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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV93-916-1IFR]

Expenses and Assessment Rates for the Marketing Order Covering Nectarines and Fresh Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes assessment rates for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) under M.O. Nos. 916 and 917 for the 1993–94 fiscal year. Authorization of these budgets enable the committees to incur expenses that are reasonable and necessary to administer their programs. Funds to administer these programs are derived from assessments on handlers.

DATES: Effective beginning March 1, 1993, through February 28, 1994. Comments received by July 22, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, or by Facsimile (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 916 (7 CFR part 916) regulating the handling of nectarines grown in California and Marketing Agreement and Order No. 917 (7 CFR part 917) regulating the handling of fresh peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, nectarines and peaches grown in California are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable nectarines and peaches handled during the 1993–94 fiscal year, which began March 1, 1993, through February 28, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this 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 provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the 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 his or her 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 date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 handlers of nectarines and peaches regulated under the marketing orders each season and approximately 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The nectarine and peach marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable nectarines and peaches handled from the beginning of such year. Annual budgets of expenses are prepared by the committees, the agencies responsible for local administration of their respective marketing order, and submitted to the Department for approval. The members of the committees are nectarine and peach handlers and producers. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committees' budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the committees are derived by dividing the anticipated expenses by expected shipments of nectarines and peaches. Because these rates are applied to actual shipments, they must be established at rates which will provide sufficient income to pay the committees' expected expenses.

The Nectarine Administrative Committee met on April 30, 1993, and unanimously recommended total expenses of $3,804,962, with an assessment rate of $0.1825 per box for the 1993–94 fiscal year. In comparison, the 1992–93 fiscal year expenses amounted to $4,106,247. This represents a $302,059 decrease in expenses from the 1992–93 fiscal year with the assessment rate remaining unchanged.

Major expense categories for the 1993–94 nectarine budget include $330,539 for salaries and benefits, $1,827,970 for market research, $1,050,000 for inspection, and $128,225 for sizing research. Funds in the reserve at the end of the 1993–94 fiscal year, estimated at $221,704, will be within the maximum permitted by the order of one fiscal year's expenses.

The Peach Commodity Committee also met April 30, 1993, and on a seven to two vote recommended total expenses of $3,853,545, with an assessment rate of $0.19 per box for the 1993–94 fiscal year. Two committee members were opposed to the $0.19 per box assessment rate and requested that it be lowered to $.1850 per box. Their request was defeated by a four to five vote. In comparison, the 1992–93 fiscal year expenses totaled $3,925,512 with an assessment rate of $0.19 per box of peaches.

Major expense categories for the 1993–94 fiscal period are $330,497 in salaries and benefits, $1,827,970 for market development, $1,105,000 for inspection, and $128,225 for sizing research. Funds in the reserve at the end of the 1993–94 fiscal year, estimated at $458,948, will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, 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, including the information and recommendations submitted by the committees and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that 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) The committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the fiscal year for the committees began March 1, 1993, and the marketing orders require that the rates of assessment for the fiscal year apply to all assessable nectarines and peaches handled during the fiscal year; (3) handlers are aware of this action which was recommended by the committees at public meetings and which are similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 916 continues to read as follows:

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

2. A new § 916.231 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 916.231 Expenses and assessment rate.

Expenses of $3,804,962 by the Nectarine Administrative Committee are authorized and an assessment rate of $0.19 per box on assessable nectarines is established for the fiscal year ending February 28, 1994. Unexpended funds may be carried over as a reserve.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

3. The authority citation for 7 CFR part 917 continues to read as follows:

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

4. A new § 917.255 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 917.255 Expenses and assessment rate.

Expenses of $3,853,545 by the Peach Commodity Committee are authorized and an assessment rate of $0.19 per box on assessable peaches is established for the fiscal year ending February 28, 1994. Unexpended funds may be carried over as a reserve.

Dated: June 14, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–14624 Filed 6–21–93; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AC61

1993—Crop Peanuts; National Average Support Levels for Quota and Additional Peanuts; and Minimum Commodity Credit Corporation Export Edible Sale Price for Additional Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule codifies the following determinations with respect to the 1993 peanut crop: The national average support level for quota peanuts of $674.93 per short ton (st); the national average support level for additional peanuts of $131.09 per st; and the minimum Commodity Credit Corporation (CCC) export edible sale price for additional peanuts of $400 per st. The determinations on the national average support levels for quota and additional peanuts were made pursuant to the statutory requirements of the 1949 Act (the 1949 Act), as amended by the Food, Agriculture, Conservation, and Trade Act of 1990. The determination of the minimum CCC export edible sale price for additional peanuts is a discretionary determination

made to facilitate the marketing of additional peanut contract negotiations.

EFFECTIVE DATE: February 12, 1993.

FOR FURTHER INFORMATION CONTACT: Ronald W. Holling, Tobacco and Peanuts Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), room 3739, South Building, USDA, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–7477.

SUPPLEMENTARY INFORMATION:

Impact Analysis

A final regulatory impact analysis describing this final rule and its impacts is available from the above-named person.

Executive Order 12291 and Department Regulation 1512–1

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" as the matter under consideration will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individuals, industries, Federal, State or local governments, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal Assistance Program

The titles and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies, are: Commodity Loans and Purchases—10.051.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order No. 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a proposed rule or notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reductions Act

This final rule does not require clearance under the Paperwork Reduction Act in that it does not create or impose information collection requirements subject to the provisions of 44 U.S.C. Chapter 35.

Statutory Background

This rule is issued pursuant to the provisions of the 1949 Act. On February 12, 1993, the Secretary announced the national average support levels for 1993-crop quota and additional peanuts and the minimum CCC export edible sales price for 1993-crop additional peanuts.

The 1949 Act provides that the Secretary shall determine the rate of loans, payments, and purchases for the 1991–1995 crops of commodities without regard to the requirements for notice and public participation in rulemaking as prescribed in 5 U.S.C. 553 or in any directive of the Secretary.

The announcement of the national support levels for the 1993 crop of quota and additional peanuts was required to be made by the Secretary no later than February 15, 1993.

Determinations

A. Quota Peanuts Support Level

In accordance with section 108B(a)(2) of the 1949 Act, the national average price support level for 1993 crop quota peanuts must be the corresponding 1992-crop price support level adjusted to reflect any increases in the national average cost of peanut production (excluding any changes in the cost of land) during the calendar year immediately preceding marketing year (MY) 1993, except that the MY 1993 price support level cannot exceed the MY 1992 support level by more than 5 percent. In the event of a reduction in these costs of production, the MY 1993 price support level for quota peanuts would be unchanged from MY 1992. The MY 1992 quota peanut price support level is $674.93 per st. The MY 1993 support level for quota peanuts was determined based on the following estimates:

PEANUT COST ESCALATOR CALCULATIONS

Variable/Component	1991 crop	1992 crop
Total cash expenses (less interest on real estate), capital replacement, and unpaid labor [1]	$538.67/acre	$505.11/acre
Trend yields	2,500 lbs./acre	2,500 lbs./acre
Adjusted costs per pound	$0.215468	$0.202044
	Dollars per st	
	1991	1992
Adjusted costs per st	430.94	404.09
	1993 Quota Calculations Dollars per st	
Change during 1992 in the average cost of producing peanuts.	−26.85	
Price support escalator [2]	0.00	
1993 Quota Support Level (1992 Support + escalator)	674.93 + 0.00 = 674.931	

[1] Economic Research Service estimates.
[2] Statute does not permit reduction in price support level.
Source: TPAD/ASCS/January 1993.

As indicated, relevant peanut production costs decreased from calendar year 1991 to 1992. The MY 1993 quota peanut price support level is accordingly established at $674.93 per st, unchanged from MY 1992.

B. Additional Peanut Support Level

Section 108B(b)(1) of the 1949 Act, provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The MY 1993 price support level for additional peanuts is established at $131.09 per st to ensure no losses to CCC from the sale or disposal of such peanuts, unchanged from MY 1992. Peanuts pledged as collateral for a price support loan are sold to recover the loan and related costs. Based on a consideration of the statutory factors it was determined that there would not be a material change in the expected return and costs to CCC on additional peanuts placed for price support loan and it was determined accordingly a $131.09 per st support level would continue, if adopted for the 1993 crop, to provide a reasonable margin of error to prevent losses to the CCC on the sale and disposition of additional peanuts. Before making this determination, the following information was considered.

1. The domestic use of peanut oil during MY 1993 is forecast to be 87,500 st, down 5.4 percent from MY 1992 projected domestic use. MY 1993 peanut oil beginning stocks are expected to be 20,000 st, up 23 percent from MY 1992. The MY 1993 average peanut oil price is expected to be $0.31 per pound, up $0.02 per pound from MY 1992.

2. The domestic use of peanut meal during MY 1993 is forecast to be 125,000 st, down 25,000 st from MY 1992 projected domestic use. MY 1993 peanut meal beginning stocks are expected to be 5,000 st, unchanged from MY 1992. The MY 1993 average peanut meal price is expected to be $173.50 per st, up $13.50 per st from MY 1992.

3. The domestic disappearance of soybean oil during MY 1993 is forecast to be 6,425,000 st, up 1.4 percent from projected MY 1992 domestic disappearance. MY 1993 soybean oil beginning stocks are expected to be 750,000 st, up 33.0 percent from MY 1992. The MY 1993 average soybean oil price is expected to be $0.23 per pound, up $0.02 per pound from MY 1992.

4. The domestic disappearance of cottonseed oil during MY 1993 is forecast to be 515,000 st, down 0.5 percent from projected MY 1992 domestic disappearance. MY 1993 cottonseed oil beginning stocks are expected to be 35,000 st, down 10.3 percent from MY 1992. The MY 1993 average cottonseed oil price is expected to be $0.24 per pound, unchanged from MY 1992.

5. The domestic disappearance of soybean meal during MY 1993 is forecast to be 24,250,000 st, up 1.3 percent from projected MY 1992 domestic disappearance. MY 1993 soybean meal beginning stocks are expected to be 300,000 st, up 30.4 percent from MY 1992. The MY 1993 average soybean meal price is expected to be $173.50 per st, down $6.50 per st from MY 1992.

6. The domestic disappearance of cottonseed meal during MY 1993 is forecast to be 1,760,000 st, up 0.9 percent from projected MY 1992 domestic disappearance. MY 1993 cottonseed meal beginning stocks are expected to be 50,000 st, up 16.2 percent from MY 1992. The average cottonseed meal price for MY 1993 is expected to be $133.50 per st, down $21.50 per st from MY 1992.

7. The world use of peanuts for MY 1992 is expected to be 22.16 million metric tons, down 0.9 percent from MY 1991. World peanut production for MY 1992 is forecast to be 22.06 million metric tons, down 0.5 percent from MY 1991. Ending stocks for MY 1992 are forecast at 0.60 million metric tons, down 14.3 percent from MY 1991.

C. Minimum CCC Export Edible Sales Price for Additional Peanuts

The minimum price at which additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is a discretionary action that, by practice, is announced at the same time as quota and additional peanut support levels to facilitate the negotiation of additional peanut contracts by producers and handlers.

A proposed rule setting forth the MY 1993 minimum CCC export edible sales price of $400 per st was published on November 24, 1992 (57 FR 55151). Six comments were received during the public comment period that ended on December 11, 1992. Comments were submitted by four producer associations, one sheller association, and one State farm bureau. All comments supported the proposed $400 per st minimum CCC export edible sales price.

For the reasons given in the proposed rule, the minimum price at which 1993-crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is established at $400 per st.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs—agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Final Rule

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. Section 1421.7(c)(8)(iii) is added to read as follows:

§ 1421.7 Adjustment of basic support rates.

* * * * *

(c) * * *

(8) * * *

(iii) 1993 Peanuts, Quota—$674.93 per short ton; Additional—$131.09 per short ton.

* * * * *

3. Section 1421.27(a)(2)(ii) is revised and (a)(2)(iii) is added to read as follows:

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) * * *

(2) * * *

(ii) The 1992 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton; and

(iii) The 1993 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton.

* * * * *

Signed at Washington, DC on June 14, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–14265 Filed 6–21–93; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

RIN 3150–AE00

Licensing Requirements for Land Disposal of Radioactive Wastes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations containing licensing requirements for low-level radioactive waste (LLW) disposal facilities. These amendments clarify that these regulations also apply to the licensing of above-ground disposal facilities; replace the phrase "quality control program" in these regulations with the phrase "quality assurance program," tailored to LLW disposal; update the Paperwork Reduction Act Statement in the regulations, and identify the correct NRC recipient of copies of the licensee's annual reports. The changes are intended to simplify LLW disposal facility licensing interactions for NRC, the NRC Agreement States, and potential applicants for LLW disposal licenses.

EFFECTIVE DATE: July 22, 1993.

ADDRESSES: Copies of the regulatory analysis, the environmental assessment and finding of no significant impact, and the comments received on the rule may be examined at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mel Silberberg, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–3810.

SUPPLEMENTARY INFORMATION:

Background

The NRC published a proposed rule in the **Federal Register** on March 6, 1992, (57 FR 8093–8096) that proposed to make four specific changes to 10 CFR part 61 (hereafter referred to as "part 61" or "the regulation"). Part 61 sets out licensing requirements, licensing procedures, and performance objectives for the land disposal of LLW waste. A review of part 61 against the backdrop of current State and Compact efforts to site and develop LLW disposal facilities identified the need to modify the regulations as follows: (1) Clarify that 10 CFR part 61 also applies to above-ground disposal facilities; (2) replace the phrase "quality control program" in § 61.12(j) with the phrase "quality assurance program," tailored to LLW disposal; (3) update the Paperwork Reduction Act Statement in § 61.8; and (4) identify the correct NRC recipient of copies of the licensee's annual reports. A 30-day comment period expired on April 6, 1992. Comments were received from six respondents.

Summary and Analysis of Public Comments

Two of the letters came from States, one from a citizens group, one from an environmental consulting company, one from a LLW facility developer, and one from a private citizen. Three of the respondents provided no actual comments but only wrote to indicate their support for the proposed rulemaking. Two of the actual commenters, the State of Illinois and the consulting company, objected to certain provisions of the proposed rule and provided comments on those provisions. The objections raised by these two commenters focused on the change which clarifies that part 61 also applies to above-ground LLW disposal facilities. The developer commented on a part of the rule that was not being revised. One of the commenters raised a concern about shallow land burial that was not germane to this rulemaking.

Issue: Abandonment of the Systems Approach

The State of Illinois and the consulting company expressed concern that the proposed amendments to clarify the applicability of part 61 to above-ground disposal amounted to more than simple clarification. These two commenters took the view that the proposed amendments constituted a significant change in, or even abandonment of, the regulatory concept that was the foundation of part 61 and referred to as the "systems approach." The consulting company stated that two of the basic concepts of the systems approach in part 61 were that "the site should make a significant contribution to the long-term isolation of the wastes," and "as reliance on the long-term performance of engineered features decreases over time, reliance on the site must increase over time in order to compensate." The same commenter stated that the site would play a significantly less important role in assuring the long-term isolation of the waste for above-ground disposal facilities without soil covers than it would for disposal facilities built into the ground with soil covers. The commenter stated that there would have to be overwhelming reliance on the above-ground engineered structures not only to contain the wastes over the short term, but to provide long-term isolation as well. The commenters argued that this situation is an abandonment by NRC of the system approach to LLW disposal.

Response

The systems approach to safe disposal of LLW was and still is the foundation of licensing under part 61. The NRC is not abandoning that regulatory concept in the process of clarifying that part 61 can be used to license above-ground disposal facilities. In pursuing the concept of the systems approach during the development of part 61, NRC assumed that for LLW disposal facilities to meet the performance objectives in subpart C, there would have to be an integrated performance of all of the disposal system components (i.e. the site, the waste form, the engineering or facility design, the operation, and the closure of the facility). Each component of the disposal system would make some particular contribution to the containment or isolation of the waste, albeit dependent upon the particular design. As an integrated system the components would work with each other to protect the public health and safety. This assumption applies to any LLW disposal facility, whether it is in the ground or above-ground. As noted in the Statement of Considerations for the proposed rule, technical criteria, analogous to those presently in 10 CFR part 61 but specific to above-ground disposal, do not exist. Nor is the NRC providing either technical criteria or guidance for above-ground disposal designs in this rulemaking. It is expected that should NRC receive an application for above-ground disposal, criteria will be developed on a case-by-case basis.

In any case, whether an LLW facility is in the ground or above ground, it will have to meet the part 61 performance objectives to be licensed for LLW disposal, and performance assessments will evaluate the interactions of the site, design, etc., to determine if they will result in a safe facility.

Issue: NRC Promotion of an Unproven and Questionably Safe Disposal Technology

The public health and safety implications of the proposed action were also a major concern to the consulting company. That commenter objected to the proposed rule on the grounds that the NRC could not ensure that the public health and safety would be protected because the Agency had not evaluated the safety of an above-ground disposal facility over the 500 years during which there would be a radiological hazard at such a facility. The commenter also asserted that the NRC had not demonstrated through the proposed rule that an overall disposal system of such a design could, with reasonable assurance, meet the performance objectives of subpart C, as such a facility would be required to do before an LLW license could be granted. In addition, the commenter stated that above-ground disposal technology was not specifically evaluated in the Environmental Impact Statement (EIS) for the existing part 61 and noted that no additional assessment was offered as part of the proposed rulemaking. From this commenter's perspective, by proposing the changes to authorize the use of above-ground disposal, NRC is promoting an unproven and questionably safe disposal technology.

Response

The structure of part 61 is that all land disposal facilities must meet the performance objectives of subpart C. The subpart C performance objectives are the safety objectives, intended to protect the general population from releases of radioactivity, to protect individuals from inadvertent intrusion, and to protect individuals during facility operations. The license application for any LLW land disposal facility must demonstrate compliance with these objectives. If NRC received a license application for an aboveground facility, NRC would perform a safety evaluation as a necessary part of the licensing process to determine if the required performance objectives would be fulfilled. NRC's analysis and evaluation for such a facility would be based on site-specific information and data obtained during the licensing process to assess compliance with the performance objectives. Additionally, in accordance with 10 CFR 51.80(a), the NRC will prepare an EIS for the facility as it is required to do for any LLW disposal facility license issued under 10 CFR part 61.

Issue: Lack of Technical Requirements for Above-Ground Disposal—More Complicated Licensing Process

The two commenters who objected to the proposed rule also objected because it did not contain technical requirements for above-ground disposal. Part 61 contains detailed technical requirements specifically for near-surface disposal facilities but no equivalent technical requirements for above-ground facilities are present in the existing part 61, nor were any proposed through the rulemaking. The commenters maintain that it is not desirable to promulgate a rule extending the applicability of Part 61 to above-ground disposal facilities without appropriate technical guidance.

The consulting company also objected to the proposed rule because the commenter believes that NRC's intentions to develop technical requirements after an application is received would increase uncertainty and complicate, rather than simplify, the licensing process. The commenter stated that developing the requirements at the same time a license application is under review would expose the license review to undesired debate about the adequacy of the regulations and the manner in which they were developed. The commenter argued that NRC should develop the technical requirements for above-ground disposal now, as part of this rulemaking.

Response

The NRC continues to support its earlier decision not to issue technical criteria for above-ground disposal with this rulemaking. While some States have considered above-ground disposal, no State has actually decided to build such a facility. Thus, NRC may not even receive an application to license an above-ground facility. Therefore, NRC believes that it is a more efficient use of NRC resources to develop technical criteria when there are actual plans for an above-ground facility rather than speculate at this time as to how such a facility might be designed.

Although the decision to defer development of the technical criteria for an above-ground disposal facility will introduce some uncertainty into the licensing process, the Commission does not believe that this deferral will substantially interfere with the development of a license application for such a facility or the NRC review of such a license application. As noted previously, the performance objectives of subpart C must still be met, and furthermore, the near-surface disposal requirements currently in § 61.50, § 61.51, and § 61.52 may be useful to a potential license applicant in preparing a license application for an above-ground disposal facility.

Issue: Increased Regulatory Uncertainty for Above-Ground Disposal

The consulting company expressed concern that if an Agreement State receives an application for above-ground disposal and NRC has not developed technical requirements, the Agreement State will have to develop its own technical requirements which could be different from those developed by another Agreement State or by the NRC. The commenter's view is that the differences in requirements could raise issues that would ultimately have to be resolved by NRC or by the courts.

Response

NRC recognizes that different States and the NRC might utilize different technical criteria appropriate to the particular design proposed to them. The NRC will provide assistance to the extent practical to facilitate States' efforts in developing and utilizing criteria. In any case, as noted previously by the Commission, the performance objectives of subpart C must still be met. Any differences in technical approaches should not give rise to proceedings before NRC or the Courts.

Issue: LLW Licensing on an Ad Hoc Basis

According to one of the commenters, the proposed changes which include facility review and criteria development on a case-by-case basis, raise the specter of above-ground disposal facilities that are designed, licensed, constructed, operated, and closed, on an ad hoc basis. The commenter believes such licensing would be a retreat to the method of licensing used before the promulgation of part 61.

Response

The NRC does not believe that the term "ad hoc" accurately describes the licensing decisions it will make on above-ground disposal. NRC has dealt with and will continue to deal with many specific licensing issues on a case-by-case basis. However, since the promulgation of part 61, the licensing process for LLW disposal is directed at attaining reasonable assurance that the licensed facility will meet the performance objectives of subpart C. Granted there will likely be new and different issues associated with licensing an above-ground facility, but NRC will deal with these issues as it has in the past, making sure that adequate conservatism has been incorporated in the design or the siting of the facility to ensure the public safety.

Issue: Not Disposal but Long-Term Storage

One of the commenters objected to the concept of above-ground disposal as nothing more than a 500-year hold-for-decay, storage facility. The commenter notes that long-term storage of LLW is inconsistent with Commission policy. The commenter urged NRC to make a clear case that an above-ground disposal facility without an earthen cover is substantially different from a 500-year storage facility.

Response

The NRC would not treat an above-ground disposal facility as a storage facility. A performance assessment would need to demonstrate long-term performance and stability as required by part 61. The facility would be licensed as a permanent disposal facility and would be evaluated for compliance with the Performance Objectives in subpart C.

Issue: Lack of Public Role in the Regulatory Process

Another issue raised was that the approach NRC intends to use to license above-ground disposal will not ensure adequate opportunity for public involvement in the regulatory process. The commenter noted that in the proposed rule NRC specified its intent to develop technical requirements for above-ground disposal facilities after an application is received and on a case-by-case basis. The commenter assumed that such an approach would not afford the public the opportunity to be actively involved in the development and review of such requirements.

Response

There has been opportunity for public participation in the establishment of the performance objectives in subpart C, which were established by rulemaking. In addition, there will be opportunity for the public to be involved in the regulatory process related to licensing an above-ground disposal facility. As discussed previously, the technical review criteria for an above-ground disposal facility will be developed on a case specific basis after a license application is received for such a facility. On a case specific basis the Commission will determine what mechanism to use to establish the technical requirements for the facility license and the method for involving the public in the development of such requirements. In similar situations where the technical criteria for licensing has not been established by rule, the Commission has provided an opportunity for parties to the hearing on the license application for the facility, the opportunity to comment on the licensing criteria. This occurred in the Envirocare license application for a specialized high-volume, low-activity thorium and uranium waste disposal facility (56 FR 2959) 1991 and in the Louisiana Energy Services license application for the design, construction, and operations of unique uranium enrichment facilities. (56 FR 23310) 1991.

Participation by a member of the public in the licensing process is described in NUREG–1274 including procedures for compliance with 10 CFR part 2, NRC's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders." **Federal Register** Notices (FRN) are published when an application is tendered, when an application is determined to be acceptable for docketing, when the Draft Safety Evaluation Report (DSER) and Draft Environmental Impact Statement (EIS) are completed, and when public hearings are scheduled. NRC will also publish a Notice of Intent to issue a license and a Notice of Issuance. The public, States, tribes, and local governments can petition to participate in the licensing process and can request hearings to provide further involvement.

Issue: Shallow Land Burial Facilities Could be Considered Geologic Repositories

The developer commented that the second sentence of the definition "land disposal facility" which reads, "For purposes of this chapter, a geologic repository as defined in part 60 is not considered a land disposal facility" might be construed to preclude shallow land burial as a permissible method for LLW disposal. The commenter noted that while the exclusion of geologic repositories is supposed to decouple LLW facilities from deep geologic facilities for high-level waste (HLW) disposal, the definition of geologic repository in part 60 (NRC's HLW disposal regulations) is very general, and that a "shallow land burial facility" for LLW could be considered a geologic repository under the part 60 definition.

Response

NRC staff believes that this comment reflects a misunderstanding regarding NRC's proposed changes to the definition of "land disposal facility," and it addresses an issue which is outside of the intended scope of the rulemaking. From the developer's comments, it could be that the developer incorrectly believed that the second sentence of the definition was being added, or at least changed, as part of NRC's proposed revision to part 61. However, neither was the case. The language identified in this comment is already part of the definition of "land disposal facility" in part 61 and has been since the original rule was promulgated in 1982. For purposes of presenting the entire definition as it would appear when the revisions were promulgated, the NRC staff included the second sentence in what was referred to as the proposed definition for "land disposal facility" for the proposed rulemaking. Even though NRC was not proposing to add or change that sentence, NRC staff considered the developer's comment to determine if the wording of the second sentence could be used to exclude typical shallow land burial as an acceptable design for disposal of LLW.

The staff does not believe that there should be any difficulty in differentiating between a geologic repository that is licensed under the requirements of part 60 for disposal of HLW and a land disposal facility licensed under the requirements of part 61 for disposal of LLW. The definition of a geologic repository must be read within the context of the purpose and scope of 10 CFR 60.1. This section applies to a geologic repository that is only licensed to the U.S. Department of Energy (DOE) in accordance with the Nuclear Waste Policy Act of 1982. Moreover, § 60.1 specifically states that part 60 "does not apply to any activity licensed under another part of this chapter." Therefore, a shallow land burial facility licensed under part 61 would not come within the scope of § 60.1, but instead would fit within the scope of part 61. The staff concludes that no change is required to the second sentence in the definition for "land disposal facility" in part 61 to address the developer's comment.

Based on the analysis of public comments and further staff review, the staff has prepared this final rule. As described below, there are some editorial differences between the proposed definition for "land disposal facility" and the definition to be promulgated in the final rule.

Discussion of the Revisions

I. Amend the definition of "land disposal facility" in § 61.2 to clarify that the term refers to LLW disposal facilities which are on or protrude through the earth's surface and do not have an earthen cover, in addition to those that are in the ground and have an earthen cover. The purpose of this change is to clarify the regulatory applicability of part 61 to the licensing of "above-ground" disposal designs like the "above-ground vault," in particular, and the applicability of the performance objectives of part 61 to these designs.

The definition of "land disposal facility" offered in the proposed rule read "land disposal facility" means the land, buildings, and equipment which are intended to be used for the disposal of radioactive wastes on the surface or into the subsurface of the land. For purposes of this Chapter, a 'geologic repository' as defined in part 60 is not considered a 'land disposal facility'."

For the final rule, the wording of the definition of "land disposal facility" has been modified slightly from the language of the proposed definition in order to better clarify that part 61 can be used by NRC to license above-ground LLW disposal facilities. The final definition of land disposal reads "land disposal facility means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive wastes. For purposes of this Chapter, a "geologic repository" as defined in part 60 is not considered a "land disposal facility." In the final definition, the words "on the surface or into the subsurface of the land" have been deleted to eliminate confusion regarding the kinds of facilities to which these terms apply. The word "structures" has been added since that term better describes the types of engineered features likely to be constructed at an above-ground LLW disposal facility. The Commission believes the final definition is not a substantive change but a modification to simplify the definition so that it is easier to understand.

At this time, the NRC is not issuing specific technical criteria for above-ground disposal facilities that are analogous to the near-surface disposal requirements of §§ 61.50(a), 61.51(a), and 61.52(a) of subpart D because of the special technical characteristics of above-ground disposal facilities. Only those portions of the regulation that apply generically to "land disposal facilities" are directly applicable to the licensing of above-ground disposal facilities. Specifically, this means that the overall performance objectives of subpart C will apply to above-ground disposal facilities, as well as the part 61 administrative and procedural requirements, the environmental monitoring requirements, the financial assurance requirements, the waste transfer and manifest requirements, and the general institutional requirements.

Establishing the applicability of the subpart C performance objectives to above-ground disposal is particularly important. Any applicant for a license for an above-ground disposal facility under part 61 will have to demonstrate to the NRC that the proposed facility can meet the same safety requirements and dose limits that apply to any LLW disposal facility that has an earthen cover. The demonstration of compliance will have to address the unique features of the above-ground design, the special technical considerations associated with those features, their potential health and safety consequences, and reconcile them with the subpart C performance objectives.

Even though some of the requirements in subpart D are only applicable to near-surface disposal, the Commission still believes they would be useful to a prospective license applicant as guidance for planning an above-ground facility and to the NRC or Agreement States in the development of technical requirements for such facilities.

To provide further clarification regarding the applicability of part 61 to the licensing of above-ground disposal facilities, NRC also is amending the "Disposal Facility" discussion in the Concepts Section—61.7. The change to § 61.7(a)(1) clarifies the distinction made by the NRC between near-surface disposal and above-ground disposal, to emphasize that near-surface LLW disposal facilities built partially or totally above-grade have protective earthen covers, while similar facilities constructed without earthen covers are considered to be "above-ground disposal facilities."

NRC is not providing either technical criteria or guidance for above-ground disposal designs with these amendments. It is expected that, should NRC receive an application for above-ground disposal, criteria will be developed on a case-by-case basis.

II. Replace the term "quality control program" in § 61.12(j) with the term "quality assurance program, tailored to LLW disposal." The purpose of this change is to clarify what steps an applicant for an LLW disposal facility license must take in order to assure that the facility will perform as intended, and also to assure that the necessary records and documentation are available for evaluation and performance assessment by NRC or an Agreement State at the time of license submittal. Quality assurance is a broad term that encompasses quality control and also includes managerial controls and audits.

III. Revise § 61.8 to indicate that the NRC requested and obtained OMB approval for the information collection requirements in part 61. Under the OMB guidelines that were in effect when the original part 61 was issued, OMB approval of the part 61 information collection requirements was not necessary because the regulation was expected to affect less than 10 licensees. Subsequently the OMB guidelines changed, and part 61 was no longer exempt from the OMB approval requirement. Accordingly, NRC submitted part 61 for OMB review and obtained the OMB clearance that is required by the Paperwork Reduction Act. The purpose of this change is to update § 61.8 to correctly reflect this approval.

IV. Revise § 61.80(i)(1) to identify the correct NRC headquarters recipient of copies of the annual report.

Issue of Compatibility for Agreement States

Under existing NRC policy and guidelines, two of the changes adopted in this rulemaking would be matters of compatibility for the NRC Agreement States. The change to the definition of land disposal facility in § 61.2 is a matter of Division I compatibility, and the "QC" to "QA" change in § 61.12(j) is a matter of Division II compatibility. This means that those Agreement States that have assumed NRC's regulatory authority for the disposal of LLW under section 274 of the Atomic Energy Act (AEA) of 1954, as amended, normally would be required to incorporate the new definition of "land disposal facility" essentially verbatim directly into their State regulations for LLW disposal. However, States who have already selected a disposal technology and adopted a more narrow regulatory definition of "land disposal facility" to reflect that selected technology, will not be required to amend their regulatory definition to conform to this revision, provided the selected technology falls within the scope of 10 CFR part 61 and the definition is not inconsistent with the NRC definition.

The incorporation of the Division II change is also required; however, the Agreement States have more flexibility than for the Division I change. For the Division II change, the language adopted need not be identical to the NRC regulations, but the effect cannot be less stringent.

Based on the existing guidelines, the changes would have to be incorporated within 3 years after this final rule is issued.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969 as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. Three of the proposed changes—the "quality control" to "quality assurance" change in § 61.12(j), the update of the Paperwork Reduction Act Statement in § 61.8, and the correction of the organizational inconsistency in § 61.80(i)(1) are the types of actions described in categorical exclusion § 51.22(c)(2). As such they are considered by the Commission to be corrective and nonsubstantive in nature and will not have an impact on the environment. The remaining changes, which clarify the applicability of part 61 to the licensing of above-ground LLW disposal, also will not have an impact on the environment in that these amendments do not change the required level of overall performance for LLW disposal facilities. Furthermore, any environmental impact of operating such a facility will be addressed as a part of the licensing action for that specific facility under 10 CFR part 51. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document

Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3877.

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 3150–0135.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the alternatives considered by the Commission and explains the decision to revise part 61. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mark Haisfield, (301) 492–3877.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The changes made to part 61 in this rule will only affect those entities that decide to apply for a license to build and operate an LLW disposal facility. In the Low-Level Radioactive Waste Policy Act of 1980 (LLRWPA) and the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA), Congress mandated that the individual States or groups of States called compacts should provide the LLW disposal capacity for the LLW generated within each of their borders. Thus the licensees for LLW disposal facilities will either be States or private operators which are not small entities under the size standards established by the Nuclear Regulatory Commission on November 6, 1991 (56 FR 56671). In addition, this rule will not have a significant economic impact because the changes to part 61 are clarifying in nature, and only a small number of licensees are likely to be affected.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule 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 61

Criminal penalty, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

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 61.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851).

2. In § 61.2, the definition of *land disposal facility* is revised to read as follows:

§ 61.2 Definitions.

As used in this part:

* * * * *

Land disposal facility means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive wastes. For purposes of this chapter, a "geologic repository" as defined in part 60 is not considered a "land disposal facility."

* * * * *

3. In § 61.7, paragraph (a)(1) is revised to read as follows:

§ 61.7 Concepts.

(a) *The disposal facility.* (1) Part 61 is intended to apply to land disposal of radioactive waste and not to other methods such as sea or extraterrestrial disposal. Part 61 contains procedural requirements and performance objectives applicable to any method of land disposal. It contains specific technical requirements for near-surface disposal of radioactive waste, a subset of land disposal, which involves disposal in the uppermost portion of the earth, approximately 30 meters. Near-surface disposal includes disposal in engineered facilities which may be built totally or partially above-grade provided that such facilities have protective earthen covers. Near-surface disposal does not include disposal facilities which are partially or fully above-grade with no protective earthen cover, which are referred to as "above-ground disposal." Burial deeper than 30 meters may also be satisfactory. Technical requirements for alternative methods may be added in the future.

* * * * *

4. Section 61.8 is revised to read as follows:

§ 61.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150–0135.

(b) The approved information collection requirements contained in this part appear in §§ 61.3, 61.6, 61.9, 61.10, 61.11, 61.12, 61.13, 61.14, 61.15, 61.16, 61.20, 61.22, 61.24, 61.26, 61.27, 61.28, 61.30, 61.31, 61.53, 61.55, 61.57, 61.58, 61.61, 61.62, 61.63, 61.72, and 61.80.

5. In § 61.12, paragraph (j) is revised to read as follows:

§ 61.12 Specific technical information.

* * * * *

(j) A description of the quality assurance program, tailored to LLW disposal, developed and applied by the applicant for the determination of natural disposal site characteristics and for quality assurance during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste.

* * * * *

6. In § 61.80, (i)(1) is revised to read as follows:

§ 61.80 Maintenance of records, reports, and transfers.

* * * * *

(i)(1) Each licensee authorized to dispose of waste materials received from other persons, pursuant to this part, shall submit annual reports to the appropriate Commission regional office shown in appendix D of part 20 of this chapter, with copies to the Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Reports must be submitted by the end of the first calendar quarter of each year for the preceding year.

* * * * *

Dated at Rockville, Maryland, this 16th day of June 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–14648 Filed 6–21–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ASW–45; Amendment 39–8575; AD 92–27–21]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 205A–1, and 205B Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 92–27–21 that was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. (BHTI) Model 205A–1 and 205B series helicopters by individual letters. This AD requires inspection of the tail rotor drive shaft (drive shaft) to ensure its airworthiness and to ensure there is adequate clearance between the drive shaft and the tail rotor drive shaft tunnel (drive shaft tunnel). An inspection is also required after each removal and reinstallation of the starter generator. This amendment is prompted by a report of damage to the drive shaft as a result of interference between the drive shaft and the forward end of the drive shaft tunnel. The actions specified by this AD are intended to prevent failure of the drive shaft, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Effective July 7, 1993. To all persons except those persons to whom it was made immediately effective by Priority Letter AD 92–27–21, issued on January 7, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1993.

Comments for inclusion in the Rules Docket must be received on or before August 6, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–45, 4400 Blue Mound Road, Fort Worth, Texas 76106.

The applicable service information may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Certification Office, ASW–170, 4400 Blue Mound Road, Fort Worth, Texas 76106, telephone (817) 624–5177, fax (817) 740–3394.

SUPPLEMENTARY INFORMATION: On January 7, 1993, the FAA issued Priority Letter AD 92–27–21, applicable to Bell Helicopter Textron, Inc. (BHTI) Model 205A–1 and 205B series helicopters with increased diameter drive shaft, part number (P/N) 204–040–620–011, installed, which requires an inspection of the drive shaft to ensure that it is airworthy and to ensure there is no interference between the drive shaft and the drive shaft tunnel. Additionally, an inspection for adequate clearance is also required each time the starter generator is installed after maintenance. That action was prompted by a report of damage to the drive shaft as a result of interference between the drive shaft and the forward end of the drive shaft tunnel. An investigation indicated that interference could occur as a result of damage to the upper side of the drive shaft tunnel when conducting maintenance on the starter generator. This condition, if not corrected, could result in failure of the drive shaft, loss of tail rotor control, and subsequent loss of control of the helicopter.

The FAA has reviewed and approved BHTI Alert Service Bulletin (ASB) 205–92–49 and ASB 205B–92–13, both dated October 5, 1992, that describe procedures for an inspection of the drive shaft, replacement of unairworthy parts, and reassembly of the drive shaft and drive shaft tunnel to provide adequate clearance between the drive shaft and the drive shaft tunnel. Additionally, these ASB's require an inspection for adequate clearance between the drive shaft and the drive shaft tunnel each time the starter generator is installed after maintenance.

Since the unsafe condition described is likely to exist or develop on other helicopters of the same type design, the FAA issued priority letter AD 92–27–21 to prevent failure of the drive shaft, loss of tail rotor control, and subsequent loss of control of the helicopter. The AD requires a one-time inspection of the drive shaft to ensure there is adequate clearance between the drive shaft and the drive shaft tunnel and inspections for adequate clearance after each removal and reinstallation of the starter generator. The actions are required to be accomplished in accordance with BHTI ASB 205–92–49 and ASB 205B–92–13, both dated October 5, 1992 described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on January 7, 1993, to all known U.S. owners and operators of BHTI Model 205A–1 and 205B series helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.