasing such information. *See* 10 CFR 2.790.

B. Comments Which Did Not Lead to Any Changes in the Final Rule

1. *The NRC has no legal authority to promulgate rules dealing with demands for testimony of its employees.* The authorities relied on in the publication of the proposed rule where section 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201) and section 210, Pub. L. 93-438; 88 Stat. 1242 (42 U.S.C. 5841). Section 201 of the Energy Reorganization Act of 1974 establishes the Nuclear Regulatory Commission and transfers to it all the licensing and regulatory functions of the Atomic Energy Commission. *See* 42 U.S.C. 5841(f). Section 161 of the Atomic Energy Act of 1954 details the general duties of the Atomic Energy Commission, including promulgating such rules as necessary to carry out the purposes of the Act. *See* 42 U.S.C. 2201(p). The Courts have found this section to be a broad grant of rulemaking authority paralleling the discretion given NRC in its broad regulatory scheme which enables it to achieve its statutory objective. *See Public Service Company of New Hampshire* v. *Nuclear Regulatory Commission*, 582 F.2d 77, 82 (1st Cir.), *cert. denied*, 439 U.S. 1046 (1978); *Westinghouse Electric Corp.* v. *Nuclear Regulatory Commission*, 555 F. 2d 82, 83 (3d Cir. 1977); *Siegel* v. *Atomic Energy Commission*, 400 F. 2d 778, 783 (D.C. Cir. 1968). Proper protection of classified and safeguards materials, e.g., 42 U.S.C. 2167, proprietary and trade secrets data, e.g., 18 U.S.C. 1905, and various types of privileged information is necessary if the NRC is to carry out its statutory duties. Thus, the NRC has clear authority to promulgate these rules.

2. *Touhy* v. *Ragen does not apply to the NRC because it is an independent, not an executive, agency.* The Department of Justice regulations which were upheld in *Touhy* v. *Ragen*, 340 U.S. 462 (1951), were promulgated under the Federal housekeeping statute, 5 U.S.C. 22 (now 5 U.S.C. 301), which applies only to executive and military departments. Although the Federal housekeeping statute does not apply to the NRC, 42 U.S.C. 2201(p), one of the statutes under which these regulations were promulgated, gives the NRC the authority to promulgate such rules as it believes are necessary to carry out the Atomic Energy Act. In *Touhy*, the Supreme Court's inquiry focused on the validity of the Department of Justice's rule suggesting that as long as the agency regulations are validly promulgated under a statutory grant of authority, the *Touhy* rationale will apply. Thus, applying the reasoning of the Supreme Court in *Touhy*, the independent status of the NRC would be irrelevant as long as the rule was valid. The case cited in the comment, *General Engineering, Inc.* v. *National Labor Relations Board*, 341 F.2d 367 (9th Cir. 1965), held that the National Labor Relations Board NLRB) was not an executive agency and, therefore, could not promulgate rules based on the Federal housekeeping statute. The court, however, did not strike down the

NLRB's rule which was also promulgated under the general authority given it to promulgate such rules as would further its mission. After some preliminary observations on the validity of the rule, the court considered whether the NLRB's claim of privilege was valid. 341 F.2d 367 at 375. In another case concerning the NLRB and assertion of privilege, the court recognized that "[A]n agency has a legitimate and tidy housekeeping objective in centralizing the determinations of when to assert and when not to assert a privilege." *National Labor Relations Board* v. *Capitol Fish Co.*, 294 F.2d 868, 875 (5th Cir. 1961).

Although the facts in *Touhy* dealt solely with written records, the Court's analysis is equally applicable to information contained in NRC files which is sought by a demand for oral testimony. Lower courts have applied *Touhy* to oral testimony. *See United States* v. *Winner*, 641 F.2d 825 (10th Cir. 1981); *United States* v. *Allen*, 554 F.2d 399, 406 (10th Cir. 1977); *Davis* v. *Braswell Motor Freight Lines, Inc.*, 363 F.2d 600 (5th Cir. 1966). It would be too easy to circumvent an agency's valid claim to withhold certain information if all that need be done to gain access to the desired information would be to rephrase a demand to request oral testimony.

3. *Incorporate additional language recognizing that these regulations do not provide any new or additional authority to withhold information or testimony.* These regulations do not give the Commission any new substantive bases for claims of privilege; they do not purport to do so; and thus there is no need to state this fact in the body of the regulations. Failure to follow the procedures set forth in the regulations, however, may be grounds for not providing the requested information. *See Touhy* v. *Ragen*, 340 U.S. 462 (1951).

4. *The General Counsel should be required to inform the Commission of any adverse determination under these regulations.* The Commission does not believe this is necessary. The NRC manual delegates to the General Counsel the responsibility of representing and protecting the interests of the NRC in various court proceedings. NRC–0115–032.[1]

[1] 10 CFR 1.2 states: "The definitive statement of the NRC's . . . delegations of authority is in the Nuclear Regulatory Commission Manual and other elements of the NRC's Management Directives System . . ." The NRC Manual is available in the NRC Public Document Room, located at 1717 H Street, NW, Washington, DC.

5. *The proposed regulations could delay or withhold information from State Public Utilities Commissions and State Utility Consumer Advocates.* The new regulations are merely procedural and give the NRC no new authority to withhold either information or records. The Commission feels that any slight delay which may be caused by compliance with these regulations is more than offset by the benefits of allowing the Commission the opportunity to better protect privileged information.

6. *The rule should contain a policy statement that the NRC intends to cooperate fully with other tribunals in the production of the requested documents and testimony.* The purpose behind this rule is to allow the NRC to respond to such requests expeditiously. The NRC is in the same position as any other entity from which discovery is requested and owes the same duties of cooperation. The Commission does not believe such a statement is necessary. Its objections to discovery or claims of privilege will be treated like those of any other governmental entity.

7. *The rule's requirement that litigants submit an outline or plan with their demand for oral testimony is inappropriate.* One comment suggested that the Commission's requirement for a plan or summary of the oral testimony desired will affront other tribunals. The Commission disagrees. The NRC requires that a plan of the oral testimony desired be submitted only so that the General Counsel may ascertain whether the proposed testimony will lead to the disclosure of privileged information or will be unnecessarily burdensome. The Commission has acknowledged that any claim of privilege or assertion of unreasonable burden will ultimately be reviewed by a court. The opportunity for judicial review of the General Counsel's decision makes more explicit guidelines for the decision, as suggested by another comment, unnecessary.

Another comment suggested that the NRC's requirement of a plan will require divulgence of attorney work product. The requested information need not include material which would be subject to the attorney work product privilege. It merely must provide the NRC with details in order to allow it to determine whether to oppose the discovery request on grounds of privilege or burden. The NRC has a legitimate interest in obtaining this information.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget Approval number 3150–0043.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule affects only those activities which involve NRC regulatory, licensing, or enforcement activities. The companies that own, build, or design these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CRF Part 121.

List of Subjects in 10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201 Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841). Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552a; Subpart C also issued under 5 U.S.C. 552b.

2. Section 9.1 is revised to read as follows:

§ 9.1 Scope.

The regulations in this part: (a) Implement the provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability to the public of Nuclear Regulatory Commission records for inspection and copying; (b) implement the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, with respect to disclosure and availability of certain Nuclear Regulatory Commission records maintained on individuals; (c) implement the provision of the Government in the Sunshine Act, 5 U.S.C. 552b, with respect to opening Commission meetings to public observation; and (d) describe procedures with respect to the production of agency records.

information, or testimony in response to subpoenas or demands of courts or other judicial or quasi-judicial authorities in State, and Federal proceedings.

3. Section 9.1a is revised to read as follows:

§ 9.1a Subparts.

Subpart A sets forth special rules applicable to matters pertaining to the Freedom of Information Act. Subpart B sets forth special rules applicable to matters pertaining to the Privacy Act of 1974. Subpart C sets forth special rules applicable to matters pertaining to the Government in the Sunshine Act. Subpart D sets forth Commission procedures regarding subpoenas or other judicial or quasi-judicial demands on current or former employees for the production of NRC records or the disclosure of information through depositions or testimony.

4. In § 9.12, paragraph (b) is revised to read as follows:

§ 9.12 Production or Disclosure of Exempt Records.

* * * * *

(b) NRC personnel and NRC contractors from whom a record exempt from disclosure is sought by non-judicial means shall follow the procedure specified below. Where the record is sought by judicial or similar process, NRC personnel and contractors shall follow the procedure specified in Subpart D:

(1) If an exempt record is sought from NRC personnel by non-judicial means, the request shall promptly be forwarded to the Director, Office of Administration, who shall process the request as provided in this Part or take such other action as may be appropriate.

(2) If an exempt record is sought from an NRC contractor by non-judicial means, the request shall promptly be forwarded to the NRC contracting officer administering the contract who will then follow the procedure specified in paragraph (b)(1) of this section.

5. Subpart D (§§ 9.200 thru 9.204) is added to read as follows:

Subpart D—Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

Subpart D—Production of Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

§ 9.200 Scope of subpart.

(a) This subpart sets forth the procedures to be followed when a subpoena, order, or other demand (hereinafter referred to as a "demand") for the production of NRC records or disclosure of NRC information, including testimony regarding such records, is issued by a court or other judicial or quasi-judicial authority in a proceeding, excluding Federal grand jury proceedings, to which the NRC is not a party. Information and documents subject to this subpart include:

(1) Any material contained in the files of the NRC;

(2) Any information relating to material contained in the files of the NRC.

(b) For purposes of this subpart, the term "employee of the NRC" includes all NRC personnel as that term is defined in § 9.2, including NRC contractors.

(c) This subpart is intended to provide instructions regarding the internal operations of the NRC and is not intended, and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the NRC.

§ 9.201 Production or disclosure prohibited unless approved by appropriate NRC official.

No employee of the NRC shall, in response to a demand of a court or other judicial or quasi-judicial authority, produce any material contained in the files of the NRC or disclose, through testimony or other means, any information relating to material contained in the files of the NRC, or disclose any information or produce any material acquired as part of the performance of that employee's official duties or official status without prior approval of the General Counsel of NRC.

§ 9.202 Procedure in the event of a demand for production or disclosure.

(a) Prior to or simultaneous with a demand upon an employee of the NRC for the production of material or the disclosure of information described in § 9.200, the party seeking production or disclosure must serve the General Counsel of the NRC with an affidavit or statement as described in paragraphs (b) (1) and (2) of this section. Whenever a demand is made upon an employee of the NRC for the production of material or the disclosure of information described in § 9.200, that employee shall immediately notify the General Counsel. If the demand is made upon a regional NRC employee, that employee shall immediately notify the Regional Counsel who, in turn, shall immediately request instructions from the General Counsel.

(b)(1) If oral testimony is sought by the demand, a summary of the testimony desired must be furnished to the General Counsel by a detailed affidavit or, if that is not feasible, a detailed statement by the party seeking the testimony or the party's attorney. This requirement may be waived by the General Counsel in appropriate circumstances.

(2) The General Counsel may request a plan from the party seeking discovery of all demands then reasonably foreseeable, including but not limited to, names of all NRC personnel from whom discovery is or will be sought, areas of inquiry, length of time away from duty involved, and identification of documents to be used in each deposition, where appropriate.

(c) The General Counsel will notify the employee and such other persons, as circumstances may warrant, of his or her decision on the matter.

§ 9.203 Procedure where response to demand is required prior to receiving instructions.

If a response to the demand is required before the instructions from the General Counsel are received, a U.S. attorney or NRC attorney designated for the purpose shall appear with the employee of the NRC upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate NRC official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions. In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of a U.S. or NRC attorney on the employee's behalf, the employee shall respectfully request the demanding authority for sufficient time to obtain advice of counsel.

§ 9.204 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made in accordance with § 9.203 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Dated at Washington, DC, this 11th day of September, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-22227 Filed 9-16-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 84-ASO-27]

Alteration of Jet Route J-91; Lakeland, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns a portion of Jet Route J-91 in the vicinity of Lakeland, FL, to improve the flow of air traffic between the Atlanta, GA, and Miami, FL, terminal areas. This action will aid flight planning and reduce controller workload.

EFFECTIVE DATE: 0901 GMT, November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

On January 30, 1985, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign J-91 between Atlanta, GA, and Miami, FL, (50 FR 4230) to improve the traffic flow between those terminal areas. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations realigns J-91 between Atlanta, GA, and Miami, FL. Recent construction in the vicinity of the Lakeland, FL, VORTAC has rendered J-89 unusable north of Lakeland; therefore, traffic proceeding over Atlanta to South Florida is routinely rerouted via Atlanta, J-91 to Cross City, FL, then vectors until southeast of Lakeland. With J-91 realigned to replace the unusable portions of J-89, traffic flow and flight planning is improved, controller workload is reduced, and arrival/departure operations in the Atlanta and Miami terminal areas are more efficiently handled by the system.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the critieria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Jet routes, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69; and 49 CFR 1.47.

2. § 75.100 is amended as follows:

J-91 [Revised]

From INT Orlando FL, 242° and Cross City, FL, 136° radials; Cross City, INT Cross City 338° and Atlanta, GA, 169° radials; Atlanta; Knoxville, TN; Henderson, WV; to Bellaire, OH.

Issued in Washington, D.C., on September 6, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-22144 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 24764; Amdt. No. 1303]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

Incorporation by reference—Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents,