AFB Airports, notice and public procedure under 5 U.S.C. 553(b) are unncecessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations 914 CFR part 71) removes Class E2 airspace at Melbourne, FL and Cocoa Patrick AFB, FL.

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 ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, as amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO FL E2 Melbourne, FL [Remove]

* * * * *

ASO FL E2 Cocoa Patrick AFB, FL [Remove]

* * * * *

Issued in College Park, GA, on July 18, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Division.

[FR Doc. 00–21201 Filed 8–18–00; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 2

Requests To Reopen

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The FTC is amending its Rule of Practice 2.51(b), which governs requests to reopen a Commission decision containing an order that has become effective. The amendment clarifies the ''satisfactory showing'' that a requester must make to support a request that the Commission reopen the proceeding to determine whether the order should be modified on public interest grounds.

DATES: This amendment is effective on August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Ave., NW., Washington, DC 20580; 202–326–2447.

SUPPLEMENTARY INFORMATION: FTC Rule of Practice 2.51(b), 16 CFR 2.51(b), sets forth certain requirements for requests to reopen and modify Commission orders either because of ''changed conditions of law or fact'' or on the ground that ''the public interest so requires.'' As presently drafted, the Rule could be read to require that all requests be accompanied by affidavits ''demonstrating in detail the nature of the changed conditions,'' even if the request itself is based on the ''public interest.'' If there are no changed conditions, however, such a requirement is unnecessary.

Accordingly, the Commission is amending the second sentence of Rule 2.51(b) to make clear that changed conditions must be demonstrated only when the request alleges that changes in fact or law warrant reopening and modification.[1] In the case of ''public interest'' requests, the Rule continues to require that such a request be supported by a factual affidavit, as described in further detail below, explaining why the Commission should reopen and modify the order in the public interest. A showing of changed conditions would be permitted but not mandated.

The amendment does not alter the requirement in the first sentence of Rule 2.51(b) that a requester make a ''satisfactory showing'' of ''changed conditions of law or fact'' or the ''public interest'' in support of its request. While the FTC Act expressly requires a ''satisfactory showing'' of changed conditions of law or fact before the Commission is required to reopen an order on those grounds, the Act does not specify the threshold showing needed to reopen a Commission order on general ''public interest'' grounds. *See* FTC Act § 5(b), 15 U.S.C. 45(b). Nonetheless, when the Commission incorporated the ''satisfactory showing'' requirement of section 5(b) into Rule 2.51, the Commission extended the requirement to all requests filed under the Rule, including ''public interest'' requests.[2] In a subsequent letter ruling, the Commission, without referring to the existing language of the statute or the Rule, further stated that a request to reopen and modify an order in the ''public interest'' must make a threshold showing of ''affirmative need.''[3] Some have interpreted that showing of need as a narrow showing of the requester's need for relief from competitive burdens imposed by the order.[4]

[1] The amended sentence is redesignated as Rule 2.51(b)(1), and the remaining subsequent sentences of Rule 2.51(b), which are not amended, are redesignated as Rule 2.51(b)(2).

[2] *See* 45 FR 36338, 36339 (May 29, 1980) (amending Rule 2.51); *e.g., Glendinning Cos.*, 97 F.T.C. 163 (1981); *Coca-Cola Co.*, 97 F.T.C. 927 (1981); *National Dairy Prods. Ass'n*, 100 F.T.C. 431 (1982); *Hammermill Paper Co.*, 100 F.T.C. 454 (1982); *Morton Thiokol, Inc.*, 101 F.T.C. 353 (1983); Illinois Cent. Indus., Inc., 101 F.T.C. 409 (1983).

[3] *See* Letter to Joel Hoffman, *Damon Corp.*, Docket No. C–3916 (Mar. 29, 1983), *reprinted in* [1979–1983 Transfer Binder] Trade Reg. Rep. (CCH) ¶ 22,207. In that letter, the Commission stated: ''As a threshold matter, [to reopen an order on public interest grounds] under [s]ection 5(b) and Commission Rule 2.51[,] a requester must demonstrate some affirmative need to modify the original order. Once such a showing of need has been made, the Commission will balance the reasons favoring the modification requested against any reasons not to make that modification.'' Letter at 2. The letter states that this approach was modeled on the two-step analysis used by courts in modifying final court orders, where a requester must present reasons that ''justify modification'' as a ''threshold matter.'' *Id.* at 2 n.1 (quoting *Gautreaux* v. *Pierce*, 535 F. Supp. 423, 426 (N.D. Ill. 1982)).

[4] *See, e.g.*, Concurring Statement of Comm'r Starek, *Columbia/HCA Healthcare Corp.*, 121 F.T.C. 611, 615 (1996); Concurring Statement of Comm'r Starek, *California & Hawaiian Sugar Co.*, 119 F.T.C. 39, 51–52 (1995); Dissenting Statement of Comm'r Azcuenaga, *Service Corp. Int'l*, 117 F.T.C. 700, 718 (1994). Nothing in the Commission's letter ruling in *Damon*, however, suggested or was intended to indicate that a showing of competitive injury is the *only* way to demonstrate ''affirmative need.''

Over time, however, the Commission has recognized that there can be threshold ''public interest'' reasons not necessarily related to the requester's competitive needs or interests to reopen an order for purposes of possibly modifying it. For example, in some cases, it may be in the ''public interest'' for the Commission to reopen an order if modifying it would likely achieve the intended purposes of an order more efficiently or effectively, and would not merely serve to lessen the burdens of the order on the requester.[5] Alternatively, there may be a threshold ''public interest'' reason to reopen and consider modifying an order if, in the absence of changed conditions, its purposes have nonetheless already been achieved, or are not likely to be achieved, under the existing order.[6] In still other cases, a showing of how non-parties to the order would benefit or avoid harm if the order were modified may provide a threshold ''public interest'' reason to reopen it.[7]

Accordingly, the Commission concludes that it is not necessary or appropriate to continue using the phrase ''affirmative need'' when discussing the threshold showing required for requests to reopen orders to consider whether they should be modified or set aside in the ''public interest.'' Instead, the Commission finds it sufficient to rely upon the language of Rule 2.51, which requires an initial ''satisfactory showing'' of how modification would serve the public interest before the Commission determines whether to reopen an order and consider all of the reasons for and against its modification. The term ''satisfactory showing,'' as opposed to ''affirmative need,'' better accommodates and acknowledges the range of threshold public interest considerations that the Commission may take into account under the ''public interest'' standard. In discontinuing reliance on the term ''affirmative need,'' the Commission hopes to dispel any lingering misconceptions or questions that may surround that particular formulation of the threshold requirement.

Thus, under the Rule, a ''satisfactory showing'' requires, with respect to ''public interest'' requests, that the requester make a *prima facie* showing of a legitimate ''public interest'' reason or reasons justifying relief. As explained earlier, this showing requires the requester to demonstrate, for example, that there is a more effective or efficient way of achieving the purposes of the order, that the order in whole or part is no longer needed, or that there is some other clear public interest that would be served if the Commission were to grant the requested relief.[8] In addition, this showing must be supported by evidence that is credible and reliable.[9]

If, after determining that the requester has made the required showing, the Commission decides to reopen the order, the Commission will then consider and balance all of the reasons for and against modification. In no instance does a decision to reopen an order oblige the Commission to modify it,[10] and the burden remains on the requester in all cases to demonstrate why the order should be reopened and modified.[11]

This Rule amendment is exempt from the notice-and-comment requirements of the Administrative Procedure Act as a rule of ''agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). The amendment does not entail an information collection for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 16 CFR Part 2

Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, for the reasons set out in the preamble, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A, of the Code of Federal Regulations as follows:

PART 2—NON–ADJUDICATIVE PROCEDURES

1. The authority for part 2 continues to read as follows:

Authority: 15 U.S.C. 46.

2. Amend § 2.51 by revising paragraph (b) to read as follows:

§ 2.51 Requests to reopen.

* * * * *

(b) *Contents.* A request under this section shall contain a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified or set aside, in whole

[5] *See, e.g., Promodes, S.A.*, 116 F.T.C. 377, 383 (1993) (affirmative need to reopen shown where proposed substitute divestiture would produce viable independent competitor, while existing divestiture provision, if enforced, would harm competition); *cf., e.g., Columbia/HCA*, 124 F.T.C. 38, 49 (1997) (concurring statement of Comm'r Starek, noting that a mutual mistake of fact underlying the order justified its reopening and modification); *American Med. Ass'n*, 114 F.T.C. 575, 580–81 (1991) (order reopened and modified to expand the reach of the order, further competition, and foster self-regulation); *Mattel, Inc.*, 104 F.T.C. 555, 557 (1984) (order reopened and modified to clarify order requirements); *Procter & Gamble Co.*, 103 F.T.C. 51, 53 (1984) (order reopened and modified to tailor disclosure requirements to their intended purpose).

[6] *See, e.g., Cooper Indus.*, 124 F.T.C. 602, 605–06 (1997) (affirmative need to reopen the order demonstrated by futility and cost of continuing to require that license be made available in absence of a likely buyer); *T&N plc*, 114 F.T.C. 696, 699 (1991) (affirmative need to reopen the order demonstrated by fact that goals of divestiture had been achieved and that requiring further divestitures would impede competition); *cf. Columbia/HCA*, 124 F.T.C. at 42 (order reopened and modified where divestiture requirement imposed costs unnecessary to achieve the order's remedial purposes); *Liquid Air Corp.*, 111 F.T.C. 135, 137 (1988) (order reopened and modified to delete prior approval provision that pertained to wholly internal corporate activities and served no procompetitive purpose); *Chevron Corp.*, 105 F.T.C. 228, 229 (1985) (order reopened and modified to delete hold separate agreement that had already accomplished its primary objective).

[7] *See, e.g., Institut Merieux, S.A.*, 117 F.T.C. 473, 481 (1994) (affirmative need to reopen order shown by costly leasing requirements that ''may adversely affect public health needs'' by delaying or preventing rabies vaccine from reaching the market); *cf. Schnuck Markets*, Docket No. C–3585 (June 2, 1998), slip op. at 3 (order reopened and modified to permit transfer of languishing assets to a charitable organization).

[8] Thus, a requester's mere assertion of competitive injury or disadvantage will ordinarily not constitute a ''satisfactory showing'' where the requester is unable to demonstrate how the proposed modification would promote effective competition or otherwise serve the broader public interest. *See, e.g., California & Hawaiian Sugar*, 119 F.T.C. at 44–45 (a requester cannot avoid order obligations just because its competitors are not so restricted; order was reopened and modified, however, to allow limited comparative claims that encouraged competition by enabling consumers to distinguish and choose among otherwise fungible products).

[9] As explained in a prior amendment to the Rule, ''[r]equests to reopen orders must not only allege facts that, if true, would constitute the necessary showing, but must also credibly demonstrate that the factual assertions are reliable. [The Rule] therefore specifically requires that requesters provide one or more affidavits to support facts alleged in requests to reopen and modify orders. This [requirement] will not only help the Commission in its decision making process but, by clarifying the applicable standard, aid requesters in presenting meritorious cases. * * * This [requirement] specifies the procedural method for substantiating factual assertions.'' 53 FR 40867 (Oct. 19, 1988).

[10] *See Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376–77 (9th Cir. 1992) (reopening and modification are independent determinations).

[11] The burden is a heavy one in view of the public interest in repose and finality of Commission orders. *See Service Corp. Int'l*, 117 F.T.C. at 702 (citing legislative history of section 5(b) regarding the showing required to reopen an order, and also citing *Federated Dep't Stores, Inc.* v. *Moitie*, 421 U.S. 394 (1981)); *RSR Corp.* v. *FTC*, 656 F.2d 718, 721 (D.C. Cir. 1981) (upholding denial of reopening request and noting that courts have consistently subscribed to the rule that agencies are not required to reopen except in the most ''extraordinary circumstances''). Maintaining the integrity of the Commission's orders is not merely a matter of the agency's administrative convenience: it also serves the public interest by ensuring that purchasing, marketing, and other competitive, strategic or consumer decisions can be made against a relatively stable and predictable background of applicable law and rules.

or in part, or that the public interest so requires.

(1) This requirement shall not be deemed satisfied if a request is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail:

(i) The nature of the changed conditions and the reasons why they require the requested modifications of the rule or order; or

(ii) The reasons why the public interest would be served by the modification.

(2) Each affidavit shall set forth facts that would be admissible in evidence and shall show that the affiant is competent to testify to the matters stated therein. All information and material that the requester wishes the Commission to consider shall be contained in the request at the time of filing.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–21185 Filed 8–18–00; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 125 and 225

[Docket No. RM99–8–000; Order No. 617]

Preservation of Records of Public Utilities and Licensees, Natural Gas Companies, and Oil Pipeline Companies

Issued August 15, 2000.

AGENCY: Federal Energy Regulatory Commission

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission published in the **Federal Register** of August 7, 2000, a final rule amending its records retention regulations for public utilities and licensees, natural gas companies, and oil pipeline companies (''regulated companies''). The Commission inadvertently omitted a cross reference in the schedule of records and periods of retention in Parts 125 and 225. The Commission also did not revise a record retention period in § 225.3 that it had agreed to do in the final rule's preamble language. This document corrects these omissions.

EFFECTIVE DATE: These corrections are effective on August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Mary C. Lauermann, Office of Finance, Accounting and Operations, 888 First Street, N.E., Washington, DC 20426, (202) 208–0087.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission published a final rule in the **Federal Register** of August 7, 2000 (65 FR 48148). The following corrections are made to the final rule.

§ 125.3 [Corrected]

1. On pages 48157–48159 in § 125.3, in the second column of the table, add the phrase ''See § 125.2(g).'' after the years shown for the following item numbers: Item No. 8(b)(1); Item No. 10; Item No. 11(a), (b) and (d); Item No. 12(b); Item No. 13.1(c)(1) and (c)(2); Item No.16(a) and (b); Item No. 25(a)(1) and (b); and Item No. 27.

§ 225.3 [Corrected]

2. On pages 48162–48165 in § 225.3, in the second column of the table, add the phrase ''See § 225.2(g).'' after the years shown for the following item numbers: Item No. 8(b)(1); Item No. 10; Item No. 11(a), (b) and (d); Item No. 12(b); Item No. 16(a) and (b); Item No. 25(a)(1) and (b); and Item No. 27.

3. On page 48165, also in § 225.3, in the second column for Item No. 31, remove the words ''7 months.'' and add in their place the words ''1 year.''

David P. Boergers,

Secretary.

[FR Doc. 00–21147 Filed 8–18–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8897]

RIN 1545–AQ91

Rules for Property Produced in a Farming Business

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the application of section 263A of the Internal Revenue Code to property produced in the trade or business of farming. These regulations also provide guidance regarding the election available to certain taxpayers to not have section 263A apply to any plant produced by the electing taxpayers in each taxpayer's farming trade or business. These regulations affect taxpayers engaged in the trade or business of farming.

DATES: *Effective Date:* These regulations are effective August 21, 2000.

Applicability Date: For dates of applicability, see § 1.263A–4(f) of these regulations.

FOR FURTHER INFORMATION CONTACT: Grant D. Anderson, (202) 622–4970 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1987, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–208151–91) (52 FR 10118) by cross reference to temporary regulations published the same day (TD 8131, 52 FR 10052). Amendments to the notice of proposed rulemaking and temporary regulations were published in the **Federal Register** on August 7, 1987, by a notice of proposed rulemaking (52 FR 29391) that cross referenced to temporary regulations published the same day (TD 8148, 52 FR 29375). Notice 88–24 (1988–1 C.B. 491), provided that forthcoming regulations would modify the proposed regulations and the regulations under § 1.471–6. Notice 88–86 (1988–2 C.B. 401), provided that forthcoming regulations would clarify the definition of *members of family* for purposes of the election out of section 263A. In addition, Notice 88–86 provided that forthcoming regulations would provide that certain taxpayers could elect to use the simplified production method for property used in the trade or business of farming. On August 5, 1994, the temporary regulations relating to property produced in a farming business were reissued and published in the **Federal Register** (TD 8559, 59 FR 39958). On August 22, 1997, proposed and revised temporary regulations were issued and published in the **Federal Register** (TD 8729, 62 FR 44542). A public hearing was held on November 19, 1997.

Written comments responding to the notice of proposed rulemaking were received. After consideration of all the public comments, the regulations are adopted as revised by this Treasury decision and the corresponding temporary regulations are withdrawn.

Explanation of Provisions and Summary of Comments

Section 263A provides uniform capitalization rules that govern the treatment of costs incurred in the production of property or the acquisition of property for resale. Section 263A generally requires