benefiting producers, handlers and consumers.

Based on the available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and unanimous recommendation submitted by the committee, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Compliance with this action will require no special preparation by handlers; (2) it is important that the relaxed size requirements apply to as much of the 1992–93 crop as possible; (3) this action relieves restrictions on handlers and; (4) the rule provides a 30-day comment period, and any comments received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

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

2. Section 987.112a is amended by revising the second sentence of paragraph (b)(2) and revising the second sentence of paragraph (c)(2) to read as follows:

Note: This section will appear in the annual *Code of Federal Regulations.*

§ 987.112a Grade, size and container requirements for each outlet category.

* * * * *

(b) * * *

(2) * * * Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the sample from the lot shall weigh at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams, except beginning December 29, 1992, and ending October 31, 1993, the 10 percent tolerance shall be increased to 15 percent. * * *

* * * * *

(c) * * *

(2) * * * Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the sample from the lot shall weigh at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams, except beginning December 29, 1992, and ending October 31, 1993, the 10 percent tolerance shall be increased to 15 percent. * * *

* * * * *

Dated: December 21, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-31346 Filed 12-28-92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1006, 1012, and 1013

[DA-92-38]

Milk in the Upper Florida, Tampa Bay, and Southeastern Florida Marketing Areas; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends a portion of the producer milk definition of the Upper Florida, Tampa Bay, and Southeastern Florida, milk orders. The action suspends the requirement that 10 days' production of a producer be received each month at a pool plant in order to qualify milk produced on other days for diversion to nonpool plants. The suspension was requested by the Florida Dairy Farmers' Association, Tampa Independent Dairy Farmers' Association, Dairymen, Inc., and Southern Milk Sales that want to reduce some inefficient milk movements in order to pool milk normally associated with these markets.

EFFECTIVE DATE: December 1, 1992.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, Dairy Division, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: Prior Document in this proceeding:

Notice of Proposed Suspension: Issued November 16, 1992; published November 23, 1992 (57 FR 54947).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas.

Notice of proposed rulemaking was published in the **Federal Register** on November 23, 1992, (57 FR 54947) concerning a proposed suspension of certain provisions of the orders. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice, and other available information, it is hereby found and determined that beginning December 1, 1992, for an indefinite period, the following provisions of the orders do not tend to effectuate the declared policy of the Act:

In § 1006.13, paragraph (b)(2).
In § 1012.13, paragraph (b)(2).
In § 1013.13, paragraph (b)(2).

Statement of Consideration

This action suspends portions of the producer milk definition of the Upper Florida, Tampa Bay, and Southeastern Florida milk orders. This action suspends the requirement that 10 days' production of a producer be received each month at a pool plan in order to qualify milk produced on other days for diversion to nonpool plants.

The suspension was requested by Florida Dairy Farmers' Association, Tampa Independent Dairy Farmers' Association, Dairymen Inc., and Southern Milk Sales. The proponents have formed and work through a common marketing agency in order to achieve maximum efficiencies in balancing the needs of the fluid milk plants and in disposing of reserve or excess milk supplies. When milk of producers located in other states who supply the Florida market is not needed, it is often diverted to plants located in other states that are regulated by other Federal milk orders.

Milk that is diverted to other order manufacturing plants, but fails to qualify for diversion under the 10-day requirement, becomes producer milk under the other order and lowers blend prices to producers under the other order. The suspension will enable cooperatives to realize efficiencies in diverting the most distant milk from fluid milk plants. The suspension will not threaten the integrity of marketwide pooling because all three orders limit the overall percentage of a handler's milk supply that can be diverted each month. The suspension is needed to be effective for the holiday season because of the need to move excess milk supplies off these markets.

No comments were received in response to the proposed suspension. Accordingly, it is appropriate to suspend the aforesaid provisions.

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 areas in that this action should enable cooperatives to realize efficiencies in diverting the most distant milk from fluid milk plants;

(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 received.

Therefore, good cause exists for making this order effective December 1, 1992.

List of Subjects in 7 CFR Parts 1006, 1012, and 1013

Milk marketing orders.

The authority citation for 7 CFR parts 1006, 1012, and 1013 continue 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 orders (7 CFR parts 1006, 1012, and 1013) are hereby suspended for an indefinite period.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

§ 1006.13 [Suspended in Part]

1. In § 1006.13, paragraph (b)(2) is suspended.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

§ 1012.13 [Suspended in Part]

1. In § 1012.13, paragraph (b)(2) is suspended.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

§ 1013.13 [Suspended in Part]

1. In § 1013.13, paragraph (b)(2) is suspended.

Dated: December 21, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–31432 Filed 12–28–92; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

RIN 3150–AE11

Exclusion of Attorneys From Interviews Under Subpoena

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to provide for the exclusion of counsel from a subpoenaed interview when that counsel represents multiple interests in the investigation and there is concrete evidence that the counsel's presence at the interview would obstruct and impede the investigation. These amendments are designed to ensure the integrity and efficacy of the investigative and inspection process. These amendments provide a standard and procedures for making and effectuating the decision to exclude counsel.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Roger K. Davis, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–1606.

SUPPLEMENTARY INFORMATION:

Contents

I. Background

On December 19, 1991 (56 FR 65949), the Nuclear Regulatory Commission (NRC) published proposed amendments to its regulations found at 10 CFR part 19. The proposed amendments provided for the exclusion of counsel from subpoenaed interviews in connection with an NRC investigation when that counsel represents multiple interests in the investigation and there is concrete evidence that such representation would obstruct and impede the investigation. The proposed amendments also provided procedures to be followed by the NRC and individual witnesses in connection with the NRC's exercise of its authority to exclude counsel.

The Commission had published a final rule on the same subject on January 4, 1990 (55 FR 243). That rule provided, *inter alia*, for the exclusion of counsel for a subpoenaed witness when that counsel represented multiple interests and there existed a reasonable basis to believe that such representation would prejudice, impede, or impair the integrity of the inquiry. Upon legal challenge, the United States Court of Appeals for the District of Columbia Circuit struck down the portion of the final rule on attorney exclusion. *Professional Reactor Operator Society* v. *Nuclear Regulatory Commission*, 939 F.2d 1047, 1052 (D.C. Cir. 1991) (hereafter "*PROS*").

Specifically, the Court of Appeals ruled that the NRC must apply the same standard for attorney exclusion that the Court had previously required of the

Securities & Exchange Commission by virtue of the Court's interpretation of the right-to-counsel guarantee of the Administrative Procedure Act (APA), 5 U.S.C. 555(b). The Court stated that to exclude counsel "the agency must come forward with 'concrete evidence' that the counsel's presence would impede its investigation." *PROS*, 939 F.2d at 1049 (*citing SEC* v. *Csapo*, 533 F.2d 7, 11 (D.C. Cir. 1976)). Thus, the Court vacated the attorney exclusion portion of the rule, since its "rational basis" standard was less rigorous than the "concrete evidence" requirement. On December 19, 1991 (56 FR 65948), the Commission responded to the appeals court decision by publishing notice in the **Federal Register** of the Commission's revocation of its rule on attorney exclusion, *i.e.*, the definition of "exclusion" appearing in 10 CFR 19.3 and the standard and procedures for attorney exclusion appearing in 10 CFR 19.18(b)–(e). On December 19, 1991 (56 FR 65949), the Commission also published the proposed amendments in the **Federal Register** that would conform the NRC's attorney exclusion requirements to the Court's ruling.

II. Responses to Public Comments on the Proposed Rule

The Commission received nine comments on the proposed December 19, 1991 rule. The commenters included one individual, the Nuclear Utility Management and Resources Council (NUMARC), three utilities endorsing NUMARC's comments, the Professional Reactor Operators Society (PROS), a law firm commenting on behalf of PROS as well as seven utilities and a major engineering firm, a law firm commenting on behalf of six utilities, and a law firm that represents utilities and individuals holding NRC licenses. All commenters opposed adoption of the proposed rule. The comments are available for inspection and copying in the agency's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

The Commission has considered the comments received, but is not persuaded that the proposed amendments should be withdrawn or modified in substantial ways as some commenters requested. However, the Commission has clarified its description of the standard for exclusion by stating the threshold requirement as "concrete evidence that the presence of an attorney representing multiple interests would obstruct and impede the investigation or inspection * * *" A similar change was made in the definition of "[e]xclusion." The Commission has deleted the phrase "directly or indirectly" from the standard for exclusion of counsel. The Commission has also revised the rule to provide that the interview shall not be rescheduled to a date that precedes the expiration of the time provided under 10 CFR 19.18(d) for appeal of exclusion of counsel, unless the witness consents to an earlier date. In addition, the final rule requires that the written notice of the grounds for counsel's exclusion also describe the right to appeal the exclusion to the Commission and thereby obtain an automatic stay of the effectiveness of the subpoena pending the Commission's decision.

Because these changes are logical outgrowths of the proposed amendments and no other modifications are made, the Commission concludes that the final rule should become effective without further notice and comment. The Commission's responses to the concerns of the commenters are set forth below.

A. Need for the Rule

One commenter argued that the expected rarity of application of the rule demonstrated the absence of a need for the rule. The Commission does expect that the rule will be invoked only in rare and compelling cases. However, the Commission continues to believe that the rule should further expeditious and satisfactory resolution of some investigations and that this is important to the Commission's fulfillment of its statutory mission. By providing to witnesses, counsel, and agency staff both a general standard for determining whether disqualification is appropriate and procedures for implementing and challenging these determinations, the final rule should reduce delay, uncertainty and confusion associated with consideration of the exclusion of counsel.

Although several commenters emphasized the circumstances in which courts have found insufficient grounds for exclusion of counsel by the Securities and Exchange Commission (SEC), the same courts have explicitly recognized the propriety and utility of this type of rule. In *Csapo*, the United States Court of Appeals for the District of Columbia Circuit stated (533 F.2d at 11) with regard to the SEC's sequestration rule that—

> We do not question its utility in preserving the integrity of an investigation and recognize its practical necessity in certain circumstances.

533 F.2d at 11. In *SEC* v. *Higashi*, the Ninth Circuit said that "[t]he reason for and purpose of the [SEC's] sequestration rule are clear and there can be no question as to its necessity and general propriety" (359 F.2d 550, 552 (9th Cir. 1966)). For reasons akin to those motivating the SEC rule, the NRC proposed and now finalizes its attorney exclusion rule.

The NRC's investigation of unsafe practices and potential violations of the Atomic Energy Act and NRC regulations is an important means of ensuring public health and safety in operation of nuclear power plants and other uses of nuclear material (*see* 10 CFR part 19; 10 CFR 1.36). NRC investigators often interview licensees, their officials and employees, and other individuals having possible knowledge of matters under investigation. In many cases, investigating officials conduct extensive and difficult inquiries to determine whether violations were willful and/or whether licensee's management engaged in wrongdoing. Yet, effective identification and correction of unsafe practices or regulatory violations through an investigative or inspection process can depend upon the willingness of individuals having knowledge of the practices or violations to disclose that information to interviewing officials.

Therefore, as specified in 10 CFR 19.2, the rule would apply to all interviews under subpoena within the jurisdiction of the Nuclear Regulatory Commission other than those which focus on NRC employees or its contractors. While the purposes of the rule relate primarily to interviews conducted under subpoena by the NRC's Office of Investigations, the NRC's predominant user of investigative subpoenas, the final rule would also apply to NRC inspections and investigations conducted under subpoena by other NRC officials. The rule does not apply, however, to subpoenas issued pursuant to 10 CFR 2.720, which applies to subpoenas requested in hearings.

Several commenters argued that there is no need for the rule because of the availability of other means for ensuring proper conduct by counsel (*e.g.*, investigation and prosecution under Federal criminal statutes or investigation and disciplinary action or disqualification under standards of professional conduct for lawyers). In some cases, the causes of impairment of the investigation may justify consideration of criminal or other proceedings. However, the Commission's objectives, standard for action, burden of proof, and remedy, *i.e.*, exclusion of counsel from particular interviews, may differ widely from those associated with criminal statutes or rules of conduct. Therefore, the possibility of collateral or future actions addressing misconduct in some cases pursuant to other authority is an insufficient basis to ignore the potential need for a direct determination of whether the counsel representing multiple interests should be excluded from an interview.

As noted in the supplementary information included in the notice of the proposed rule (56 FR 65949, 65950; December 19, 1991), questions regarding impairment of investigation as a result of multiple representation have arisen in some cases in the past. Several of the commenters argued that the cited cases did not involve any grounds for disqualification of counsel and that any concern about multiple representation in those cases was improper. The Commission believes that the final rule will facilitate resolution of this type of question when it arises in the future. As the Commission has stated (56 FR 65949, 65950; December 19, 1991), the justification for this rule is not premised on whether any *prior* case actually involved "concrete evidence" that the investigation would be impeded.

NUMARC and another commenter indicated that adoption of the proposed rule would be inconsistent with the Commission's efforts to eliminate unnecessary regulatory burdens (*see, e.g.*, 57 FR 4166; February 4, 1992 and 57 FR 39353; August 31, 1992). The Commission disagrees with the suggestion that the rule fails to strike a fair and reasonable balance between the right to counsel and the need for information in investigations. In this case, the Commission is expressly adopting the judicial resolution of that issue. That resolution does not involve a highly prescriptive standard. Rather, it involves a demanding general standard that is expected to have very limited application in a fraction of NRC interviews under subpoena.

NUMARC stated that the rule was unnecessary because NRC rules currently in effect (10 CFR part 2) provide a mechanism for imposing sanctions for attorney misconduct in various contexts. The existing provisions directly relating to standards of practice (10 CFR 2.713) concern appearance and practice in adjudicatory proceedings. By this final rule, however, the Commission intends to provide specific direction for expeditious resolution of decisions to exclude counsel because of obstruction or impediment of investigative interviews resulting from multiple representation. Therefore, the final rule serves purposes that are not met by the general 10 CFR part 2—Rules of practice for domestic licensing proceedings and issuance of orders.

B. Attorney Misconduct

Most commenters indicated that the proposed standard for exclusion of counsel was deficient because it did not require a showing of misconduct or wrongdoing by the attorney representing multiple parties. These commenters generally concede that unethical or illegal conduct by counsel. such as encouraging or condoning perjury or engaging in a pattern of overt disruption of the interview, would supply grounds for exclusion. Concrete evidence that such conduct is obstructing and impeding an investigation could lead to exclusion under the rule. However, the Commission does not find as a matter of logic or law that there is no possibility of a finding of concrete evidence of impairment on grounds other than misconduct or wrongdoing by counsel.

For instance, the Commission does not find it necessary to rule out application of the rule to a case presenting concrete evidence of nondisclosure of information by a witness as a result of the presence of counsel representing multiple interests even though the counsel has not engaged in misconduct. Moreover, whether or not an investigation will be impeded could be irrelevant in a pure misconduct case.

The Commission also does not interpret the legal precedent as permitting disqualification only for misconduct, wrongdoing, or active obstruction by counsel. Indeed, in stating the standard to which the Commission must adhere, the court in *Pros* did not mandate "concrete evidence" of wrongdoing but rather " 'concrete evidence' that counsel's presence would impede [the agency's] investigation." *Pros*, 939 F.2d 1049 (*citing SEC* v. *Csapo*, 533 F.2d at 11).

The commenters insisting on the necessity of misconduct or wrongdoing as the essential substantive element for disqualification point to *Csapo*, in which the Court of Appeals agreed with the lower court's finding that the SEC had failed to produce any "concrete evidence" of misconduct (533 F.2d at 8). While that opinion clearly affirmed an evidentiary threshold of "concrete evidence" in relation to the alleged misconduct, the Court of Appeals also found that the record failed to disclose "*any reason* for barring counsel selected" by the witness (*id.*) (emphasis added). And, the Court's specific direction was that "before the SEC may exclude an attorney from its proceedings, it must come forth * * * with 'concrete evidence' that [counsel's] presence would obstruct and impede its investigation." *Id.* at 11. Therefore, the Commission does not interpret *Csapo* as limiting the grounds for exclusion of counsel to "misconduct."

c. Application of the Rule

Most commenters expressed or endorsed the view that the supplementary information in the notice of the proposed rule (56 FR 65949–65950; December 19, 1991) shows that the intended application of the rule is inconsistent with judicial direction. They suggest that the Commission's identification of concerns motivating the rule and of some of the potentially relevant evidence displaces the "concrete evidence" standard.

While "concrete evidence" was not defined expressly in the cases referenced above, the discussion and application of that standard indicates the courts require more than speculation or even reasonable concern about potential impairment. Rather, exclusion of counsel requires real or tangible evidence demonstrating that the investigation would be impeded as a result of the multiple representation. Thus, the Commission recognizes that neither multiple representation nor speculation about a potential for obstruction of an investigation by, for example, the mere sharing of information provided by an interviewee to a subsequent interviewee, is a sufficient basis to exclude counsel.

The Commission cannot predict in any significant detail what set of circumstances will arise in particular investigations that will lead to application of the exclusion rule. In the proposed rule, however, the Commission did endeavor to identify some of the factual circumstances which would tend to support invocation of the rule. For instance, it seems clear that the Commission's interests in the integrity and effectiveness of its investigation may outweigh a witnesses' choice of counsel for multiple interests where there is reliable, factual evidence that a witness is withholding, or will withhold, information critical to the investigation because the information will be shared with the witnesses' employer or supervisor by virtue of multiple representation.

Thus, the Commission continues to believe that evidence that the employee had a concern that his employment would be jeopardized by transmittal of information from the interview to the licensee would be relevant. The Commission believes that evidence that the multiple representation would lead to disclosure of the substance of an interview to a future interviewee or subject in the investigation would also be relevant although not sufficient unless there was also concrete evidence that the disclosure would obstruct and impede the investigation. However, the Commission expects that it will be a rare case in which there is actual proof that the multiple representation will seriously obstruct and impede the investigation, *e.g.*, critical information is being or will be withheld.

Some commenters misunderstood the Commission's statement that concerns arise about inhibition of the candor of witnesses where the interviewee is represented by counsel who is paid by the licensee and also represents the licensee or licensee's officials under investigation, particularly where the matter at issue is whether the licensee's employees have been, or are being, harassed or intimidated for raising safety issues (56 FR 65949; December 19, 1991). These commenters viewed these statements as examples of cases in which the Commission would deem exclusion to be appropriate. The Commission recognizes that these circumstances do not necessarily lead to non-disclosure of critical information or other serious impairment of the investigation. Exclusion of counsel under the rule is warranted only when there is also concrete evidence, not just mere concern or speculation, that the investigation will be obstructed and impeded as a result of the presence of the counsel representing multiple interests.

Several commenters expressed concern that the Commission would find obstruction and impediment to the investigation where minor inconvenience results from such traditional activities of counsel as endeavoring to learn more about the investigation or to advise clients to testify truthfully but cautiously. The Commission recognizes that these types of activities do not establish real obstruction and impediment to the investigation. Indeed, these traditional activities of counsel are common to legal representation of any witness.

Some commenters fault the proposed rule's statement that disqualification may be based on concrete evidence that multiple representation will "directly or indirectly" impede the investigation. Several commenters state that the Commission's use of these modifiers unjustifiably lessens and obscures the "concrete evidence" standard.

The Commission recognizes that the Court in *Pros* and *Csapo* did not use the modifiers "directly or indirectly" in referring to the requirement of concrete evidence of impediment to the investigation. However, the Commission notes that the same modifiers were present in the final rule published on January 4, 1990 (55 FR 243), and that the court of appeals did not comment on their presence in that rule.

The key requirement is "concrete evidence" of obstruction and impediment. Whether the causation is described as direct or indirect, the question in a particular case will be whether there is concrete evidence that the presence of counsel representing multiple interests would obstruct and impede the investigation. It is the effects of multiple representation, not multiple representation standing alone, that may in some cases impede the investigation. For instance, if there were concrete evidence that a present or future witness will not answer questions or provide evidence because his attorney's representation of multiple interests will necessarily result in the sharing of the witness' testimony or evidence with a represented target, invocation of the rule could be warranted whether the cause of the impairment is described as direct or indirect. Clearly, a mere chain of inferences and speculation would not constitute "concrete evidence." Nonetheless, the "concrete evidence" requirement does not preclude a showing of obstruction and impediment through indirect effects, but rather implicitly embraces the possibility of such a showing. Therefore, the Commission has decided to delete the phrase "directly or indirectly" from the rule as unnecessary.

For increased clarity, the Commission has also revised the standard for exclusion by stating the threshold requirement in § 19.18(b) as "concrete evidence that the presence of an attorney representing multiple interests would obstruct and impede the investigation or inspection. * * *" In the proposed § 19.18(b), the requirement was described as "concrete evidence that the investigation or inspection will be obstructed and impeded, directly or indirectly, by an attorney's representation of multiple interests." A similar change was made in the definition of "[e]xclusion" in § 19.3. The revised language tracks more precisely the judicial articulation of the threshold requirement. Thus the revisions further affirm and clarify the Commission's intent to follow the judicial guidance.

D. Adequacy of the Procedures

NUMARC and another commenter stated that "consultation" by the investigating official with the Office of the General Counsel before a decision to exclude counsel is ineffectual without the requirement of consent by the Office of General Counsel. Another commenter recommended that the investigator be required to obtain a written opinion from the Office of the General Counsel that the standard of "concrete evidence" has been met. The Commission disagrees because it has already added numerous safeguards which it considers to be sufficient, including the "consultation" requirement, to guide agency officials and prevent arbitrary action in the exclusion process. The rule requires that the interviewing official provide a written statement of reasons for the exclusion to the witness whose attorney has been excluded and to the excluded attorney. The interviewing official must consult with the Office of the General Counsel prior to invoking the exclusion rule. The witness whose counsel has been excluded may appeal the decision to the Commission and automatically obtain a stay of the effectiveness of that decision pending decision by the Commission.

Of course, the Commission may also quash or modify the subpoena if it finds that the exclusion of counsel decision is not based upon concrete evidence or if the subpoena is otherwise unreasonable, or requires evidence not relevant to any matter in issue. Moreover, the Commission (like the SEC) must still prevail in court in a subpoena enforcement proceeding if the person under subpoena declines to comply. A court in which the basis for the exclusion is litigated may also conduct an evidentiary hearing if the factual issues require it. *SEC* v. *Csapo*, 533 F.2d at 12.

NUMARC recommended that § 19.18(d) be revised to provide the witness and the witness' counsel an opportunity to appear before the Commission in the course of the Commission's evaluation of the appeal of an interviewing official's decision. The purpose would be to ensure that the adversely affected parties had a right to be heard. The Commission believes that the procedure in the final rule, providing a statement of reasons for exclusion and permitting the filing of a motion to quash, provides a reasonable mechanism for presentation of the views of affected parties. However, nothing in the rule prevents the witness moving to quash the subpoena from requesting an opportunity for an oral presentation in connection with the motion and stating the reasons supporting the need for oral presentation.

The comments of PROS included the suggestion that the rule, if issued, be amended to require that the witness be advised of the right to counsel at the time of an exclusion of counsel and prior to any subsequent interview.

NUMARC recommended that internal procedures to implement the rule should be amended to direct NRC investigators to advise witnesses of the right to counsel, including a right to consent to multiple representation, and of the provisions of § 19.18, including the right to appeal any exclusion of counsel.

As a practical matter, a witness who is already represented by counsel can be expected to consult with counsel about such issues as the right to counsel, consent to multiple representation and witnesses' rights under this final rule. Thus, while an investigator may reasonably inquire about issues of consent to multiple representation in connection with an investigative interview, it does not seem necessary to require that an investigator provide general direction or advice on rights and limitations regarding an attorney's representation of multiple interests to a witness already represented by counsel. Moreover, the Commission was asked to require that investigators advise witnesses of the right to consent to multiple representation, although even under standards of professional conduct for lawyers such consent is subject to various conditions and exceptions. *See, e.g., Wheat* v. *United States,* 486 U.S. 153 (1988) (district court may refuse waiver of conflicts of interest in cases where a potential for conflict exists); *FTC* v. *Exxon,* 636 F.2d 1336, 1342 (D.C. Cir. 1980) (district court's order to retain separate counsel because of potential conflict violated neither due process nor the APA). However, in order to ensure that the witness is aware of the Commission's procedures for appeal of the exclusion decision, the Commission has revised the text of the proposed § 19.18(c) to require that the written notice of the reasons for exclusion include a description of the rights provided in § 19.18(d), regarding the right to appeal the exclusion decision.

NUMARC recommended that proposed 10 CFR 19.18(e) be clarified to assure that a witness' interview is delayed automatically to at least the date of the receipt of the written statement of basis for exclusion. An automatic delay is clearly unnecessary, however, if the witness chooses to proceed without counsel or with new counsel at an earlier time. Moreover, the proposed provision already permits the witness to request a reasonable period of time to obtain new counsel, and the witness may even obtain an automatic stay of the subpoena during an appeal of the exclusion decision to the Commission.

Nonetheless, the Commission would not expect that an interviewing official would proceed with the interview of the witness until more than five days after the receipt by the witness and the counsel of the written statement of reasons for exclusion, unless the witness requests that the interview proceed without counsel or with new counsel at an earlier date. Therefore, the Commission has revised the text of the proposed 10 CFR 19.18(e) to provide that the interview shall not be rescheduled to a date that precedes the expiration of the time provided under 10 CFR 19.18(d) for appeal of the exclusion of counsel, unless the witness consents to an earlier date.

Aside from this minimum delay, however, what constitutes a reasonable period of time for the continuation of an interview after exclusion of counsel must be determined on a case-by-case basis, with the interviewing official taking into account the relevant circumstances, including the availability of substitute counsel, the complexity of the case and the grounds for exclusion, the date of actual notice to the witness and excluded counsel of the grounds for exclusion, and the Commission's need to complete the investigation promptly in order to protect public health and safety.

PROS recommended that the witness whose counsel has been excluded be presented "concrete evidence" that the new counsel has a previous record of accomplishment in, and knowledge of, the nuclear industry that is on the same level as the excluded counsel. The Commission disagrees that it should have the burden of initiating an investigation and making a finding on this question. The witness, not the Commission, would choose new counsel. Many counsel and law firms appear in connection with Commission proceedings and investigations. Moreover, the Commission has already provided that a witness may either proceed without counsel or request a delay for a reasonable period of time to permit retention of new counsel.

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

This final 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 3150-0044.

Regulatory Analysis

The APA affords individuals compelled to submit to agency inquiry under subpoena the right to be accompanied by counsel or other representative of choice (5 U.S.C. 555(b)). This right to counsel guarantee is not absolute and may be circumscribed within permissible limits when justice requires. An exception has been recognized for cases in which there is concrete evidence that the presence of counsel representing multiple interests during an investigative interview would impede and obstruct the agency's investigation.

Questions concerning the scope of the right to counsel have arisen in the context of NRC investigative interviews of licensee employees when the employee is represented by counsel who also represents the licensee or other witnesses or parties in the investigation. This arrangement is not improper as a general matter. This final rule provides, however, that counsel representing multiple interests may be excluded from a subpoenaed interview if there is concrete evidence that counsel's presence would obstruct and impede the investigation. This final rule also delineates responsibilities of NRC officials and rights of interviewees in connection with the exercise of the authority to exclude counsel. Thus, the rule is intended to further expeditious and satisfactory resolution of NRC's inquiry into matters concerning public health and safety. Guidance in this area should reduce delay and uncertainty in the completion of an investigation when questions of multiple representation arise. The foregoing discussion constitutes the regulatory analysis for this final rule.

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 would not have a significant impact on a substantial number of small entities. The final rule concerns an attorney's appearance at a subpoenaed interview of a licensee's employee or other individual during an NRC investigation or inspection in circumstances where there is concrete evidence that the attorney's representation of multiple interests would obstruct and impede the investigation or inspection. It provides procedures for exercise of the authority to exclude that attorney from the interview in these limited circumstances and for challenge of a decision to exclude the attorney.

Backfit Analysis

The NRC has determined that a backfit analysis is not required because these amendments 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 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

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 19.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186. 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95–601, sec. 10. 92 Stat. 2951 (42 U.S.C. 5851).

2. In § 19.3, the definition of "Exclusion" is added in alphabetical order to read as follows:

§ 19.3 Definitions.

* * * * *

Exclusion means the removal of counsel representing multiple interests from an interview whenever the NRC official conducting the interview has concrete evidence that the presence of the counsel would obstruct and impede the particular investigation or inspection.

* * * * *

3. In § 19.18, paragraphs (b)–(e) are added to read as follows:

§ 19.18 Sequestration of witnesses and exclusion of counsel in interviews conducted under subpoena.

* * * * *

(b) Any witness compelled by subpoena to appear at an interview during an agency inquiry may be accompanied, represented, and advised by counsel of his or her choice. However, when the agency official conducting the inquiry determines, after consultation with the Office of the General Counsel, that the agency has concrete evidence that the presence of an attorney representing multiple interests would obstruct and impede the investigation or inspection, the agency official may prohibit that counsel from being present during the interview.

(c) The interviewing official is to provide a witness whose counsel has been excluded under paragraph (b) of this section and the witness's counsel a written statement of the reasons supporting the decision to exclude. This statement, which must be provided no later than five working days after exclusion, must explain the basis for the counsel's exclusion. This statement must also advise the witness of the witness' right to appeal the exclusion decision and obtain an automatic stay of the effectiveness of the subpoena by filing a motion to quash the subpoena with the Commission within five days of receipt of this written statement.

(d) Within five days after receipt of the written notification required in paragraph (c) of this section, a witness whose counsel has been excluded may appeal the exclusion decision by filing a motion to quash the subpoena with the Commission. The filing of the motion to quash will stay the effectiveness of the subpoena pending the Commission's decision on the motion.

(e) If a witness' counsel is excluded under paragraph (b) of this section, the interview may, at the witness' request, either proceed without counsel or be delayed for a reasonable period of time to permit the retention of new counsel. The interview may also be rescheduled to a subsequent date established by the NRC, although the interview shall not be rescheduled by the NRC to a date that precedes the expiration of the time provided under § 19.18(d) for appeal of the exclusion of counsel, unless the witness consents to an earlier date.

Dated at Rockville, Maryland, this 18th day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–31247 Filed 12–28–92; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Parts 34, 35, 50, 73, and 110

RIN 3150–AD58

Material Approved for Incorporation by Reference; Maintenance and Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to make a needed clarification to previously published requirements governing the availability of material approved for incorporation by reference. The amendment clarifies that copies of material which have been incorporated by reference are maintained and available for review at the NRC Library.

EFFECTIVE DATE: December 29, 1992

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–7758

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission is revising those portions of 10 CFR chapter I that reference the availability of materials that have been approved by the Director of the Office of Federal Register for incorporation by reference. Current references within 10 CFR chapter I indicate that copies of material which have been incorporated by reference are available for inspection at the Commission's Public Document Room. This amendment revises the text of 10 CFR chapter I to indicate the current location where this material is available for inspection. The material which has been approved for incorporation by reference is maintained and available for inspection in the NRC Library, which is located at 7920 Norfolk Avenue, Bethesda, Maryland 20814.

Because this is an amendment dealing with agency practice and procedures the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective upon publication in the Federal Register. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature dealing with the location where referenced documents are available for inspection.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final 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 numbers 3150–0007, –0010, –0002, and –0036.

List of Subjects

10 CFR Part 34

Criminal penalty, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 35

Byproduct material, Criminal penalty, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalty, Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalty, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

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 parts 34, 35, 50, 73 and 110

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

1. The authority citation for part 34 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 34.20 [Amended]

2. In § 34.20, paragraph (a), remove the words "Nuclear Regulatory Commission Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555", and add in their place the words "NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814".

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

3. The authority citation for part 35 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 35.632 [Amended]

4. In § 35.632, paragraph (d), remove the words "or may be obtained from the U.S. Nuclear Regulatory Commission, Public Document Room, 2120 L Street, NW., Washington, DC 20555", and add in their place the words "at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814".

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for part 50 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 50.34 [Amended]

6. In § 50.34, paragraph (f)(3)(v)(A)(*2*), remove the words "Nuclear Regulatory Commission's Public Document Room, 2120 L Street, NW., Washington, DC", and add in their place the words "NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814".

7. In § 50.55a, paragraph (b) introductory text is revised to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) The ASME Boiler and Pressure Vessel Code, which is referenced in the following paragraphs, was approved for incorporation by reference by the Director of the Federal Register. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of the ASME Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th St., New York, NY 10017. It is also available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

* * * * *

Appendix H to Part 50 [Amended]

8. In the second paragraph of the introduction to appendix H to part 50, remove the words "at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC", and add in their place the words "at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814".

9. In appendix J to part 50, section III, remove footnote number one, redesignate footnote number two as number one, and revise paragraph A 3 (a) to read as follows:

Appendix J to Part 50—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

* * * * *

III. * * *

A. * * *

3. *Test Methods.* (a) All Type A tests shall be conducted in accordance with the provisions of the American National Standards N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors," March 16, 1972. In addition to the Total time and Point-to-Point methods described in that standard, the Mass Point Method, when used with a test duration of at least 24 hours, is an acceptable method to use to calculate leakage rates. A typical description of the Mass Point method can be found in the American National Standard ANSI/ANS 56.8–1987, "Containment System Leakage Testing Requirements," January 20, 1987. Incorporation of ANSI N45.4–1972 by reference was approved by the Director of the Federal Register. Copies of this standard, as well as ANSI/ANS–56.8–1987, "Containment System Leakage Testing Requirements" (dated January 20, 1987) may be obtained from the American Nuclear Society, 555 North Kensington Avenue, La Grange Park, IL 60525. A copy of each of these standards is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

* * * * *

10. In appendix K to part 50, section I is amended by revising paragraphs A4, A5, C1b, D5, and D7c to read as follows:

Appendix K to Part 50—ECCS Evaluation Models

I. * * *

A. * * *

4. *Fission Product Decay.* The heat generation rates from radioactive decay of fission products shall be assumed to be equal

to 1.2 times the values for infinite operating time in the ANS Standard (Proposed American Nuclear Society Standards—"Decay Energy Release Rates Following Shutdown of Uranium-Fueled Thermal Reactors." Approved by Subcommittee ANS-5, ANS Standards Committee, October 1971). This standard has been approved for incorporation by reference by the Director of the Federal Register. A copy of the standard is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814. The fraction of the locally generated gamma energy that is deposited in the fuel (including the cladding) may be different from 1.0; the value used shall be justified by a suitable calculation.

5. *Metal—Water Reaction Rate.* The rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation (Baker, L., Just, L.C., "Studies of Metal Water Reactions at High Temperatures, III. Experimental and Theoretical Studies of the Zirconium-Water Reaction," ANL-6548, page 7, May 1962). This publication has been approved for incorporation by reference by the Director of the Federal Register. A copy of the publication is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814. The reaction shall be assumed not to be steam limited. For rods whose cladding is calculated to rupture during the LOCA, the inside of the cladding shall be assumed to react after the rupture. The calculation of the reaction rate on the inside of the cladding shall also follow the Baker-Just equation, starting at the time when the cladding is calculated to rupture, and extending around the cladding inner circumference and axially no less that 1.5 inches each way from the location of the rupture, with the reaction assumed not to be steam limited.

* * * * *

C. * * *

1. * * *

b. *Discharge Model.* For all times after the discharging fluid has been calculated to be two-phase in composition, the discharge rate shall be calculated by use of the Moody model (F.J. Moody, "Maximum Flow Rate of a Single Component, Two-Phase Mixture," Journal of Heat Transfer, Trans American Society of Mechanical Engineers, 87, No. 1, February, 1965). This publication has been approved for incorporation by reference by the Director of the Federal Register. A copy of this publication is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814. The calculation shall be conducted with at least three values of a discharge coefficient applied to the postulated break area, these values spanning the range from 0.6 to 1.0. If the results indicate that the maximum clad temperature for the hypothetical accident is to be found at an even lower value of the discharge coefficient, the range of discharge coefficients shall be extended until the maximum clad temperatures calculated by this variation has been achieved.

* * * * *

D. * * *

5. *Refill and Reflood Heat Transfer for Pressurized Water Reactors.* a. For reflood rates of one inch per second or higher, reflood heat transfer coefficients shall be based on applicable experimental data for unblocked cores including FLECHT results ("PWR FLECHT (Full Length Emergency Cooling Heat Transfer) Final Report," Westinghouse Report WCAP-7665, April 1971). The use of a correlation derived from FLECHT data shall be demonstrated to be conservative for the transient to which it is applied; presently available FLECHT heat transfer correlations ("PWR Full Length Emergency Cooling Heat Transfer (FLECHT) Group I Test Report," Westinghouse Report WCAP-7544, September 1970; "PWR FLECHT Final Report Supplement," Westinghouse Report WCAP-7931, October 1972) are not acceptable. Westinghouse Report WCAP-7665 has been approved for incorporation by reference by the Director of the Federal Register. A copy of this report is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814. New correlations or modifications to the FLECHT heat transfer correlations are acceptable only after they are demonstrated to be conservative, by comparison with FLECHT data, for a range of parameters consistent with the transient to which they are applied.

b. During refill and during reflood when reflood rates are less than one inch per second, heat transfer calculations shall be based on the assumption that cooling is only by steam, and shall take into account any flow blockage calculated to occur as a result of cladding swelling or rupture as such blockage might affect both local steam flow and heat transfer.

* * * * *

7. * * *

c. Wetting of the channel box shall be assumed to occur 60 seconds after the time determined using the correlation based on the Yamanouchi analysis ("Loss-of-Coolant Accident and Emergency Core Cooling Models for General Electric Boiling Water Reactors," General Electric Company Report NEDO-10329, April 1971). This report was approved for incorporation by reference by the Director of the Federal Register. A copy of the report is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

11. The authority citation for part 73 continues to read in part as follows:

Authority: Sec. 161, 58 Stat. 948, as amended (42 U.S.C. 2201; sec 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

12. In § 73.26, paragraph (l)(1) is revised to read as follows:

§ 73.26 Transportation physical protection systems, subsystems, components and procedures.

* * * * *

(l) *Shipment by sea.* (1) Shipments shall be made only on container-ships. The strategic special nuclear material container(s) shall be loaded into exclusive use cargo containers conforming to American National Standards Institute (ANSI) Standard MH5.1—"Basic Requirements for Cargo Containers" (1971) or International Standards Organization (ISO) 1496, "General Cargo Containers" (1978). Locks and seals shall be inspected by the escorts whenever access is possible. The ANSI Standard MH5.1 (1971) and the (ISO) 1496 (1978), have been approved for incorporation by reference by the Director of the Federal Register. A copy of each of these standards is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

* * * * *

13. In § 73.50, paragraph (d)(1) is revised to read as follows:

§ 73.50 Requirements for physical protection of licensed activities.

* * * * *

(d) Detection aids. (1) All alarms required pursuant to this part shall annunciate in a continuously manned central alarm station located within the protected area and in at least one other continuously manned station, not necessarily within the protected area, such that a single act cannot remove the capability of calling for assistance or otherwise responding to an alarm. All alarms shall be self-checking and tamper indicating. The annunciation of an alarm at the onsite central alarm station shall indicate the type of alarm (e.g., intrusion alarm, emergency exit alarm, etc.) and location. All intrusion alarms, emergency exit alarms, alarm systems, and line supervisory systems shall at minimum meet the performance and reliability levels indicated by GSA Interim Federal Specification W-A-00450 B (GSA-FSS). The GSA Interim Federal Specification has been approved for incorporation by reference by the Director of the Federal Register. A copy of the material is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethedsa, Maryland 20814.

* * * * *

14. In Appendix B to part 73, section I is amended by revising paragraph B.1.b.(2)(a) and section IV is amended by revising Footnote 2 to the table in paragraph C to read as follows:

Appendix B to Part 73—General Criteria for Security Personnel

* * * * *

I. * * *

B. * * *

1. * * *

b. * * *

(2) Hearing: (a) Individuals shall have no hearing loss in the better ear greater than 30 decibels average at 500 Hz, 1,000 Hz, and 2,000 Hz with no level greater that 40 decibels at any one frequency (by ISO 389 "Standard Reference Zero for the Calibration of Puritone Audiometer" (1975) or ANSI S3.6–1969 (R. 1973) "Specifications for Audiometers"). ISO 389 and ANSI S3.6–1969 have been approved for incorporation by reference by the Director of the Federal Register. A copy of each standard is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

* * * * *

IV. * * *

C. * * *

2. As set forth by the National Rifle Association (NRA) in its official rules and regulations, "NRA Target Manufacturers Index," December 1976. The Index has been approved for incorporation by reference by the Director of the Federal Register. A copy of the index is available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814.

* * * * *

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

15. The authority citation for part 110 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

16. In § 110.43, paragraph (a)(1) is revised to read as follows:

§ 110.43 Physical security standards.

(a) * * *

(1) Review of the physical security program established by the recipient country and of the implementation of the national requirements, as considered through country visits and other information exchanges, to ensure that the physical security measures provide, as a minimum protection comparable to that set forth in the International Atomic Energy publication INFCIRC/225 Rev. 1, entitled "The Physical Protection of Nuclear Material" (INFCIRC/225), which is incorporated by reference in this part.

This publication has been approved for incorporation by reference by the Director of the Federal Register. Notice of any changes to the publication will be published in the **Federal Register**. Copies of INFCIRC/225 may be obtained from the Assistant Director for International Security, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and are available for inspection at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland 20814. A copy is on file in the library of the Office of the Federal Register.

* * * * *

Dated at Rockville, Maryland, this 14th day of December 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92–31249 Filed 12–28–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–229–AD; Amendment 39–8451; AD 92–27–16]

Airworthiness Directives; Sabreliner Model NA265 Series Airplanes Equipped With or Converted to Electrical Driven Hydraulic Pump (Single or Double)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Sabreliner Model NA265 series airplanes. This action requires installation of redundant hydraulic pump/motor ground circuitry. This amendment is prompted by an in-flight fire that occurred inside the aft section of the fuselage shortly after takeoff. The actions specified in this AD are intended to prevent electrical arcing, which could lead to a fire inside the aft section of the fuselage.

DATES: Effective January 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 13, 1993.

Comments for inclusion in the Rules Docket must be received on or before March 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–229–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Sabreliner Corporation, 18118 Chesterfield Airport Road, Chesterfield, Missouri 63005–1121. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. C. Dale Bleakney, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: Recently, a Sabreliner Model NA265–70 series airplane experienced an in-flight fire in the aft section of the fuselage shortly after takeoff. The airplane landed safely at the airport, the flight crew evacuated uninjured, and the fire was extinguished. Subsequent investigation revealed that the fire was caused by inadequate grounding of the hydraulic pump/motors. Such inadequate grounding caused high current flow through the metal braid covering the hydraulic pump pressure and return lines and into the airplane structure, which resulted in softening and rupturing of the high pressure lines and subsequent electrical arcing. Inadequate grounding of the hydraulic pump/motors could result in electrical arcing, which could lead to a fire inside the aft section of the fuselage.

The FAA has reviewed and approved Sabreliner Service Bulletin 92–5, dated December 11, 1992, that describes procedures for installation of redundant hydraulic pump/motor ground circuitry which would preclude the possibility for a fire in the aft section of the fuselage due to loss of ground in the hydraulic pump/motor. This service bulletin also describes procedures for repetitive inspections of the hydraulic pump/motors.

Since an unsafe condition has been identified that is likely to exist or develop on other Sabreliner Model NA265 series airplanes of the same type design, this AD is being issued to prevent electrical arcing caused by inadequate grounding of the hydraulic pump/motors, which could lead to fire inside the aft section of the fuselage. This AD requires installation of redundant hydraulic pump/motor ground circuitry. The actions are required to be accomplished in accordance with the service bulletin described previously.