determined from the engine maintenance records.

This amendment revises AD 70-03-04, Amendment 39-933.

This amendment becomes effective March 28, 1987.

Issued in Kansas City, Missouri, on February 11, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-3687 Filed 2-20-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-ANE-47; Amdt. 39-5565]

Airworthiness Directives; Pioneer Parachute Company K-XX, K-XXII, and 26 Foot Conical Canopies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all U.S. users of certain Pioneer Parachute Company K-XX, K-XXII, and 26 foot conical canopies by priority letters sent to all certificated parachute lofts and certificated parachute riggers. The AD requires removal or obliteration of the Technical Standard Order (TSO) C-23b markings. The AD is needed to prevent use of affected canopies as FAA approved canopies due to understrength fabric.

DATES: Effective February 23, 1987, as to all persons except those to whom it was made immediately effective by individual letters dated November 21, 1986, and January 13, 1987, which contained this amendment.

Compliance required prior to next use after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable Safety Notice referred to in Note 1 may be obtained from Pioneer Parachute Company, Incorporated, Pioneer Industrial Park, Hale Road, Manchester, Connecticut 06040.

A copy of the Safety Notice is contained in the Rules Docket, Docket Number 86-ANE-47, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Boston Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7103.

SUPPLEMENTARY INFORMATION: On November 21, 1986, Priority Letter AD No. 86-24-03 was issued and made effective immediately as to all U.S. users of certain Pioneer Parachute Company K-XX canopies. The Priority Letter AD required removal or obliteration of the TSO C-23b markings. AD action was necessary on these canopies because understrength fabric was found on panels of several canopies of this type.

After issuance of Priority Letter AD 86-24-03, it was determined that an amendment was needed to add certain canopies to the applicability list. Consequently, on January 13, 1987, Priority Letter AD No. 86-24-03R1 was issued and made effective as to all users of certain Pioneer Parachute K-XX, K-XXII, and 26 foot conical canopies.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual Priority Letters as to all known certificated parachute lofts and parachute riggers. 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 to make it effective as to all persons.

Conclusion

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

List of Subjects in 14 CFR Part 39

Aviation safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pioneer Parachute Company: Applies to Model K-XX, K-XXII, and 26 foot conical canopies with the following serial numbers: K-XX, P/N 5375-1.

Color Patterns: Light Blue Upper Panels and Royal Blue Lower Panels or Yellow Upper Panels and Tan Lower Panels.

598162	598961	599006
598318	598965	599008
598865	598966	599009
598866	598967	599042
598923	598968	599043
598924	598969	599048
598925	598970	599049
598926	598971	599050
598927	598972	599051
598928	598995	599087
598929	599000	599165
598930	599001	599166
598937	599004	
598960	599005	

Color Patterns: Light Blue Upper Panels and Tan Lower Panels or Yellow Upper Panels and Tan Lower Panels.

598307	598351	598530
598317	598363	598531
598320	598364	598532
598340	598366	598533
598341	598367	598535
598342	598521	598536
598343	598522	598537
598344	598523	598545
598345	598524	598571
598346	598525	598572
598347	598526	598592
598348	598527	598863
598349	598528	
598350	598529	

Color Pattern: White Panels.

598539	598579	599007
598540	598842	599164
598541	598843	599561
598542	598844	599562
598546	598845	599563
598547	598858	599613
598548	598864	599614
598549	598962	599640
598550	598996	599701
598552	598997	599702
598553	598998	599703
598554	598999	599711
598555	599002	
598556	599003	

K-XXII, P/N 5418-1

598557	598564	598651
598558	598565	599044
598559	598566	599076
598560	598567	599441
598561	598568	599638
598562	598569	599639
598563	598650	

26 foot conical, P/N 2412-501

Color Pattern: All White.

599093

To prevent use of affected canopies as FAA approved canopies due to understrength material, remove or obliterate TSO C-23b marking prior to next use after receipt of this AD, unless already accomplished.

Notes.—(1) Pioneer Parachute Company Safety Notice, dated December 22, 1986, applies to this AD.

(2) Investigation is continuing and this AD may be amended in light of the results of the investigation.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Boston Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7103.

This amendment becomes effective March 20, 1987, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD No. 86-24-03, issued November 21, 1986, and Priority Letter AD No. 86-24-03R1, issued January 13, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on February 12, 1987.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 87-3685 Filed 2-20-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWP-30]

Revision to the Santa Rosa, CA Transition Area and Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Santa Rosa, California, transition area and provides controlled airspace for aircraft executing a new instrument approach procedure to the Sonoma County Airport. This action also revises the Santa Rosa control zone and deletes any reference to the Santa Rosa Coddington Airport which no longer exists.

EFFECTIVE DATE: 0901 UTC, June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

History

On December 22, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Santa Rosa transition area and control zone (51 FR 45780). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Santa Rosa transition area and control zone. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Santa Rosa, CA—[Revised]

Within a 5-mile radius of Sonoma County Airport (lat. 38°30'33"N., long 122°48'42" W.). This control zone shall be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

§ 71.181 [Amended]

3. § 71.181 is amended as follows:

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 38°54'45" N., long. 122°52'33" W.; to lat. 38°27'00" N., long. 122°39'05" W., to lat. 38°22'45" N.; long. 122°52'22" W.; to lat. 38°49'30" N., long. 123°08'28" W.; thence to the point of beginning.

Issued in Los Angeles, California, on February 11, 1987.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-3686 Filed 2-20-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-34]

Establishment of Transition Area—Mobridge, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Mobridge, South Dakota, transition area to accommodate a new NDB Runway 12 Standard Instrument Approach Procedure (SIAP) to Mobridge Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, December 31, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Mobridge, South Dakota, transition area (51 FR 47253).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in

Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Mobridge, South Dakota, transition area to accommodate aircraft utilizing an NDB Runway 12 SIAP.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Mobridge, South Dakota [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Mobridge Municipal Airport (Lat. 45°33'00"N., Long. 100°24'00"W.); and within 3 miles either side of the 297° bearing from the Mobridge NDB extending from the 5 mile radius to 8 miles northwest of the Mobridge NDB; and, that airspace extending upward from 1,200 feet above the surface within 9.5 miles southwest of, and 4.5 miles northeast of the 297° bearing from the Mobridge NDB, extending from the Mobridge NDB to 18.5 miles northwest excluding the portions within Federal Airway V71.

Issued in Des Plaines, Illinois, on February 11, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-3688 Filed 2-20-87; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 211, 272 and 302

[OST Docket 42721; Amdt. No. 211-18; 272-1; 302-72]

Applications for Permits to Foreign Air Carriers; Essential Air Transportation to the Freely Associated States; Rules of Practice in Proceedings

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department adopts a rule to implement the provisions of the aviation economic agreement supplementing the Compact Of Free Association between the United States, the Federated States of Micronesia, the Marshall Islands and Palau. The rule will: (1) Establish procedures for the grant of a special class of foreign air carrier permit to "Freely Associated State Air Carriers"; (2) allow these carriers to apply for authority to engage in overseas (and interstate) air transportation between Guam, the Commonwealth of the Northern Mariana Islands, and Honolulu, Hawaii; (3) make provision for the guarantee of essential air transportation to certain Freely Associated State points, with subsidy if necessary; and (4) permit Freely Associated State Air Carriers to be eligible to provide such subsidized essential air transportation under certain conditions.

EFFECTIVE DATE: February 23, 1987.

FOR FURTHER INFORMATION CONTACT: Peter B. Schwarzkopf, Office of the Assistant General Counsel for International Law, C-20, (202) 366-5621, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking, (Docket 42721), published December 24, 1984 (50 FR 95, January 2, 1985), the Civil Aeronautics Board proposed adoption of rules to implement the provisions of the aviation economic agreement supplementing the Compact of Free Association between the United States, the Federated States of Micronesia and the Marshall Islands.

With the statutory termination of the Civil Aeronautics Board on January 1, 1985 under the Airline Deregulation Act of 1978 and the Civil Aeronautics Board Sunset Act of 1984, the Department of Transportation is now responsible for the disposition of this rule.

By Supplementary Rulemaking Notice (No. 85-6, Docket 42721, 50 FR 11182, March 3, 1985), the Department granted a request by the Federated States of Micronesia for extension of time to comment to April 4, 1985, with reply comments due April 25, 1985.

No comments have been filed in this proceeding. Accordingly, except to the extent modified to extend the applicability of these rules to Palau, we adopt this final rule, as proposed.

The Compact of Free Association between the United States, on the one hand, and the Federated States of Micronesia and the Marshall Islands, on the other (hereafter referred to as the "Freely Associated States"), creates a new independent status, in association with the United States, for these island governments in the Trust Territory of the Pacific Islands. A Joint Resolution adopting the Compact was passed by both Houses of Congress and was signed by the President on January 14, 1986 (Pub. L. 99-239).

By Proclamation issued on November 3, 1986, the President of the United States announced the effectiveness of the Compact for the Marshall Islands on October 21, 1986, and for the Federated States of Micronesia on November 3, 1986, in accordance with the terms of the Compact and agreements with those Governments.

A Compact of Free Association has also been concluded between the United States and the Republic of Palau. For purposes of provisions relating to aviation, that Compact is identical to the Compacts in effect with the Marshall Islands and the Federated States of Micronesia. On October 16, 1986, the U.S. Congress approved the Compact with Palau, which was signed by the President on November 14, 1986 (Pub. L. 99-658). However, the Compact approval process in the Republic of Palau has not yet been completed. The Compact will become effective for Palau on a date to be agreed following completion of the Palauan approval process. We are revising the rule to be applicable to Palau in anticipation of effectiveness of the Compact for Palau. Nevertheless, Palau would not be considered to be a Freely Associated State, within the meaning of the rule, until the Compact becomes effective for Palau. Similarly, the rule's subsidy provisions (Part 272) would not be applicable to Palau until effectiveness of the Compact for Palau, although the subsidy provisions in section 419 of the

Federal Aviation Act (49 U.S.C. 1389) would remain applicable until that time.

Supplementary to the Compact is the Federal Programs and Services Agreement. Article IX of that Agreement deals with Civil Aviation Economic Services (hereafter referred to as the "Aviation Agreement"). Subject to the special provisions of the Aviation Agreement, these Micronesian islands are treated as foreign points, and carriers owned and controlled by their citizens as foreign air carriers, for purposes of application of the Federal Aviation Act (49 U.S.C. 1301, *et. seq.*).

Paragraph 5 of Article IX provides that the Department of Transportation (as successor to the Civil Aeronautics Board) will guarantee essential air transportation, with subsidy if necessary, between the United States and certain points in the Federated States of Micronesia, the Marshall Islands, and Palau. In addition, paragraph 5 provides that Freely Associated State Air Carriers, which are air carriers owned and controlled by citizens of the Federated States of Micronesia, the Marshall Islands, Palau and/or the United States, may be authorized by the Department to engage in local air transportation between Guam, the Commonwealth of the Northern Mariana Islands (and within the Commonwealth of the Northern Mariana Islands) and Honolulu, Hawaii (interstate and overseas air transportation). Freely Associated State Air Carriers could be selected to perform subsidized essential air transportation to these Micronesian points only if no U.S. air carrier were available to perform such transportation, or the subsidy cost would be substantially less than for an available U.S. air carrier.

Section 221(a)(5) of the Compact provides that the Department of Transportation, as successor to the Civil Aeronautics Board, has "the authority to implement the provisions of paragraph 5 of Article IX of such separate agreements, the language of which is incorporated into this Compact." As noted, the Compact has been adopted by both Houses of Congress as Public Laws (Pub. L. 99–239, January 14, 1986; Pub. L. 99–658, November 14, 1986). Therefore, the Department has, through the Compact, been granted specific statutory authority to implement the provisions of paragraph 5 of the Aviation Agreement.

Subparagraph 5(h) of the Aviation Agreement provides:

(h) The Civil Aeronautics Board shall adopt such rules to implement the provisions of this paragraph as the Board, in its discretion deems appropriate.

This rule implements the provisions of paragraph 5 of the Aviation Agreement.

A summary of the final rule, follows:

Essential Air Service

As noted, section 5(a) of the Compact provides for the guarantee of essential air service, with subsidy if necessary, to various points in the Federated States of Micronesia, the Marshall Islands, and Palau. This rule specifies the procedures for implementation of these subsidy provisions. The authority for the essential air service provisions is derived from the provision of the Compact that grants the statutory authority to implement paragraph 5 of the Aviation Agreement, and not from section 419 of the Federal Aviation Act, *Small Community Air Service, Guaranteed Essential Air Transportation.* This rule, therefore, differs in several respects from the provisions of section 419.

Most significantly, the rule contemplates that there may be service by carriers in addition to those carriers providing the essential air transportation, although, all service, including connecting, multi-stop, or service via foreign points, whether provided by U.S., Freely Associated State or foreign air carriers, will be considered in determining if essential air transportation is being provided. Among the criteria for determination of the level of essential air transportation will be the demonstrated demand for service, as well as any subsidy costs involved. There is no specified minimum level of service. The essential air service provisions will be effective until October 28, 1988, and may be extended by Congress. Again, however, action by Congress on the Compact subsidy program would not necessarily be tied to, or be the same as action by Congress on the U.S. domestic subsidy program under section 419 of the Federal Aviation Act.

The Department has the authority to require that existing essential air transportation be maintained by U.S. or Freely Associated State air carriers, pending the selection of a carrier to provide essential air transportation, with a 90 day notice for termination of service below the level of essential air transportation. The Department will determine the level of essential air transportation for the eligible Freely Associated State points within nine (9) months after the effective date of the Compact of Free Association for the Freely Associated State concerned. The views of the Governments of the Freely Associated States will be carefully considered in making these determinations.

The Department will determine the compensation necessary to maintain the essential air transportation level, although payments will be made from appropriations to the Department of Interior. Such compensation will be provided only so long as is necessary to maintain a level of essential air transportation. The Department is authorized to impose conditions with respect to service, fares or rates on the operations of carriers serving a subsidized market as may be necessary or desirable to minimize the required subsidy compensation, provided such conditions do not unduly impair the services provided in the market (§ 272.10).

The Presidents of the Freely Associated States concerned must be served with all documents concerning subsidy or licensing proceedings.

Applications for Freely Associated State Foreign Air Carrier Permits

Paragraph 5(b) of the Aviation Agreement provides that the Department will establish a distinct classification of foreign air carriers known as Freely Associated State Air Carriers. The Department now adds a new subpart D to Part 211, which sets forth the procedures and requirements for such applications. Section 211.31 requires that the applicant clearly establish substantial ownership and effective control of the carrier, and that citizens of other countries do not have interests in the carrier sufficient to permit them to substantially influence its actions. The applicant must also establish that the Administrator of the FAA has determined that carrier complies with required safety standards.

Service of Documents

Paragraph 6 of the Aviation Agreement requires that the United States promptly notify the Government of the Marshall Islands, the Federated States of Micronesia or Palau of the filing with the Department of Transportation (as successor to the Civil Aeronautics Board) of any application by a United States air carrier for authority under the laws of the United States to operate air services to, through, beyond, within and between the territories of those governments. We are amending § 302.8 *Service of Documents,* § 302.9 *Parties;* and Part 302, Subpart Q *Expedited Procedures for Processing Licensing Cases,* § 302.1705 *Service of Documents,* to implement this provision.

The amendments require that all applications "directly involving" service to the Federated States of Micronesia,

the Marshall Islands or Palau, and all other documents in the proceeding, be served on the President and designated authorities of the Freely Associated State(s) concerned. The concerned Freely Associated State Government will be made a party to the proceeding.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in annual effect on the economy of $100 million or more. This regulation is significant under the Department's Regulatory Policies and Procedures because it involves important Departmental policies. Its economic impact will be so minimal that a full regulatory evaluation is not necessary.

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Department certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are only a few small U.S. air taxi operators in this area. The rule will not be detrimental to their operations. They will be eligible, under the rule, to receive subsidy for necessary essential air service operations.

Immediate Effectiveness

No comments were received in response to the Notice of Proposed rulemaking. The Compact has recently become effective for the Federated States of Micronesia and the Marshall Islands. This rule implements important provisions of the Compact. It therefore extends benefits already provided for in the Compact, without adding any new restrictions for any person or carrier. In order to insure that the Compact's provisions may be available immediately to interested parties, without confusion as to the procedures for their implementation, the Department finds, in accordance with 5 U.S.C. 553(d), that good cause exists for making this rule immediately effective.

List of Subjects

14 CFR Part 211

Air carriers, Air transportation-foreign, Freely Associated State Air Carriers.

14 CFR Part 272

Air carrier, Essential air service, Freely Associated States.

14 CFR Part 302

Administrative practice and procedure, Air rates and fares, Authority delegations, Postal service, Freely Associated States.

Final Rule

Accordingly, for the reasons set out in the preamble, the Department adds a new 14 CFR Part 272, Essential Air Transportation to the Freely Associated States, and amends 14 CFR Part 211, Applications for Permits to Foreign Air Carriers, and 14 CFR Part 302, Rules of Practice in Proceedings, as follows:

PART 211—APPLICATIONS FOR PERMITS TO FOREIGN AIR CARRIERS

1. The authority citation for Part 211 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1372, 1386, 1481, 1482, 1502. Section 221(a)(5) of the Compact of Free Association, and Paragraph 5 of Article IX of the Federal Programs and Services in implementation of that Compact (Pub. L. 99-239; Pub. L. 99-658).

2. A new Subpart D consisting of §§ 211.30 through 211.35 is added to read as follows:

Subpart D—Freely Associated State Air Carriers

Sec.
211.30 Eligibility.
211.31 Application.
211.32 Issuance of permit.
211.33 Interstate and overseas authority.
211.34 Other permits.
211.35 Termination of eligibility.

Subpart D—Freely Associated State Air Carriers

§ 211.30 Eligibility.

Foreign carriers owned and controlled by citizens of the Federated States of Micronesia, the Marshall Islands, Palau and/or the United States may, in accordance with the provisions of paragraph 5(b) of Article IX of the Federal Programs and Services Agreement, implementing section 221(a)(5) of the Compact of Free Association between the United States and those governments, apply for authority as "Freely Associated State Air Carriers." The permit application for such authority shall be labeled on the front page, "Application for Freely Associated State Foreign Air Carrier Permit."

§ 211.31 Application.

The application shall include, in addition to other requirements of this part, documentation clearly establishing:

(a) That the carrier is organized under the laws of the Federated States of Micronesia, the Marshall Islands, Palau or the United States;

(b) That substantial ownership and effective control of the carrier are held by citizens of the Federated States of Micronesia, the Marshall Islands, Palau and/or the United States;

(c) That citizens of other countries do not have interests in the carrier sufficient to permit them substantially to influence its actions, or that substantial justification exists for a temporary waiver of this requirement;

(d) That the Administrator of the Federal Aviation Administration has determined that the carrier complies with such safety standards as the Administrator considers to be required.

(e) That the government or governments of the Freely Associated States concerned have consented to the carrier's operation as a "Freely Associated State Air Carrier."

§ 211.32 Issuance of permit.

If the Department is satisfied that the applicant meets the requirements of paragraphs (a) through (e) of § 211.31, and that grant of all or part of the requested authority would otherwise be in the public interest, the Department may, subject to Presidential review under section 801(a) of the Federal Aviation Act, issue a "Freely Associated State Foreign Air Carrier Permit" to the applicant, including such terms, conditions or limitations as the Department may find to be in the public interest.

§ 211.33 Interstate and overseas authority.

(a) An application under this subpart may include a request, in addition to other foreign air transportation, for authority to engage in overseas air transportation between Guam, the Commonwealth of the Northern Mariana Islands and Honolulu, Hawaii, and interstate air transportation within the Commonwealth of the Northern Mariana Islands. A request for all or part of such limited overseas and interstate air transportation authority shall be supported by documentation establishing:

(1) The impact of such overseas and interstate air transportation services on the economic projections of the carrier's proposed operations;

(2) The need for such proposed overseas and interstate air transportation by the affected U.S. points;

(3) The economic impact of such overseas and interstate air transportation on services provided by other carriers providing essential air transportation services to eligible Freely Associated State points within the scope of Part 272 of this chapter.

(b) The Department may grant a Freely Associated State Air Carrier

authority to engage in all or part of the overseas and interstate air transportation requested in paragraph (a) of this section provided that the Department finds:

(1) That grant of such overseas and interstate air transportation authority would be in furtherance of the objectives of the Compact of Free Association and related agreements between the United States and the Freely Associated States, and would otherwise be in the public interest; and

(2) That grant of such overseas and interstate air transportation authority would not significantly impair the economic viability of existing services providing essential air transportation to any eligible Freely Associated State point within the scope of Part 272 of this Chapter, or significantly increase compensation that may be required to maintain any such essential air transportation.

(c) The Department may, at any time, subject to Presidential review under section 801(a), suspend, modify, or revoke such overseas or interstate authority if it concludes that the requirements specified in paragraph (b) of this section are not then being met.

§ 211.34 Other permits.

Nothing in this section shall be construed as limiting the authority of the Department to issue a foreign air carrier permit, other than a Freely Associated State Foreign Air Carrier Permit, to a carrier owned or controlled, in whole or in part, by citizens of the Federated States of Micronesia, the Marshall Islands or Palau, that does not meet the requirements of this section.

§ 211.35 Termination of eligibility.

The eligibility of a carrier owned or controlled, in whole or in part, by citizens of the Federated States of Micronesia, the Marshall Islands or Palau, respectively, for issuance of a Freely Associated State Foreign Air Carrier Permit under this subpart shall exist only for such period as subparagraphs (a), (d), and (e) (eligibility for Freely Associated State essential air transportation subsidy compensation), or subparagraph (c) (limited overseas and interstate air transportation authority), of paragraph (5) of the Agreement on Civil Aviation Economic Services and Related Programs (Article IX of the Federal Programs and Services Agreement) remain in effect between the Government of those States and the Government of the United States, insofar as authority is conferred by such permits for purposes specified in those subparagraphs.

1. A new Part 272, *Essential Air Transportation to the Freely Associated States,* is added to read as follows:

PART 272—ESSENTIAL AIR TRANSPORTATION TO THE FREELY ASSOCIATED STATES

Sec.

Authority: 49 U.S.C. 1302, 1324, 1502; Sec. 221(a)(5) of the Compact of Free Association, and Paragraph 5 of Article IX of the Federal Programs and Services Agreement in implementation of that Compact (Pub. L. 99-239; Pub. L. 99-658).

§ 272.1 Purpose.

Paragraph 5 of Article IX of the Federal Programs and Services Agreement implementing section 221(a)(5) of the Compact of Free Association between the United States and the Governments of the Federated States of Micronesia, the Marshall Islands and Palau (the Freely Associated States) provides, among other things, for the Department of Transportation (Department), as successor to the Civil Aeronautics Board (Board), to guarantee essential air transportation, with compensation if necessary, to certain points in these islands. Subparagraph 5(h) of the Agreement provides that the Department shall adopt rules to implement the provisions of paragraph 5 as it in its discretion deems appropriate. Section 221(a)(5) of the Compact, which was adopted by Congress as public laws (Pub. L. 99-239, January 14, 1986; Pub. L. 99-658, November 14, 1986), provides that the Department (as successor to the Board) has the authority to implement the provisions of paragraph 5 of the Agreement. This part implements these provisions of paragraph 5.

§ 272.2 Applicability.

This part establishes the provisions applicable to the Department's guarantee of Essential Air Transportation to points in the Federated States of Micronesia, the Marshall Islands and Palau, and the payment of compensation for such services. The rule applies to U.S. air carriers and Freely Associated State Air Carriers providing essential air transportation to these points.

§ 272.3 Points eligible for guaranteed essential air transportation.

(a) Subject to the provisions of this part, and paragraph 5 of Article IX of the Federal Programs and Services Agreement, the Department will make provision for the operation of essential air transportation, with compensation if necessary, to the following points in the Freely Associated States:

In the *Federated States of Micronesia:* Ponape, Truk and Yap.

In the *Marshall Islands:* Majuro and Kwajalein.

In *Palau:* Koror.

(b) The points specified herein in the Federated States of Micronesia, the Marshall Islands or Palau, respectively, shall cease to be eligible points under this part if any of those Governments withdraw from the subsidy provisions of Article IX of the Federal Programs and Services Agreement in accordance with paragraph 8 of Article IX or Article XII of that Agreement.

§ 272.4 Applicability of procedures and policies under section 419 of the Federal Aviation Act.

Since the authority of the Department to guarantee essential air transportation is derived from the Federal Programs and Services Agreement and the Compact of Free Association, the provisions and procedures utilized by the Department in implementation of section 419 of the Federal Aviation Act will be followed only to the extent determined by the Department to be consistent with the obligations assumed by the United States in the Agreement and Compact, and the provisions of this part.

§ 272.5 Determination of essential air transportation.

(a) The Department shall determine the level of essential air transportation for the eligible points set forth in § 272.3 within nine (9) months from the effective date of the Compact of Free Association for the Freely Associated State concerned.

(b) Procedures for the determination of essential air transportation under this section, and review of that determination, shall, except to the extent otherwise directed by the Department, be governed by § 325.4 (except the application of section 419(f)

in § 325.4(b)); § 325.6(a); § 325.7 (except §§ 325.7(a)(2) and 325.7(b)(9)); §§ 325.8–325.11; § 325.12 (provided that all documents shall be served on the President and the designated authorities of the Freely Associated State concerned); and §§ 325.13 and 325.14 of this chapter.

§ 272.6 Considerations in the determination of essential air transportation.

(a) In the determination of essential air transportation to an eligible Freely Associated State point, the Department shall consider, among other factors, the following:

(1) The demonstrated level of traffic demand;

(2) The amount of compensation necessary to maintain a level of service sufficient to meet that demand;

(3) The extent to which the demand may be accommodated by connecting or other services of U.S., Freely Associated State, or foreign carriers by air—through U.S., Freely Associated State, or foreign points—that provide access to the U.S. air transportation system;

(4) Alternative modes of transportation that may be available; and

(5) The peculiar needs of the Freely Associated States for air transportation services.

(b) The Guidelines for Individual Determinations of Essential Air Transportation set forth in Part 398 of this chapter shall be applied only to the extent the Department concludes that they are applicable to the special circumstances affecting transportation to the Freely Associated States and reflective of the provisions of this part.

(c) Nothing in this part shall be construed as providing for a level of essential air transportation that would exceed the level of service justified by the considerations set forth in paragraph (a) of this section.

§ 272.7 Notice of discontinuance of service.

(a) An air carrier or Freely Associated State Air Carrier shall not terminate, suspend, or reduce air service to any eligible Freely Associated State point, unless it has given notice as specified in this section, if as a result of the reduction of such service the aggregate of the remaining air service provided to such point would be below:

(1) If the Department has not made a determination of essential air transportation for such point, the level of service specified in Order 80–9–63; and

(2) If the Department has made a determination of essential air transportation for such point, that level of essential air transportation.

(b) An air carrier or Freely Associated State Air Carrier wishing to terminate, suspend or reduce air service under paragraph (a) shall file a notice of such proposed reduction in service at least 90 days prior to such service reduction, in accordance with the procedures specified in §§ 323.4, 323.6, and 323.7 of this chapter.

(c) The notice shall be served on the President and the designated Authorities of the Freely Associated State concerned, in addition to the persons specified in § 323.7.

(d) The procedures specified in §§ 323.9–323.18, to the extent applicable to 90-day notices filed by certificated air carriers, shall also be applicable to notices of terminations, suspensions or reductions in service filed under this section.

§ 272.8 Obligation to continue service.

(a) If the Department finds that a proposed termination, suspension, or reduction in service by an air carrier or Freely Associated State Air Carrier will, or may, reduce service to an eligible Freely Associated State point below the level of essential air transportation to such point, whether or not the Department has previously determined the level of essential air transportation to such point, the Department may direct the air carrier or Freely Associated State Air Carrier concerned to maintain service to such point at a level the Department determines will ensure essential air transportation to such point, pending the commencement of alternative service as required to maintain the level of essential air service previously, or thereafter, determined by the Department.

(b) During any period the Department requires an air carrier or Freely Associated State Air Carrier to maintain a level of service proposed to be terminated, suspended or reduced, following the filing of a 90 day notice in accordance with § 272.7, the Department will provide for the payment of compensation to such carrier for any losses incurred by that carrier as a result of such required continuation of service in accordance with the procedures set forth in Part 324 of this chapter. If the carrier is already receiving compensation pursuant to § 272.9 of this part, the Department will continue to direct payment of such compensation during any period the carrier is required to maintain service. Such payments shall be made by the Department of Interior from funds appropriated for this purpose.

(c) The Department will review its order from time to time and will revise the level of required service as necessary to maintain only the level of essential air transportation determined by the Department for that point, considering all other service to such point in accordance with § 272.6(a)(3).

(d) During the period any such air carrier or Freely Associated State Air Carrier is required to maintain service under this section, the Department will make every effort to obtain alternative service, with compensation if necessary, as required to maintain essential air transportation to such point.

§ 272.9 Selection of a carrier to provide essential air transportation and payment of compensation.

(a) If the Department finds that essential air transportation will not be maintained to an eligible Freely Associated State point, the Department shall invite applications to provide the service required to maintain essential air transportation to such point.

(b) If the Department determines that essential air transportation will not be provided to such point in the absence of the payment of subsidy compensation to a carrier or carriers, the Department shall determine the compensation necessary, considering all other service to such point in accordance with § 272.6(a)(3), to maintain the level of essential air transportation determined by the Department under § 272.5, and the times and manner of the payment of such compensation.

(c) The compensation determined by the Department to be necessary to maintain essential air transportation to such point shall be paid by the Department of Interior out of funds appropriated for that purpose, to the carrier or carriers selected by the Department.

(d) The Department shall continue to specify compensation to be paid to a carrier or carriers under this section only as long as the Department determines that essential air transportation will not be provided to the Freely Associated State in the absence of the payment of such compensation.

(e) Except as permitted in paragraph (f) of this section, the Department shall select a U.S. air carrier or carriers to provide essential air transportation for compensation.

(f) The Department may select a Freely Associated State Air Carrier, holding a foreign air carrier permit issued in accordance with Subpart D of Part 211 of this chapter, to provide

essential air transportation for compensation, only if—

(1) No U.S. air carrier is available to provide the required essential air transportation; or

(2) The compensation necessary for the provision of the required essential air transportation would be substantially less than the compensation necessary if such essential air transportation were to be provided by a U.S. air carrier.

(g) Any order of the Department selecting a Freely Associated State Air Carrier to provide such essential air transportation shall be submitted to the President of the United States not less than 10 days prior to its effective date and shall be subject to stay or disapproval by the President.

(h) Among the criteria that will be considered by the Department in its determination of the carrier or carriers to be selected to perform the required essential air transportation are:

(1) The desirability of developing an integrated linear system of air transportation whenever such a system most adequately meets the air transportation needs of the Freely Associated States concerned;

(2) The experience of the applicant in providing scheduled air service in the vicinity of the Freely Associated States for which essential air transportation is proposed to be provided;

(3) The amount of compensation that will be required to provide the proposed essential air transportation;

(4) The impact of the proposed service on service provided to other Freely Associated State points; and

(5) The views of the Governments of the Freely Associated States concerned.

(i) The Department may from time to time, on its own motion, or upon application of any carrier or government, review and change its selection of a carrier to provide essential air transportation, or its determination as to the compensation necessary to provide such essential air transportation.

(j) All applications or other documents filed or issued in proceedings under this section shall be served upon the President of the Freely Associated State concerned and the Authorities designated by that Government(s) in accordance with Article II, paragraph 10, of the Federal Programs and Services Agreement supplemental to the Compact of Free Association, and such Government shall be a party to any such proceeding. In reaching its determination, the Department will carefully consider any views of such Government that have been submitted.

§ 272.10 Conditions applicable to carriers serving a subsidized market.

(a) The Department may, after providing an opportunity for comment by the carrier or carriers affected, impose service, fare or rate conditions on any U.S., Freely Associated State, foreign air carrier, or foreign carrier by air as a precondition to the payment of compensation necessary to maintain essential air transportation, whether or not the affected carrier is itself receiving subsidy compensation in the market, if it finds that:

(1) Essential air transportation in a Freely Associated State market or markets will not be provided in the absence of the payment of compensation;

(2) Specified service, rate or fare conditions are or will be necessary or desirable to minimize the required subsidy compensation; and

(3) The imposition of such conditions will not unduly impair the service provided in the market.

(b) To the extent the carrier or carriers upon whom the conditions are imposed pursuant to paragraph (a) of this section do not hold a certificate, permit, or other authority from the Department that may be amended to effectively implement the specified conditions, the Department may notify the Government(s) of the Freely Associated States concerned that the imposition of such conditions on those carriers by those Governments shall be a precondition to the payment of the subsidy compensation required to maintain essential air transportation in the market in question.

(c) The Department may withhold or suspend its provision for the payment of subsidy compensation required to maintain essential air transportation unless and until the Freely Associated State(s) concerned take the necessary action to impose the specified conditions on the carriers referred to in paragraph (b) of this section, and those carriers have complied with the specified conditions.

(d) Any order of the Department imposing conditions, or requiring the imposition of conditions, pursuant to this paragraph shall be submitted to the President for review not less than 10 days prior to its effective date, and shall be subject to stay or disapproval by the President.

§ 272.11 Effective date of provisions.

The provisions of this part shall not become effective for Palau until the Compact of Free Association and Article IX of the Federal Programs and Services Agreement become effective for Palau.

§ 272.12 Termination.

These provisions shall terminate on October 24, 1988, unless the program for the guarantee of essential air transportation to the Federated States of Micronesia, the Marshall Islands and Palau is specifically extended by Congress.

PART 302—RULES OF PRACTICE IN PROCEEDINGS

1. The authority citation in Part 302 continues to read as follows:

Authority: 49 U.S.C. 1301, 1323, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485; Reorganization Plan No. 3, 75 Stat. 837, 26 FR 5989; E.O. 11514, Pub. L. 91–90 (42 U.S.C. 4321); 84 Stat. 772, 39 U.S.C. 5402. The Compact of Free Association and paragraph 5 of Article IX of the Federal Programs and Services Agreement, adopted for the United States by Pub. L. 99–239; Pub. L. 99–658.)

2. A new paragraph (9) is added to § 302.8, *Service of documents,* to read:

§ 302.8 Service of documents.

* * * * *

(g) *Freely Associated State Proceedings.* In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands, or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated Authorities of the Government(s) involved. This requirement shall apply to all proceedings where service is otherwise required, and shall be in addition to any other service required by this chapter.

3. Section § 302.9, *Parties,* is revised to read as follows:

§ 302.9 Parties.

The term "party" wherever used in this part shall include any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and any trustee, receiver, assignee or legal successor thereof, and shall include the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, these Governments or their designated Authorities shall be a party.

4. Section § 302.1705(c) is revised to read as follows:

§ 302.1705 Service of documents.

* * * * *

(c) *Additional service.* The Department may, in its discretion, order additional service upon such persons as the facts of the situation warrant. Where

only notices are required, parties are encouraged to serve copies of their actual pleadings where feasible. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated Authorities of the Government(s) involved.

By the Department of Transportation: February 13, 1987.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 87-3666 Filed 2-20-87; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM85-6-000; Order No. 464]

Waiver of the Water Quality Certification Requirements of Section 401(a)(1) of the Clean Water Act

Issued: February 11, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending Part 4 of its regulations to define when the certification requirements of section 401(a)(1) of the Clean Water Act (CWA) [1] have been waived as a result of the failure of the state or other authorized certifying agency to act on a request for certification filed by an applicant for a Commission hydroelectric license. The Commission is allowing certifying agencies one year after the certifying agency's receipt of a request for section 401 water quality certification to grant or deny the license applicant's request for certification. Additionally, this rule revises § 4.38 of the Commission's Rules and Regulations [2] governing the pre-filing consultation procedures an applicant for a Commission hydroelectric license must follow. The revision will ensure that certifying agencies are incorporated early in the Commission's pre-filing consultation procedures, which will facilitate the information-gathering needed for a certification determination.

[1] 33 U.S.C. 1341(a)(1) (1982).

[2] 18 CFR 4.38 (1986).

EFFECTIVE DATE: The effective date of this final rule is May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Kristina Nygaard, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending Part 4 of its regulations to define when the certification requirements of section 401(a)(1) of the Clean Water Act (CWA) [1] have been waived as a result of the failure of the state or other authorized certifying agency to act on a request for certification filed by an applicant for a Commission hydroelectric license. The Commission is allowing certifying agencies one year after the certifying agency's receipt of a request for section 401 water quality certification to grant or deny the license applicant's request for certification. Additionally, this rule revises § 4.38 of the Commission's Rules and Regulations [2] governing the pre-filing consultation procedures an applicant for a Commission hydroelectric license must follow. The revision will ensure that certifying agencies are incorporated early in the Commission's pre-filing consultation procedures, which will facilitate the information-gathering needed for a certification determination.

II. Background

Section 401(a)(1) of the CWA prohibits Federal agencies from authorizing the construction or operation of facilities which may result in any discharge of water pollutants into the navigable waters of the United States, unless the applicant for such authorization obtains certification from the state in which the discharge will originate or, if appropriate, from the interstate water pollution control agency having jurisdiction over the point where the discharge will originate [3] that any discharge will comply with the water quality standards of the CWA. If section 401 water quality certification is denied by the certifying agency, no Federal agency may authorize any action that may result in a discharge. However, the statute explicitly permits authorization, such as a Commission hydroelectric license under the Federal Power Act (FPA),[4] without section 401 certification, if the certifying agency has failed to act on the applicant's request for section 401 certification within a reasonable period of time, not to exceed one year, from the date the certifying agency received the request for certification.[5] In other words, the CWA section 401 certification is in that event deemed waived.

On August 6, 1985, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this docket to reexamine its procedures for determining when a CWA section 401 certification is deemed waived by the certifying agency.[6] The Commission's practice has been to deem the one-year waiver period to commence when the certifying agency finds the request acceptable for processing. *See Washington County Hydro Development Associates*, 28 FERC ¶ 61,341 (1984). The current reassessment was undertaken in light of the Commission's concern that, under this practice, states could delay indefinitely their acceptance of a certification request, in contravention of the Congress' intent, through the waiver provision, to prevent unreasonable delays (*i.e.*, of more than one year).

The Commission proposed to start the waiver period as of the date the certifying agency receives the certification request, and to allow a certifying agency 90 days from the date the Commission issues a public notice of the acceptance of a hydroelectric license application, or one year after the certifying agency receives an applicant's request for section 401 certification, whichever occurs first, to grant or deny the request. If the certifying agency does not grant or deny the request in that time period, certification would be deemed waived, and the Commission would proceed with the applicant's request for a hydroelectric license. The Commission proposed to retain the requirement in its existing regulations that a license applicant submit a copy of its section 401 certification or a copy of its request to the certifying agency for

[3] For the purposes of this preamble, the term "certifying agency" will encompass state certifying agencies, interstate water pollution control agencies, and the Administrator of the Environmental Protection Agency, as appropriate.

[4] 16 U.S.C. 797(e) (1982), as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99-495 (Oct. 16, 1986).

[5] Section 401(a)(1) provides in pertinent part: If the State, interstate agency, or Administrator [of the Environmental Protection Agency], as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application.

[6] 50 F.R. 32229 (Aug. 9, 1985).