PART 810—[AMENDED]

1. The authority citation for Part 810 continues to read as follows:

Authority: Secs. 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

Subpart A—General Provisions

§ 810.104 [Amended]

2. Section 810.104(b) is amended by revising the first sentence to read "The percentage of splits in soybeans, and the percentage of dockage in barley, flaxseed, rye, and sorghum are reported in whole percents with fractions of a percent being disregarded."

3. Section 810.104(b) is further amended by removing the phrase "splits in soybeans;" after the phrase "classes in barley;" in the ninth sentence.

Dated: May 18, 1989.

D.R. Galliart,

Acting Administrator.

[FR Doc. 89-13396 Filed 6-5-89; 8:45 am]

BILLING CODE 3410-EN-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

RIN 3150-AD08

Financial Protection Requirements and Indemnity Agreements; Miscellaneous Amendments Necessitated By Changes in the Price-Anderson Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to conform to changes made to the Price-Anderson Act by "The Price-Anderson Amendments Act of 1988," which was enacted on August 20, 1988. The Commission is also amending its regulations to increase the level of the primary layer of financial protection required of certain indemnified licensees. The provisions of Section 170 of the Atomic Energy Act of 1954, as amended, require production and utilization facility licensees to have and maintain financial protection to cover public liability claims. Therefore, the Commission is amending its regulations to coincide, as statutorily required, with the increase in the level of the primary layer of insurance provided by private nuclear liability insurance pools. This change would provide additional insurance to pay public liability claims arising out of a nuclear incident.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Policy Development and Financial Evaluation Section, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-1289.

SUPPLEMENTARY INFORMATION: On August 20, 1988, "The Price-Anderson Amendments Act of 1988" was enacted as Pub. L. 100-408. This legislation modifies and extends for 15 years (to August 1, 2002) the Price-Anderson Act. On December 20, 1988, the Commission published a proposed rule in the Federal Register (53 FR 51120) requesting comments on amending certain provisions of 10 CFR Part 140 to conform to changes made by Pub. L. 100-408. Two nonsubstantive comments were received on the proposed rule. The first commenter, without indicating a need, requested an extension of the comment period, which the NRC did not believe was warranted. The other commenter requested specific incorporation of certain other regulatory changes, which has been done. First, the requirement for the imposition of a surcharge above the $63 million deferred premium assessment, as specified in subsection 170o.(1)(E) of the Act, has been incorporated into the regulations. Second, the regulations have been clarified to specify that the $10 million annual deferred premium would be assessed on a "per incident" basis as implied in the Act and as clearly indicated in the legislative history.

Section 170 of the Atomic Energy Act of 1954, as amended, (the Act) requires production and utilization facility licensees to have and maintain financial protection to cover public liability claims resulting from a nuclear incident or precautionary evacuation. Section 170 also requires the Nuclear Regulatory Commission to indemnify the licensee and other persons indemnified, up to the statutory limitation on liability, against public liability claims in excess of the amount of financial protection required. Subsection 170b. of the Act requires that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available from private sources. Primary financial protection may be in the form of private insurance, private contractual indemnities, self-insurance or other proof of financial responsibility, or combination of such measures.

The insurers who provide the nuclear liability insurance, American Nuclear Insurers (ANI) and Mutual Atomic Energy Liability Underwriters (MAELU), have advised the Commission that the maximum amount of primary nuclear energy liability insurance available has been increased from $160 million to $200 million. Pursuant to the provisions of subsection 170b. of the Act, the amount of primary financial protection required for facilities having a rated capacity of 100,000 electrical kilowatts or more will be increased to $200 million.

Environmental Impact: Categorical Exclusion

The Commission has determined that this rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) Existing requirements were approved by the Office of Management and Budget approval number 3150-0039.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) the Commission hereby certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule applies only to nuclear power plant licensees which are electric utility companies dominant in their service areas. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the standards set forth for small businesses in Small Business Administration regulations in 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, that a backfit analysis is not required for this rule. These amendments are required to conform NRC regulations to statutory directives and do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 140

Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the

Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 140.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for Part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 140.11(a), 140.12(a), 140.13, and 140.13a are issued under sec. 161b., 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and § 140.6 is issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 140.11, paragraph (a)(4) is revised and the introductory text (a) is provided for the convenience of the user to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) Each licensee is required to have and maintain financial protection:

* * * * *

(4) In an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by section 170o.(1)(D), in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, That under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than $63,000,000 with respect to any nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) and no more than $10,000,000 per incident within one calendar year shall be charged.

* * * * *

3. In § 140.13a, paragraph (a) is revised to read as follows:

§ 140.13a Amount of financial protection required for plutonium processing and fuel fabrication plants.

(a) Each holder of a license issued pursuant to Part 70 of this chapter to possess and use plutonium at a plutonium processing and fuel fabrication plant is required to have and maintain financial protection in the form specified in § 140.14 in the amount of $200,000,000. Proof of financial protection shall be filed with the Commission in the manner in § 140.15 prior to issuance of the license under Part 70 of this chapter.

* * * * *

4. Section 140.92, Appendix B, is amended as follows:

a. Article I, paragraphs 1 and 7 are revised.

b. Article II, paragraph 4(c), introductory text of paragraph 8, and paragraphs 8(a), 8(b), and 8(c) are revised.

c. Article III, paragraph 4(b) is revised.

d. Article VIII, paragraph 1 is revised.

§ 140.92 Appendix B—Form of Indemnity Agreement With Licensees Furnishing Insurance Policies as Proof of Financial Protection

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Article I

* * * * *

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

7. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

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4. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

8. With respect to any common occurrence,

(a) If the sum of limit of liability of any Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association exceeds $155,000,000 the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $155,000,000 as the limit of liability of the Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

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Article III

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4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under this agreement and all other applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection.

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Article VIII

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1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 a and b of the Attachment annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges); Provided, however, That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed $63,000,000 with respect to any single nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) nor exceed $10,000,000 per incident within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

* * * * *

5. Section 140.93, Appendix C, is amended as follows:

a. Article I, paragraphs 1 and 7 are revised.

b. Article II, paragraphs 4(c) and 8 are revised.

c. Article III, paragraph 4(b) is revised.

d. Article VIII, paragraph 1 is revised.

§ 140.93 Appendix C—Form of Indemnity Agreement With Licensees Furnishing Proof of Financial Protection in the Form of Licensee's Resources

* * * * *

Article I

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1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

7. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political sudivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material, and (b), if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

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Article II

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4. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

8. With respect to a common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements. As used in this paragraph, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170 c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence".

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Article III

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4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to Paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amount of financial protection established under this agreement and to all other applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection.

* * * * *

Article VIII

* * * * *

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges): Provided, however, That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed $63,000,000 with respect to any single nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) nor exceed $10,000,000 per incident within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

* * * * *

6. Section 140.94, Appendix D, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraphs 4(c) and 6 are revised.

§ 140.94 Appendix D—Form of Indemnity Agreement With Federal Agencies

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Article I

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1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State of Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3)

claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

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Article II

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4. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

6. With respect to a common occurrence, the obligations of the Commission under this Article shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amount of financial protection established under all applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection. As used in this Article "applicable agreements" means each agreement entered into by the Commission pursuant to subsection 170c. or k. of the Act in which agreement the nuclear incident is defined as "common occurrence.

* * * * *

7. Section 140.95, Appendix E, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraphs 2(c) is revised.

c. Article III, paragraphs 4(b) is revised.

d. Article IV, paragraph 1 is revised.

§ 140.95 Appendix E—Form of Indemnity Agreement With Nonprofit Education Institutions

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Article I

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1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regualtions issued by the Commission.

* * * * *

6. "Public liability" means are legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Act of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, or the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

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Article II

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2. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

Article III

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4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under all applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection. As used in this Article "applicable agreements" means each agreement entered into by the Commission pursuant to subsection 170 c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence."

* * * * *

Article IV

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim including such legal costs of the licensee as are approved by the Commission and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

* * * * *

8. Section 140.107, Appendix G, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, introductory text of paragraph 6 and paragraphs 6(a), (6(b), and 6(c) are revised.

c. Article III, paragraph 4(b) is revised.

§ 140.107 Appendix G—Form of Indemnity Agreement With Licensees Processing Plutonium for Use in Plutonium Processing and Fuel Fabrication Plants and Furnishing Insurance Policies as Proof of Financial Protection

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Article I

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1. "By product material," "person," "source material," "special nuclear material," "precautionary evacuation," and "extraordinary nuclear occurrence" shall have the meaning given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of or damage to, or loss of use of (a) property which is located at the location and used in connection with the

licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

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6. With respect to any common occurrence,

(a) If the sum of the limit of liability of any Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association exceeds $155,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $155,000,000 as the limit of liability of the Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability-Property Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

* * * * *

Article III

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4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed $200,000,000.

* * * * *

9. Section 140.108, Appendix H, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraph 6 is revised.

c. Article III, paragraph 4(b) is revised.

§ 140.108 Appendix H—Form of Indemnity Agreement With Licensees Possessing Plutonium for Use in Plutonium Processing and Fuel Fabrication Plants and Furnishing Proof of Financial Protection in the Form of the Licensee's Resources

* * * * *

Article I

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1. "Byproduct material," "person," "source material," "special nuclear material," "precautionary evacuation," and "extraordinary nuclear occurrence" shall have the meaning given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

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6. With respect to any common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements. As used in this paragraph, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence."

* * * * *

Article III

* * * * *

4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed $200,000,000.

* * * * *

Dated at Rockville, MD, this 30th of May 1989.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 89-13381 Filed 6-5-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-146-AD; Amdt. 39-6232]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, which requires periodic inspections and cleaning of the cavity aft of the wing center section. This amendment is prompted by reports of inadequate drainage, which apparently

is caused by an inordinate quantity of debris and foreign material collecting in the cavity area. This situation has led to accumulated water leaking from the wing center section onto portions of the aileron control system and subsequently freezing. Ice in the aileron control system can result in reduced lateral control capability.

EFFECTIVE DATE: July 10, 1989.

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, C-68966, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. 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 to include an airworthiness directive which requires periodic inspections and cleaning of the cavity aft of the wing center section, was published in the Federal Register on January 13, 1989 (54 FR 89796). The comment period for the proposal closed on March 9, 1989.

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 Air Transport Association (ATA) of America, on behalf of its members, expressed no technical objection with the proposed rule. The ATA did, however, request that the initial compliance interval be extended from 12 to 15 months, and that the repetitive inspection interval be extended from 15 to 18 months, to accommodate operators' normal "C" check maintenance hold. The extension is needed because, the proposed inspection will require substantially more time than the 9-manhour estimate stated in the cost estimate of the Notice unless it is accomplished when the airplane is open for inspection such as a "C" check. One ATA member has estimated that approximately 80 manhours are needed to accomplish the proposed task because of removal/replacement activities required for access. This task can, therefore, only be scheduled during long maintenance holds such as a "C" check. The FAA has considered the ATA's comment and has concluded that the request has merit. The FAA has determined that an extension of the initial compliance time to 15 months and the repetitive inspection interval to 18 months will not have a derogative effect on safety. The final rule has been revised accordingly.

Another commenter requested that this AD be revised to include a provision for a longer interval for the airplanes which have improved drain capability, such as the incorporation of Boeing Service Bulletins 747-51-2026, 747-51-2032, and 747-51-2036. The FAA agrees that there are other acceptable methods of complying with the rule, and paragraph B. of the AD contains provisions for alternate means of compliance. Since alternate means must be considered on a case-by-case basis, it is not practicable to incorporate all possible means of compliance in the final rule.

The manufacturer requested that this AD be revised to require visual inspection external of the cavity and, if drainage is blocked, then inspection internally. The FAA disagrees because accumulated water leaking from the wing center section onto portions of the aileron control system and subsequently freezing, was found on airplanes that were reported to have had the drainage previously checked.

The manufacturer also requested that the wording of the final rule identifying the inspection area be changed from "* * * cavity over the wing center section * * *" to "* * * cavity aft of the wing center section * * *." The FAA concurs; the suggested wording clarifies the intent of the rule. The final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted. The FAA has determined that these changes will neither increase the economic burden on any operator, nor increase the scope of the AD.

There are approximately 700 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 260 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 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 $93,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this regulation and is contained in the regulatory docket. A copy of it may be obtained from the 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 Part 39 of the Federal Aviation Regulations 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. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced lateral control caused by icing of the aileron control cables, accomplish the following:

A. Within the next 15 months after the effective date of this AD, unless already accomplished within the last 3 months, and thereafter at intervals not to exceed 18 months, perform the following:

1. Gain access to the cavity aft of the wing center section.

2. Remove all debris and foreign material, clean the cavity, and verify all drains are open and clean.

B. 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.

C. 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 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 becomes effective July 10, 1989.

Issued in Seattle, Washington, on May 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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14 CFR Part 39

[Docket No. 89-NM-13-AD; Amdt. 39-6233]

Airworthiness Directives; Israel Aircraft Industrie (IAI) Model 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Israel Aircraft Industrie (IAI) Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, which currently requires repetitive dye penetrant inspections to detect cracks in the horizontal stabilizer aft spar splice fitting, and replacement, as necessary. This amendment requires repetitive visual inspections for cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting, and replacement of any fittings found cracked. This amendment is prompted by reports of cracks found in the outer hinge lugs during a visual inspection, which were apparently missed during the previously required dye penetrant inspection. Such cracking, if not detected and corrected, could lead to failure of the outer and inner hinge lugs, which would compromise the structural integrity of the horizontal stabilizer assembly.

EFFECTIVE DATE: July 10, 1989.

ADDRESSES: The applicable service information may be obtained from Israel Aircraft Industrie (IAI), Delaware Office, P.O. Box 10086, Wilmington, Delaware 19850. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 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 86-14-02, Amendment 39-5341 (51 FR 23217; June 26, 1986), applicable to Israel Aircraft Industrie (IAI) Model 1121, 1121A, 1121B, 1123, 1124 and 1124A series airplanes, to require repetitive visual inspections for cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting, and replacement of any fittings found cracked, was published in the **Federal Register** on March 17, 1989 (54 FR 11226).

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

The commenter supported the proposed rule.

Paragraph C. of the final rule has been revised to reflect the correct issue date for Revision 2 of Service Bulletins 1121-55-004 and 1123-55-007 as October 21, 1988.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 410 airplanes of U.S. registry will be affected by this AD, that it will take approximately one-half manhour 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 $8,200 for the initial inspection cycle.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" or under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Regulatory docket. A copy of it may be obtained from the 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 Part 39 of the Federal Aviation Regulations 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. Section 39.13 is amended by superseding AD 86-14-02, Amendment 39-5341 (51 FR 23217; June 26, 1986), with the following new airworthiness directive:

Israel Aircraft Industries (IAI): Applies to Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting (hinge assembly), accomplish the following:

A. Within the next 75 flight hours time-in-service after the effective date of this AD, unless previously accomplished within the last 225 flight hours time-in-service, conduct a visual inspection of the horizontal stabilizer aft spar splice fitting (hinge assembly) Part