and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the Regulatory Docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Applies to the following helicopters certificated in any category (Airworthiness Docket No. 87–ASW–22).

(a) Model 206A and 206B helicopters equipped with the following mast assemblies, P/N 206–010–332–121: Serial Numbers FAJF–58340 thru 58353, 58395 thru 58398, 58400, 58402 thru 58408, 58421 and 58423 thru 58434.

Note: The following model 206B serial numbered helicopters were delivered with the affected masts: 3933, 3934, 3937 thru 3940, 3942, 3944 thru 3946, 3953 thru 3955, and 3958.

(b) Model 206L, 206L–1, and 206L–3 helicopters equipped with the following mast assemblies, P/N 206–040–535–105: Serial Numbers NJF–935 thru 973, 1000, 1003, 1004, 1006 thru 1012, 1014 thru 1019, 1022 thru 1024, 1026, 1040 thru 1042, 1046, 1050 thru 1057, 1059, 1066, 1068, 1073, 1079, 1086, 1087, 1089 thru 1097, 1099, 1101, 1102, 1123, 1124, 1129, 1135, 1141, 1143, 1145, 1146, 1149, 1151, 1153, 1156, 1157, 1161, 1162, 1165, 1167, and 1169 thru 1172.

Note: The following Model 206L–3 serial numbered helicopters were delivered with the affected masts: 51173 thru 51175, 51178, 51179, 51181, 51183 thru 51185, 51187 thru 51191, 51194 thru 51205, and 51208 thru 51211.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the main rotor mast, accomplish the following:

(a) Before further flight, determine if an affected serial number main rotor mast is installed on the helicopter.

(b) Within the next 25 hours' time in service after receipt of this AD but no later than May 31, 1987, remove the affected serial number main rotor mast from service and replace it with an airworthy part.

(c) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Helicopter Certification Branch, Aircraft Certification Division, FAA, Southwest Region, Fort Worth, Texas 76193–0170.

Note: Bell Helicopter Alert Service Bulletin Nos. 206–87–37, dated 4/23/87 and 206–44, dated 4/23/87 pertain to this AD.

This amendment becomes effective August 8, 1988, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD No. 87–10–11, issued May 19, 1987 which contained this amendment.

Issued in Washington, DC, on July 15, 1988.

Daniel P. Salvano,

Acting Director, Office of Airworthiness.

[FR Doc. 88–16361 Filed 7–20–88; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 88–NM–15–AD; Amdt. 39–5983]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection of the body station (BS) 1241 bulkhead splice strap and forging for cracks, and repairs, if necessary. This action requires that airplanes on which the strap replacement modification was incorporated in accordance with Boeing Service Bulletin 747–53–2219 be subjected to more frequent repetitive inspections. This action also requires that factory-modified airplanes be inspected. This action is prompted by reports indicating that modified airplanes are still subject to cracking. This condition, if not corrected, could lead to failure of the bulkhead forging, which could lead to loss of cabin pressure or the inability to withstand fail-safe loads.

EFFECTIVE DATES: August 28, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, ANM–120S; telephone (206) 431–1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 84–18–01, Amendment 39–4905 (49 FR 35621; September 11, 1984), was published in the **Federal Register** on March 18, 1988 (53 FR 8927). This new AD affects additional airplanes previously modified by the manufacturer and increases the frequency of inspections performed on certain airplanes already affected. This action is necessary because service experience with the preventative modification indicated that it had a greater propensity for cracking than had been expected.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The airplane manufacturer commented that paragraphs A.2. and D.2. of the proposed rule should be revised to clarify that inspections at the forward hole are to be initiated if a crack is found on the aft edge of the bulkhead splice strap or at the aft hole.

The words "on the aft edge of the bulkhead splice strap" were not included in the proposed rule. The FAA concurs with this comment and the final rule has been revised accordingly. This change is for clarification purposes only and does not increase the scope of the rule.

The airplane manufacturer also commented that an ultrasonic inspection procedure would be an acceptable substitute for the eddy current inspection procedure which was proposed in the NPRM. The manufacturer, however, has not yet published its ultrasonic inspection procedures. Therefore, the final rule is adopted as proposed, in this regard. Paragraph E. of the AD provides for interested parties to request FAA approval for substituting ultrasonic inspections for eddy current inspections as an alternate means of compliance with the AD.

The final rule has been revised to remove certain references to the use of "later FAA-approved revisions" of the applicable service bulletin, in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisons of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by Paragraph E.

After careful review of the available data, including comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the changes previously noted.

It is estimated that 40 additional airplanes of U.S. registry will be affected by this AD, that it will take approximately 110 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $176,000.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The Authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 84–18–01, Amendment 39–4905 (49 FR 35621; September 11, 1984), with the following new airworthiness directive:

Boeing: Applies to Groups 1, 2, and 3 Model 747 series airplanes, certificated in any category, listed in Boeing Service Bulletin 747–53–2283, dated December 17, 1987. Compliance required as indicated, unless previously accomplished.

To prevent failure of the body station (BS) 1241 bulkhead forging, accomplish the following:

A. For Group 1 airplanes on which the initial inspection requirements of airworthiness directive (AD) 84–18–01 have not been conducted as of the effective date of this AD, and which have not been modified by incorporation of a replacement strap in accordance with Boeing Service Bulletin 747–53–2219, dated February 19, 1982, or later revision:

1. Prior to the accumulation of 10,000 landings (13,000 landings for Model 747–100SR), perform an eddy current inspection of the BS 1241 bulkhead frame splice strap at the aft hole and visually inspect the aft edge of he strap, in accordance with Boeing Service Bulletin 747–53–2283, dated December 17, 1987. If no cracks are found inspect thereafter at intervals not to exceed 7,000 landings (10,500 landings for Model 747–100SR).

2. If a crack is found on the aft edge of the bulkhead splice strap or at the aft hole, prior to further flight, perform an eddy current inspection for cracks in the bulkhead frame splice strap and forging at the adjacent forward hole, in accordance with Boeing Service Bulletin 747–53–2283, dated December 17, 1987. If no cracks are found or if cracks are found only in the bulkhead splice strap when inspecting at the foward hole, then repeat the inspection at the forward hole at intervals not to exceed 3,000 landings (4,500 landings for Model 747–100SR).

3. If cracks are found at the forward hole in the bulkhead forging, repair as follows:

a. If the cracks found in the forging do not exceed the forward hole rework limits specified in Boeing Service Bulletin 747–53–2283, dated December 17, 1987, and the hole coldwork has not been previously accomplished, repair prior to further flight, in accordance with the service bulletin and then continue to inspect in accordance with paragraph A.2. of this AD.

b. If the cracks found in the forging exceed the forward hole rework limits, or if the hole coldwork has been previously accomplished, repair in accordance with an FAA-approved procedure prior to further flight.

B. For Group 1 airplanes on which the initial inspection requirements of AD 84–18–01 have been conducted as of the effective date of this AD, and which have not been modified by incorporation of a replacement strap in accordance with Boeing Service Bulletin 747–53–2219, dated February 19, 1982, or later revisions: Continue to perform the repetitive inspections, and to make repairs, if necessary, as described in paragraph A. of this AD.

C. For Group 1 airplanes that have been modified by incorporation of a replacement strap in accordance with Boeing Service Bulletin 747–53–2219, dated February 19, 1982, or later revisions: Perform inspections and repairs, if necessary, as described in paragraph A. of this AD, except that the initial inspections must be conducted within 1,000 landings (1,500 landings for Model 747–100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings since the time of modification (13,500 landings for Model 747–100SR), whichever occur later.

D. For Group 2 and 3 airplanes:

1. Within the next 1,000 landings (1,500 landings for Model 747–100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings (13,000 landings for Model 747–100SR) total time-in-service, whichever occurs later, perform an eddy current inspection of the BS 1241 bulkhead splice strap at the aft hole and visually inspect the aft edge of the strap, in accordance with Boeing Service Bulletin 747–53–2283, dated December 17, 1987. If no cracks are found, repeat the inspections thereafter at intervals not to exceed 7,000 landings (10,500 landings for Model 747–100SR).

2. If a crack is found on the aft edge of the bulkhead splice strap or at the aft hole, prior to further flight perform an eddy current inspection for cracks in the bulkhead frame splice strap and forging at the adjacent forward hole, in accordance with Boeing Service Bulletin 747–53–2283, dated December 17, 1987. If not cracks are found or if cracks are found only in the bulkhead splice strap when inspecting at the forward hole, repeat the inspections at the forward hole at

intervals not to exceed 3,000 landings (4,500 landings for Model 747–100SR).

3. If cracks are found at the forward hole in the bulkhead forging, repair in accordance with an FAA-approved procedure prior to further flight.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington, 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 84–18–01, Amendment 39–4905.

This amendment becomes effective August 28, 1988.

Issued in Washington, DC, on July 14, 1988.

Daniel P. Salvano,

Acting Director, Office of Airworthiness.

[FR Doc. 88–16362 Filed 7–20–88; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket Number 88–ACE–05]

Alteration of Transition Area; Milford, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the legal description and effective date for the Milford, Iowa, transition area (53 FR 23220, June 21, 1988). Subsequent to the issuance of this final rule, a typographical error was discovered in the latitude coordinate for the Fuller Municipal Airport transition area as well as an incorrectly cited effective date.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: Subsequent to the issurance of the Rule altering the transition area at Milford, Iowa, it has been determined that the latitude coordinate for the Fuller Municipal Airport, Milford, Iowa, was incorrectly cited as "43°19'17" W." instead of 43°19'57" N." In addition, the effective date was in error. It should be August 25, 1988, rather than October 22, 1988. (53 FR 23220; June 21, 1988). Action is taken herein to make these corrections. Since these changes are editorial in nature, notice and public procedure thereon are not considered necessary and are contrary to the public interest.

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 criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 88–13862 on page 23220 of the **Federal Register** on Tuesday, June 21, 1988, is corrected to read as follows:

Fuller Municipal Airport, Milford, Iowa [Corrected]

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

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended to read as follows:

That airspace extending upward from 700 ft. above the surface within a five (5) mile radius of the Fuller Municipal Airport (Lat. 43°19'57" N., Long. 95°09'29" W.) and within 1.75 mile each side of the 190° bearing from the Fuller Municipal Airport extending from the five (5) mile radius to 5.5 miles south of the airport.

This amendment becomes effective at 0901 u.t.c. August 25, 1988.

Issued in Kansas City, Missouri, on July 11, 1988.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 88–16364 Filed 7–20–88; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1261

Processing of Monetary Claims (General)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Policy statement.

SUMMARY: NASA is amending 14 CFR Part 1261 by adding § 1261.316 and § 1261.317. The National Aeronautics and Space Act of 1958, as amended (Pub. L. 85–568, 72 Stat. 426), grants the Administrator of NASA broad powers with regard to the settlement of civil claims arising out of activities of the agency. In addition, NASA, like other Federal agencies, can settle claims under the Federal Tort Claims Act, as amended. See 28 U.S.C. 2671–2680. However, there currently exists no clear statement of policy regarding the Administrator's ability to use agency funds to indemnify employees who become liable for money judgments or personal damage claims as a result of official acts. This policy statement, which will amend current agency regulations regarding the procedures for handling claims against employees, clarifies the situations where such indemnification may be granted. This policy statement is similar to one recently adopted by the Department of Justice. See 51 FR 27021–27023 dated July 23, 1986.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Frankle, Deputy General Counsel, Code G, National Aeronautics and Space Administration, Washington, DC 20546, 202–453–8608.

SUPPLEMENTARY INFORMATION: Existing NASA regulations do not address the issue of indemnification of agency employees who are sued in their individual capacity and who suffer an adverse judgment or other monetary consequences as a result of conduct taken within the scope of their employment. Lawsuits against Federal employees in their personal capacity have proliferated since the Supreme Court's decision in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). As reported by the Department of Justice, since 1971 over 12,000 claims have been filed against Federal employees; nearly 3,000 actions are now pending.

While NASA's workforce is well-disciplined, the risk of personal liability and the burden of defending a suit as a result of performing one's employment duties can have a significant effect on NASA operations. An adverse judgment against any Federal employee has detrimental consequences for both the individual and the Government. The potential for being found personally liable and the uncertainty as to what actions may culminate in a lawsuit intimidate all employees, discouraging initiative and decisiveness. As Professor Kenneth Culp Davis has stated:

> The public suffers whenever a government employee resolves doubts in order to protect his own pocketbook instead of resolving doubts in order to protect the public interest—courageous action of public employees is often essential, and it should not be discouraged by the threat of a lawsuit against the employee personally.
>
> K. Davis, Constitutional Torts 25, 28 (1984).

On a broader scale, this fear of personal liability affects government operation, decision-making, and policy determination.

NASA believes that the potential of significant judgments or other monetary consequences flowing from lawsuits against Federal employees in their personal capacity can seriously hinder effective functioning. A clarification in agency policy to recognize NASA's inherent ability to indemnify its employees would help alleviate this problem and afford NASA employees the same protection now given to other Federal officials. As noted previously, the Department of Justice has recently enacted a similar amendment to its housekeeping regulation allowing for indemnification of Department of Justice employees. See 28 CFR 50.15. In this amendment, the Department of Justice specifically recognized the inherent authority of all Executive Branch agencies to indemnify employees for liability resulting from official acts. *Id.*

The clarification in NASA policy published today does not mandate that the agency indemnify any employee who suffers an adverse judgment, verdict, or monetary award. To merit indemnification, the actions which give rise to the claim or judgment must fall within the individual's current or past scope of employment and indemnification must be in the interest of the National Aeronautics and Space Administration as determined by the Administrator or designee. In rare administrative instances, where the Administrator deems it appropriate, an individual damage claim may be settled with agency funds prior to entry of judgment. Absent exceptional circumstances, however, NASA will not agree to indemnify an employee or settle a claim before entry of an adverse determination. This provision is designed to discourage claims brought against agency employees solely in order to pressure the agency into settlement. Denial of dispositive motions or delay in deciding such motions ordinarily will not lead to settlement before trial and judgment.

In addition, the statement also reaffirms that agency attorneys participating in the process by which the agency seeks representation for present or former employees sued, subpoenaed, or charged in their individual capacity undertake a full attorney-client relationship with those employees with all attendant protections.

This policy statement will not have a significant economic impact on substantial numbers of small entities within the meaning of 5 U.S.C. 605(b). Moreover, as a matter relating to NASA management and internal personnel policy, this statement is not required to be published pursuant to the procedural requirements of 5 U.S.C. 553 *et seq.*

The National Aeronautics and Space Administration has determined that:

1. This policy statement is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This policy statement is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1261

Claims, Tort claims.

For reasons set forth in the Preamble, 14 CFR Part 1261 is amended as follows:

PART 1261—[AMENDED]

1. The authority citation for 14 CFR Part 1261 Subpart 1261.3 continues to read as follows:

Authority: 28 U.S.C. 2671–2680, 42 U.S.C. 2473(c)(13), and 28 CFR Part 14.

2. Section 1261.316 and Section 1261.317 are added to read as follows:

§ 1261.316 Policy.

(a) The National Aeronautics and Space Administration may indemnify a present or former NASA employee, who is personally named as a defendant in any civil suit in state or federal court, or in an arbitration proceeding or other proceeding seeking damages against that employee personally, for any verdict, judgment, appeal bond, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, appeal bond, or award was taken within the scope of his or her employment and that such indemnification is in the interest of the National Aeronautics and Space Administration, as determined by the Administration or designee.

(b) The National Aeronautics and Space Administration may settle or compromise a personal damage claim against a present or former NASA employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the employee's scope of employment and that such settlement or compromise is in the interest of the National Aeronautics and Space Administration, as determined by the Administrator or designee.

(c) Absent exceptional circumstances as determined by the Administrator or designee, the agency will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award.

(d) A present or past NASA employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, appeal bond, award, or settlement proposal to the General Counsel, who shall make a recommended disposition of the request. Where appropriate, the agency shall seek the views of the Department of Justice. The General Counsel shall forward the request, the accompanying documentation, and the General Counsel's recommendation to the Administrator for decision.

(e) Any payment under this section either to indemnify a National Aeronautics and Space Administration employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the National Aeronautics and Space Administration.

§ 1261.317 Attorney-client privilege.

(a) Attorneys employed by the National Aeronautics and Space Administration participate in the process utilized for the purpose of determining whether the agency should request the Department of Justice to provide representation to a present or former agency employee sued, subpoenaed, or charged in his/her individual capacity, and attorneys employed by the National Aeronautics and Space Administration provide assistance in obtaining representation of such an agency employee. In these roles, agency attorneys undertake a full and traditional attorney-client relationship with the employee with respect to application of the attorney-client privilege. If representation is authorized, National Aeronautics and Space Administration attorneys who assist in the representation of a present or former employee also undertake a full and traditional attorney-client relationship with that employee with respect to the attorney-client privilege.

(b) Any adverse information communicated by the client-employee to an agency attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the National Aeronautics and Space Administration, other than attorneys resonsible for representation of the employee, unless such disclosure is authorized by the employee. Such adverse information shall continue to be fully protected whether or not representation is provided and even though representation may be denied or discontinued.

July 11, 1988.

James C. Fletcher,

Administrator.

[FR Doc. 88-16421 Filed 7-20-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87-35-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

July 15, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee the Director, Office of Economic Policy, issues the update to the "advisory" benchmark rate of return on common equity applicable to rate filings made during the period August through October 1988. This benchmark rate is set at 12.36 percent.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8283.

SUPPLEMENTARY INFORMATION: On January 27, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule which readopted the quarterly indexing procedure for establishing and updating the benchmark rate of return on common equity applicable to electric rate filings.[1] Based on this procedure, the Commission, by its designee, the Director of the Office of Economic Policy, determines that the benchmark rate of return on common equity applicable to rate filings made during the period August 1 through October 31, 1988, is 12.36 percent.

Section 37.9 of the Commission's regulations [2] requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 99 utilities.[3] The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$k_t = 1.02\ Y_t + 4.36$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the 99-company sample of utilities for the first and second quarters of 1988 are 7.76 and 7.91 percent, respectively. The average yield for those two quarters is 7.84 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.36 percent.

This notice supplements the generic rate of return rule announced in Order No. 489, issued January 29, 1988 and effective on February 1, 1988.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the Code of Federal Regulations as set forth below, effective August 1, 1988.

Douglas R. Bohi,

Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly Indexing Procedure

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.*

The following table presents the quarterly benchmark rates of return on common equity:

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 489, 53 FR 3342 (Feb. 5, 1988), III FERC Stats. & Regs. ¶ 30,795 (Jan. 29, 1988).

[2] 18 CFR 37.9 (1987).

[3] As a result of the acquisition of Savannah Electric & Power Company by the Southern Company, the Commission has reduced the number of companies in the sample for the most recent quarter to 99. It has made this change in accordance with the criteria for inclusion in the sample specified in 18 CFR 37.9(c) (1987).