Recovery would be considered against equity and good conscience.

4. In Part 416, Subpart E, a new § 416.556 is added to read as follows:

§ 416.556 Waiver of adjustment or recovery—countable resources in excess of the limits prescribed in § 416.1205 by $50 or less.

(a) If any overpayment with respect to an individual (or an individual and his or her spouse if any) is attributable solely to the ownership or possession by the individual (and spouse if any) of countable resources having a value which exceeds the applicable dollar figure specified in § 416.1205 by an amount of $50.00 or less, including those resources deemed to an individual in accordance with § 416.1202, such individual (and spouse if any) shall be deemed to have been without fault in connection with the overpayment, and waiver of adjustment or recovery will be made, unless the failure to report the value of the excess resources correctly and in a timely manner was willful and knowing.

(b) Failure to report the excess resources correctly and in a timely manner will be considered to be willful and knowing and the individual will be found to be at fault when the evidence clearly shows the individual (and spouse if any) was fully aware of the requirements of the law and of the excess resources and chose to conceal these resources. When an individual incurred a similar overpayment in the past and received an explanation and instructions at the time of the previous overpayment, we will generally find the individual to be at fault. However, in determining whether the individual is at fault, we will consider all aspects of the current and prior overpayment situations, and where we determine the individual is not at fault, we will waive adjustment or recovery of the subsequent overpayment.

[FR Doc. 88–10353 Filed 5–9–88; 8:45 am]
BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Part 170

[Docket No. 84N–0080]

Eligibility for Classification of Food Substances as Generally Recognized as Safe

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to recognize that a substance that was used in food prior to 1958 can be shown to be generally recognized as safe (GRAS) through experience based on its common use in food outside, as well as in, the United States. This action responds to a court decision that declared invalid an agency regulation that had restricted the experience that could provide the basis for general recognition of safety to experience in the United States. This action also delineates the proof needed to establish that a substance is GRAS on the basis of its foreign use.

DATE: Effective June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 2, 1985 (50 FR 27294), FDA published a proposal to revise its procedural regulations to establish that a substance in use before 1958 may be eligible for GRAS status based upon its history of use in food outside of the United States. The agency proposed to revise the definitions of "common use in food" in § 170.3(f)) (21 CFR 170.3(f)) so that it would no longer stipulate that the history of consumption of the substance must have occurred only in the United States. The agency also proposed to add a new paragraph (c)(2) to § 170.30 that specifies the information that would be required to establish that a substance is GRAS based upon a history of common use in food when that use has occurred outside of the United States. Proposed § 170.30(c)(2) would require verification of the history of common use in food and sufficient information about the use to determine the context in which the use occurred and to establish that use of the substance is safe within the meaning of the Federal Food, Drug, and Cosmetic Act (the Act). The proposed regulation also suggested that persons claiming GRAS status for a substance on the basis of its common use in food outside the United States obtain FDA concurrence that the substance is GRAS.

FDA also proposed to revise the procedures for GRAS affirmation petitions in § 170.35 to make clear that a request for GRAS affirmation may be based upon either scientific procedures or a history of common use in food. The regulation currently stipulates that the petition be based upon scientific procedures.

The proposal responded to a court decision that declared invalid an agency regulation that had restricted the experience that could provide the basis for a general recognition of safety to experience in the United States.

In § 170.3(f), the agency had defined "common use in food" to mean "a substantial history of consumption of a substance by a significant number of consumers in the United States." On September 15, 1983, however, the United States Court of Appeals for the Ninth Circuit declared § 170.3(f) to be invalid. *Fmali Herb, Inc.* v. *Heckler*, 715 F.2d 1385 (9th Cir. 1983). The court ruled that by restricting "common use in food" to mean use only in the United States, FDA had imposed a restriction that did not comport with either the literal terms of the act or with the purpose of the common use in food exception, as articulated by the legislators (715 F.2d at 1390).

The agency initially provided 60 days for interested persons to submit written comments on the proposal, but in response to a request from a trade association, the agency extended the period for comment on the proposal for an additional 60 days to November 4, 1985 (50 FR 35571; September 3, 1985).

The agency received 16 comments in response to the proposed regulation. Three comments urged FDA to promulgate the regulation without modification. Two comments noted that the date "January 1, 1985," that appeared in the second colum of the **Federal Register** of July 2, 1985 (50 FR 27297) of the proposed rule should be changed to "January 1, 1958." The agency has already corrected this error in the **Federal Register** of July 18, 1985 (50 FR 29235). The remaining comments raised the issues that are discussed below.

II. Response to Comments

1. Seven comments objected to the word "solely" in the proposed wording of § 170.3(f), which read: "Common use in food means a substantial history of consumption of a substance solely for food use by a significant number of consumers." These comments stated that the word "solely" in the definition could be interpreted as not allowing GRAS status for food substances that have uses in addition to food uses. One comment stated that FDA is imposing a limitation that is not relevant. The comment stated that the only rationale FDA provided for this limitation is the statement in the preamble that "the information must demonstrate that the substance has in fact been used as a food ingredient and not as a drug, tonic, or folk remedy." Another comment added that in many parts of the world

there is no sharp distinction between the use of substance as a food and as a "folk remedy." It suggested that the definition should be: "Common use in food means a substantial history of concumption of a substance for food or other use by a significant number of consumers." Another comment agreed with this view and stated that "since FDA's concern is whether substances are safe, all safety data from whatever source should be examined."

The agency has reviewed these comments and believes that the respondents misinterpreted the agency's intent in including the work "solely" in the proposed definition of "common use in food." The agency does not intend to exclude from GRAS eligibility food substances that also have nonfood uses. However, GRAS determination based upon common use in food depends, by definition, upon food use. The agency used the words "solely for food use" to emphasize this important point. Sufficient data must exist that document the safe use of the substance in food. Data on the use of a substance as a drug, for example, cannot substitute for data on food use.

However, the agency recognizes that inclusion of the word "solely" in § 170.3(f) may cause confusion. Therefore, the agency has removed that word from § 170.3(f).

The agency still considers it necessary to emphasize the concept that eligibility for GRAS status through experience based on common use in food prior to January 1, 1958, must be based solely on use of the substance in food. Consequently, the agency has included language to this effect in new § 170.30(c)(1). Because this revision merely clarifies the agency's intent expressed in the proposal, further opportunity for comment is not necessary.

2. One comment requested modifications in the safety standards for food and food ingredients.

The agency advises that this issue is outside the scope of this rulemaking. The agency further advises that it has no authority to modify the safety standards that are prescribed by the act.

3. Six comments objected to the last sentence of proposed § 170.30(c)(2), which reads: "Persons claiming GRAS status for a substance based on its common use in food outside of the United States should obtain FDA concurrence that the use of the substance is GRAS." Five comments asserted that the requirement for FDA concurrence imposes more stringent requirements upon foods that are GRAS based upon foreign experience than upon those claimed to be GRAS based upon U.S. experience. Specifically, the comments asserted that: (a) Such stringent restrictions are not required by statute and exceed FDA authority; (b) products that are not food additives within the meaning of the act are exempt from premarket approval; (c) the requirement is not in agreement with the act or with the ruling of the court in Fmali Hert, Inc. v. *Heckler*, 715 F.2d 1385 (9th Cir. 1983); and (d) FDA should reconsider its reasons for justifying the need for concurrence.

FDA has considered these comments and acknowledges that persons have the right to make independent GRAS determinations on food substances. Indeed, the preamble to the proposal stated that "persons normally are free to make their own determination about whether a substance is GRAS."

However, FDA is charged with the responsibility of protecting interstate commerce from adulterated foods. When a food substance is offered for import, FDA must judge whether that substance is adulterated on the basis of the information known about it. If, in advance of offering the substance for import, the importer has petitioned FDA and obtained agency concurrence that the substance is GRAS, the substance will enter the United States with little or no problem.

On the other hand, if the importer has failed to seek FDA concurrence that the use of the substance is GRAS, and if the substance has no history of use in the United States, the agency cannot simply assume that the substance is GRAS. Therefore, it has little choice but to find that the substance appears to be adulterated. Under section 801(a) of the act (21 U.S.C. 381(a)), FDA is authorized to detain articles that appear to be adulterated and to refuse admission to those articles.

A person whose product has been detained has a right to request a hearing to review the initial determination that the substance appears to be adulterated, and FDA will listen to relevant evidence presented at such a hearing. While the agency will consider the evidence on this question at the hearing, determinations on GRAS status are not usually the type of simple and straightforward decisions that are appropriately made in the context of a detention hearing. Therefore, it seems likely that such hearings will rarely result in a finding that a substance is GRAS.

Furthermore, detention hearings are high pressure situations in which a decision must be made as quickly as possible because the goods are either waiting on the docks or being held under bond. Thus, detention hearings are ill-suited to consideration of whether the use of a food ingredient is GRAS based on its history of use outside the United States.

Evidence on the effects of the use of a substance usually must be evaluated by FDA scientists trained in such disciplines as toxicology, chemistry, and epidemiology before the agency can make a determination as to whether the history of use of the substance provides an assurance of safety. Thus, except in rare cases in which the evidence of pre-1958 use of a substance provides overwhelming evidence of its safety (e.g., when there was specific approval granted for its use before 1958 by a foreign government), questions about whether use of the substance is GRAS are likely to remain unresolved at the detention hearing. If such questions persist, the hearing officer will likely affirm the finding that the substance appears to be an unapproved, and therefore unsafe, food additive.

For these reasons, prudence suggests that an importer who has made an independent determination that a substance is GRAS on the basis of its history of use outside the United States seek FDA concurrence in that judgment, by means of a GRAS affirmation petition, before seeking to bring the product into this country. The last sentence in § 170.30(c)(2) incorporates this suggestion into FDA's regulations. It does not require that such concurrence be obtained, establish a premarket approval requirement, or establish more stringent requirements for foods that allegedly are GRAS based on foreign experience than for those that allegedly are GRAS based on experience in the United States. It merely reflects the fact that, to protect the safety of the food supply, section 801(a) of the act requires that FDA deny entry into this country to foods that even appear to be adulterated, and that it is to the advantage of the importer to have questions about possible adulteration resolved before the food is offered for entry.

Finally, the last sentence in § 170.30(c)(2) is fully consistent with *Fmali Herb, Inc.* v. *Heckler*. That decision states that FDA cannot refuse to consider evidence of safety based on use of a substance outside the United States before 1958. The last sentence in § 170.30(c)(2) does not purport to do so. The agency is fully prepared to consider such evidence. The sentence in question makes clear, however, that the agency prefers to be given such evidence before a product is offered for import and in a context other than a detention hearing.

For the foregoing reasons, FDA has not made any changes in the last sentence in § 170.30(c)(2) in response to the comments.

4. One comment contended that FDA should not deny an exemption from premarket approval simply because information supporting the safety of a substance is not readily available in this country, and that FDA's ability to obtain data is no reflection upon the validity of data.

Given its long history of regulating the food supply in the United States, FDA generally has some information relating to the safety of substances used in food in the United States. The same is not necessarily true for substances used in foreign countries. FDA's ability to obtain comparable information on the use of substances in foreign countries may be no reflection on the validity of the information, but it does affect the agency's ability, and the ability of qualified experts in this country, to assess the safety of the food substance.

5. One comment noted that in deciding whether to allow imports into the United States the agency is not entitled to create legal requirements (i.e., the imports are on an FDA approved substances list) because it is convenient to have a list of approved substances.

It is to the advantage of an importer to have the substances of its product on an FDA-approved list, which would occur if FDA concurred in the GRAS determination. This listing would eliminate delays and uncertainties regarding the food product's entry into the United States. However, FDA has not created any legal requirements to this effect.

6. Three comments stated that a requirement for FDA concurrence would have a catastrophic economic impact upon importers.

The agency does not agree with the assertion that a requirement for FDA concurrence in a foreign determination of GRAS would have a catastrophic economic impact upon importers. This rule serves to open U.S. markets to products not previously sold in this country. Any expense associated with the submission of a petition seeking FDA concurrence should be minimal because an individual or firm making an independent GRAS determination should already have the information needed to support a general recongnition of safety.

Due to these considerations, the agency has not modified its regulation in response to these comments.

7. One comment was concerned that FDA might exclude data on foreign usage after January 1, 1958, in making GRAS determinations.

The agency emphasizes that it regulates substances used outside of the United States after 1958 in the same manner as those used in the United States after 1958. The act allows substances that were used in food prior to January 1, 1958, to be GRAS either through experience based on common use in food or through scientific procedures (21 U.S.C. 321(s) and 21 CFR 170.30(a)). All substances first used in food after this date can be GRAS only on the basis of scientific procedures (21 CFR 170.30(b)).

8. Two comments recommended that the GRAS provisions on animal food substances also be revised to be consistent with the *Fmali* court decision.

The agency agrees that the court decision affects the GRAS provisions on animal food substances and has decided to initiate a rulemaking for the GRAS provisions on animal food substances. A notice of proposed rulemaking will be published in a future issue of the **Federal Register.**

III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (July 2, 1985; 50 FR 27294 at 27296). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

IV. Economic Impact

In accordance with Executive Order 12291 and the Regulatory Flexibility Act, the agency previously considered the potential economic effects of this rule including its potential effect on small entities, including small businesses. In accordance with Executive Order 12291 and section 605(b) of the Regulatory Flexibility Act, the agency has determined that this rule would not be a major rule, and that no significant impact on a substantial number of small entities would derive from this action. As previously mentioned, the agency received three comments that claimed that this rule would have adverse economic effects on businesses. However, the agency did not receive any new information upon which to base a reconsideration of its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment that was prepared in conjunction with the notice of proposed rulemaking and which may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

V. Paperwork Reduction Requirements

Section 170.35(c)(i) of this final rule contain information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0132.

List of Subjects in 21 CFR Part 170

Administrative practice and procedure, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 170 is amended as follows:

PART 170—FOOD ADDITIVES

1. The authority citation for 21 CFR Part 170 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701(a) (21 U.S.C. 321(s), 342, 348, 371(a)); 21 CFR 5.10.

2. Section 170.3 is amended by revising paragraph (f) to read as follows:

§ 170.3 Definitions.

* * * * *

(f) "Common use in food" means a substantial history of consumption of a substance for food use by a significant number of consumers.

* * * * *

3. Section 170.30 is amended by redesignating paragraph (c) as paragraph (c)(1), by revising the second sentence in paragraph (c)(1), and by adding a new paragraph (c)(2) to read as follows:

§ 170.30 Eligibility for classification as generally recognized as safe (GRAS).

* * * * *

(c)(1) * * * General recognition of safety through experience based on common use in food prior to January 1, 1958, shall be based solely on food use of the substance prior to January 1, 1958, and shall ordinarily be based upon generally available data and information. * * *

(2) A substance used in food prior to January 1, 1958, may be generally recognized as safe through experience based on its common use in food when that use occurred exclusively or primarily outside of the United States if the information about the experience establishes that the use of the substance

is safe within the meaning of the act (see § 170.3(i)). Common use in food prior to January 1, 1958, that occurred outside of the United States shall be documented by published or other information and shall be corroborated by information from a second, independent source that confirms the history and circumstances of use of the substance. The information used to document and to corroborate the history and circumstances of use of the substance must be generally available; that is, it must be widely available in the country in which the history of use has occurred and readily available to interested qualified experts in this country. Persons claiming GRAS status for a substance based on its common use in food outside of the United States should obtain FDA concurrence that the use of the substance is GRAS.

* * * * *

4. Section 170.35 is amended by revising the introductory text of paragraph (c)(1), and by adding a parenthetical phrase at the end of the section to read as follows:

§ 170.35 Affirmation of generally recognized as safe (GRAS) status.

* * * * *

(c)(1) Persons seeking the affirmation of GRAS status of substances as provided in § 170.30(e), except those subject to the NAS/NRC GRAS list survey (36 FR 20546; October 23, 1971), shall submit a petition for GRAS affirmation pursuant to Part 10 of this chapter. Such petition shall contain information to establish that the GRAS criteria as set forth in § 170.30 (b) or (c) have been met, in the following form:

* * * * *

(Collection of information requirements were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0132.)

Dated: May 4, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-10314 Filed 5-9-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-87-063]

Drawbridge Operation Regulations; Pocomoke River, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the requests of the Maryland Department of Transportation and Conrail, the Coast Guard is changing the regulations governing the operation of the Route 675 highway drawbridge across the Pocomoke River, mile 15.6, and adding new regulations for the railroad swing bridge across the Pocomoke River, mile 15.2, at Pocomoke City, Maryland. This action will require five hours advance notice for bridge openings from November 1 to March 31.

EFFECTIVE DATE: These regulations become effective on June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398-6222.

SUPPLEMENTARY INFORMATION: On August 16, 1987, the Coast Guard issued a notice of proposed rulemaking concerning this amendment, which was published in the **Federal Register** on September 4, 1987 (52 FR 34686). Interested persons were given until October 29, 1987, to submit comments on the proposed rule.

The Commander, Fifth Coast Guard District also published the proposal as a Public Notice on November 9, 1987, which gave interested persons until December 18, 1987, to submit comments.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, Project Officer, and CDR Robert J. Reining, Project Attorney.

Discussion of Rule and Comments

The notice of proposed rulemaking would have required vessels to give five hours advance notice for openings between October 1 to March 31 for openings of the railroad swing bridge at mile 15.2 and the Route 675 drawbridge at mile 15.6 across the Pocomoke River. The proposal was intended to eliminate the need to have individuals constantly available to open the draws during a time of year when few vessels transit the river. After the notice of proposed rulemaking was issued, a letter was received from the Mayor of Pocomoke City, dated August 31, 1987. The mayor requested that the proposal be changed to require the Conrail bridge to open on signal from March 1 through October 31. The mayor also stated a general preference for having the bridge open on signal throughout the year.

In addition, in September, 1987, a member of the Fifth Coast Guard District bridge staff was contacted by the DELMARVA Water Transport Committee (DWTC), who stated that they had discussed the issue of manning the bridge during March and October with Conrail. They reported that Conrail did not believe it was feasible to keep the bridge manned during March, but that Conrail had agreed to leave the railroad bridge manned through the month of October. DWTC, therefore, requested that the proposal be changed to require the bridge to open on signal during a seven month period (April 1 through October 31), rather than the six month period published in the notice of proposed rulemaking (April 1 through September 30).

A member of the Fifth Coast Guard District bridge staff then contacted both Conrail and the Maryland State Highway Administration to obtain their views on the subject. Conrail stated that they had no objections to manning the bridges during the month of October, but they insisted that there was insufficient traffic to keep the bridge manned during the month of March. They requested that they be permitted to only open the draw on five hours notice during March.

On March 18, 1988, the Maryland Department of Transportation stated that they had no objections to the changes proposed by the City for the Route 675 bridge at mile 15.6. No comments were received in response to the notice of proposed rulemaking published in the **Federal Register.** Only two comments were received as a result of the public notice. One, from a private citizen, favored the proposed regulations. The other, from the U.S. Environmental Protection Agency, Philadelphia, Pennsylvania, stated they had no comments regarding the proposed regulation.

Based on the discussions with Conrail, DWTC, and the Maryland State Highway Administration, we have determined that there is a need to maintain the unrestricted openings of the draws from April 1 through October 31, in order to provide for the reasonable needs of navigation. Therefore, the rule that was originally proposed has been amended to extend the open period from September 30 to October 31.

Good cause exists to issue this final rule without an additional notice of proposed rulemaking, since all the affected interests have been afforded an opportunity to comment on the proposed change and have made their positions known to the Coast Guard. Publication of an additional notice of proposed rulemaking or other public procedures are unnecessary.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and

procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the regulation will have no effect on commercial navigation, or on any industries that depend on waterborne transportation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authorty citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499, 49 CFR 1.46; 33 CFR 1.05–01(g).

2. Section 117.569 is revised to read as follows:

§ 117.569 Pocomoke River.

(a) The Conrail railroad bridge, mile 15.2, at Pocomoke City, shall open on signal, except between November 1 and March 31 the draw must open only if at least five hours advance notice is given.

(b) The draw of the Route 675 bridge, mile 15.6, at Pocomoke City, shall open on signal, except between November 1 and March 31 the draw must open only if at least five hours advance notice is given.

(c) The draw of the S12 bridge, mile 29.9, at Snow Hill, shall open on signal if at least five hours advance notice is given.

Dated: April 27, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard.

[FR Doc. 88–10286 Filed 5–9–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251 and 261

Land Uses and Prohibitions

AGENCY: Forest Service, USDA.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule would revise the existing regulations governing special uses of National Forest System lands and resources to remove ambiguities regarding First Amendment rights of assembly and free speech within the National Forest System.

DATE: This rule effective May 10, 1988. Comments must be received in writing by July 11, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2300), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this interim rule in the Office of the Director, Recreation Management Staff, Room 4225, South Building, 12th and Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: W.T. Svensen Recreation Staff, (202) 382–9407.

SUPPLEMENTARY INFORMATION: The rules at 36 CFR Part 251, Subpart B, govern the authorization of all uses of National Forest System lands, improvements, and resources, except the disposal of timber (Part 223) and minerals (Part 228) and the grazing of livestock (Part 222).

The existing rule establishes two types of group events, differentiating between recreation events and special events, both of which involve groups of 10 or more participants and/or spectators. The existing rule also contains different standards for the denial of special use authorizations for each type of group event. A Federal District Court recently held that it is unconstitutional to require a group to obtain a special use authorization simply because they gather to exercise their constitutional right of free speech. The Court explained that the Forest Service has every right to regulate large group use of government land, but only if the regulation is content-neutral and applies to all large groups. *United States v. Israel*, No. CR–86–027–TUC–RMB (May 10, 1986).

In response, the Department is revising 36 CFR 251.50 through .54 to refine the definitions of special uses, eliminate the terms "recreation event" and "special event", to add a new term "group event", and to add proper safeguards for protecting all First Amendment activities.

Paragraph (c) of § 251.50 is being revised to more clearly articulate that a special use authorization is not required for the noncommercial use or occupancy of National Forest System lands or facilities for most recreational activities, unless authorization of such use is required by an order issued pursuant to 36 CFR 261.50, or required by a regulation issued pursuant to 36 CFR 261.70, or unless the use is for a group event. The major change in this paragraph is that special use authorizations are required for all organized or publicized events involving groups of 25 or more persons. The interim rule classifies every organized or publicized group of 25 or more persons as a "group event" irrespective of the purpose of the gathering.

Section 251.51 of the existing rule contains definitions used in Part 251, Subpart B. The interim rule removes the terms and definitions for "recreation event" and "special event", which will no longer be used in this Subpart, and adds new terms and definitions for "group event", "distributing noncommercial printed material", and "noncommercial printed material". The term "group event" covers all organized or publicized gatherings of 25 or more people, and thus includes groups currently included in the "special events" or "recreation events" categories, as well as groups currently not subject to the special use authorization requirement. "Distributing noncommercial printed material" and "noncommercial printed material" are new terms which are defined in the interim rule. These terms and definitions are added to clarify that special use authorization for this First Amendment activity will be granted unless certain conditions specified in § 251.54 are not met.

Section 251.53 of the existing rule contains the authorities under which special use authorizations may be issued. In this interim rule, paragraph (a) is changed to reflect new terms which are now used in this subpart.

Existing § 251.54 prescribes procedures and requirements of special use applications. Paragraphs (h) and (i) of this section describe reasons that an authorized officer may deny special use applications. In the interim rule, existing paragraph (i) is redesignated as paragraph (h) and revised to provide that applications for a special use authorization for the distribution of noncommercial printed material or for a group event for the purpose of public expression of views shall be granted, unless the authorized officer determines that the planned event or use would conflict with another use which has been previously authorized, the planned event or use would present a clear and present danger to public health or safety, or the planned event or use would be of such nature and duration that it could not reasonably be accommodated in the particular place