

(k) The judicial officer may affirm, reduce, reverse, compromise, remand or settle any penalty or assessment determined by the ALJ.

(l) The judicial officer shall promptly serve each party to the appeal with a copy of the decision of the judicial officer and a statement describing the respondent's right to seek judicial review.

(m) Unless a petition for review is filed as provided in 31 U.S.C. § 3805 after a respondent has exhausted all administrative remedies under this part and within 60 days after the date on which the judicial officer serves the respondent with a copy of the judicial officer's decision, a determination that a respondent is liable under § 1.303 is final and is not subject to judicial review.

§ 1.339 Stays ordered by the Department of Justice

(a) If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Secretary a written finding that continuation of the administrative process described in this subpart with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the judicial officer shall stay the process immediately.

(b) If the judicial officer stays the administrative process in accordance with paragraph (a) of this section, the judicial officer may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 1.340 Stay pending appeal.

(a) A decision is stayed automatically pending disposition of an appeal to the judicial officer.

(b) The respondent may file with the ALJ a request for stay of the effective date of a decision of the judicial officer pending judicial review. Such request shall state the grounds upon which respondent relies in requesting the stay, together with a copy of the notice(s) of appeal filed by respondent seeking review of a decision of the judicial officer. The filing of such a request shall automatically stay the effective date of the decision of the judicial officer until the ALJ rules upon the request.

(c) The representative for the USDA may file an opposition to respondent's request for a stay within 10 days of receipt of the request. If the representative for the USDA fails to file such an opposition within the allotted time, or indicates that the USDA has no objection to the request, the ALJ may grant the stay without requiring

respondent to give a bond or other security.

(d) The ALJ may grant a contested request where justice so requires and to the extent necessary to prevent irreparable harm but only upon the respondent's giving of a bond or other adequate security. The ALJ shall rule promptly on a contested request for stay.

(e) A decision of the ALJ denying respondent's request for a stay shall constitute final agency action.

§ 1.341 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the judicial officer imposing penalties or assessments under this part and specifies the procedures for such review.

§ 1.342 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this subpart and specify the procedures for such actions.

§ 1.343 Right to Administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 1.341 or § 1.342 of this part, or any amount agreed upon in a settlement under § 1.345 of this part, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes then or later owing by the United States to the respondent.

§ 1.344 Deposit to Treasury of the United States.

All amounts collected pursuant to this subpart shall be deposited as miscellaneous receipts in the Treasury of the United States.

§ 1.345 Settlement.

(a) A respondent may make offers of compromise of settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this subpart at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues a decision.

(c) The judicial officer has exclusive authority to compromise or settle a case under this subpart at any time after the date on which the ALJ issues a decision, except during the pendency of any appeal under § 1.341 or during the

pendency of any action to collect penalties and assessments under § 1.342.

(d) The Attorney General has exclusive authority to compromise or settle a case under this subpart during the pendency of any appeal under § 1.341 of this part, or any action to recover penalties and assessments under § 1.342 of this part.

(e) The investigating official may recommend settlement terms to the reviewing official, the judicial officer, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the judicial officer, or the Attorney General, as appropriate.

(f) Any settlement must be in writing.

§ 1.346 Limitation.

The complaint referred to in § 1.308 of this part with respect to a claim or statement must be served in the manner specified in § 1.309 of this part within 6 years after the date on which such claim or statement is made.

Done this 3d day of November 1989, at Washington, DC.

Clayton Yeutter,
Secretary of Agriculture.

[FR Doc. 90-277 Filed 1-5-90; 8:45 am]

BILLING CODE 3410-90-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASW-55]

Proposed Revision of Transition Area; Carthage, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Carthage, TX. The development of a new NDB RWY 35 standard instrument approach procedure (SIAP) to the Panola County-Sharpe Field, Carthage, TX, utilizing the Carthage Nondirectional Radio Beacon (NDB), has made this proposed revision necessary. The intended effect of the proposal is to provide adequate controlled airspace to all aircraft executing this new SIAP. The status of the Panola County-Sharpe Field would continue to be instrument flight rules (IFR).

DATE: Comments must be received on or before March 2, 1990.

ADDRESS: Send comments on the proposal in triplicate to: Manager,

System Management Branch, Air Traffic Division, Southwest Region, Docket No. 89-ASW-55, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-55." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0503. Communications must

identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Carthage, TX. The development of a new NDB RWY 35 SIAP to the Panola County-Sharpe Field, Carthage, TX, utilizing the Carthage NDB, has necessitated the proposal of this revision. The intended effect of the proposal is to provide adequate controlled airspace to all aircraft executing this new NDB RWY 35 SIAP. The status of the Panola County-Sharpe Field would continue to be IFR. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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 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.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Carthage, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Panola County-Sharpe Field (latitude 32°10'27"N., longitude 94°17'52"W.), and within 3.5 miles each side of the 183° bearing of the Carthage NDB (latitude 32°10'44"N., longitude 94°17'46"W.), extending from the 6.5-mile radius area to 10.5 miles south of the Panola County-Sharpe Field.

Issued in Fort Worth, TX on December 20, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-371 Filed 1-5-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 89N-0397]

Irradiation in the Production, Processing, and Handling of Food; Labeling

AGENCY: Food and Drug Administration.
ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulation on the labeling of irradiated food by removing the provision (21 CFR 179.28(c)(4)) that established an expiration date for the requirement that the phrase "Treated with radiation" or "Treated by irradiation" appear on the label and labeling of retail packages of, or, in some cases, on counter signs, cards, or other appropriate devices that accompany irradiated food. The amended regulation will continue to require that foods that have been irradiated bear, prominently and conspicuously, a logo representing that fact in conjunction with the required phrase.

DATE: Written comments by March 9, 1990.

ADDRESS: Written comment may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St.

SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 18, 1986 (51 FR 13376), FDA issued a final rule on the use of irradiation in the production, processing, and handling of food. Among other things, that final rule modified the requirements for labeling such foods. These modified requirements (21 CFR 179.26) provide that the label or labeling of foods that have been irradiated must bear, prominently and conspicuously, a specified logo along with the phrase "Treated with radiation" or "Treated by irradiation." For foods not in package form, the logo and phrase must be displayed to the consumer on a counter sign, card, or other appropriate device.

FDA adopted these requirements in response to comments that asserted that irradiation of food altered the organoleptic properties of food (51 FR 13376 at 13388). Comments also asserted that these changes in the food make the irradiation of food a material fact that must be disclosed in labeling under sections 201(n) and 403(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(n) and 343(a)).

In response to these comments, FDA decided to require that the label and labeling of food products inform consumers that the food had been subjected to an irradiation process. The agency stated that it was adopting this requirement to identify those foods that have been processed with irradiation because irradiation may not change the food visually. Thus, in the absence of a statement that the food had been irradiated, the implied representation to consumers is that the food has not been processed (51 FR 13388). FDA pointed out that historically it has required the disclosure of a processing agent whenever it is material to the accurate representation of the food. Thus, failure to disclose the use of irradiation would constitute the omission of a material fact and would misbrand the food (51 FR 13388). In adopting this requirement, however, FDA emphasized that labeling is not being required because of FDA concern about the safety of the uses of irradiation being allowed (51 FR 13388).

When FDA published the final rule, FDA anticipated that the meaning of the logo would be understood by consumers after 2 years of requiring both the logo and the wording on the label. Consequently, the agency included a provision in the final rule that stated that the requirement for the mandatory wording would expire on April 18, 1988, unless extended by notice and comment rulemaking (21 CFR 179.26(c)(4)). On April 18, 1988, FDA extended the

expiration date for the wording requirement an additional 2 years, until April 18, 1990 (53 FR 12756). The agency concluded that because of the limited presence of irradiated foods in the marketplace, most consumers had not had an opportunity to associate the required logo with the mandatory wording and, thus, were not yet aware that the logo means that the food had been treated with radiation.

There has been only two market tests in which labeled irradiated food was offered to consumers in the United States: (1) Mangoes from Puerto Rico were sold in Florida in September 1986; and (2) Hawaiian papayas were sold in California in March 1987. These tests were of limited duration, 1 day for papayas and several weeks for mangoes. The agency is unaware of any other instances in which consumers would have seen the mandatory labeling. Therefore, the agency finds that it is very unlikely that the conditions necessary for consumers throughout the country to recognize the logo will be met by April 18, 1990. Moreover, the current lack of marketing of such foods prevents the agency from estimating when consumers will be able to recognize that the logo on the label means that the food was treated with radiation.

Thus, FDA is now proposing to remove 21 CFR 170.26(c)(4), which contains the expiration date for the wording requirement. This amendment would not change the amount of information provided to the consumer on the label, but it would eliminate the need for agency reconsideration of the expiration date in the future. If the logo becomes recognizable by consumers, and the required wording becomes unnecessary, an interested party would be able, under the provisions of 21 CFR part 171, to petition the agency to remove the wording requirement.

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act and Executive Order 12291, the agency has previously considered the potential effects of specifying the label and labeling requirements for retail packages or irradiated food on small entities, including small businesses. The agency had determined that these labeling requirements would not result in a significant impact. Because this proposal

merely removes an expiration date, the agency has determined, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant impact on a substantial number of small entities would derive from this action. Further, in accordance with Executive Order 12291, the agency has determined that this rule will not be a major rule as defined by the Order.

List of Subjects in 21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 179 be amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

1. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: Secs. 201, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 371).

§ 179.26 [Amended]

2. Section 179.26 "Ionizing radiation for the treatment of food" is amended by removing paragraph (c)(4).

Dated: January 2, 1990.

Ronald G. Chesmore,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-342 Filed 1-5-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Extension of Study on Alabama's Program Provisions Concerning Disposal of Excess Spoil

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period on a proposed extension of the trial period for a study of provisions for the disposal of excess spoil on abandoned mine sites. These provisions are contained in Alabama's approved permanent program for the regulation of surface coal mining and reclamation