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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, 59, and 70

[Docket No. [PY-90-001]]

Increase in Fees and Charges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the charges for Federal voluntary egg products inspection and egg, poultry, and rabbit grading; as well as Federal mandatory egg products inspection overtime, holiday, and appeal services. These charges are increased to reflect higher costs associated with these programs due to the 3.6-percent increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

EFFECTIVE DATE: May 1, 1990.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Chief, Standardization Branch, 202-447-3506.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been reviewed in accordance with Executive Order 12291 and Department Regulation 1512-1 and has been determined to be a "non-major" rule because it does not meet the criteria contained therein for major rules. It will not (i) result in an annual effect on the economy of \$100 million or more; (ii) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (iii) have significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service (AMS) has determined that this rule, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because (i) the fees and charges merely reflect, on a cost-per-unit-graded/inspected basis, a minimal increase in the costs currently borne by those entities utilizing the services and (ii) competitive effects are offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e., the cost to users increases in proportion to increased volume.

Background

Each fiscal year, the fees for services rendered by AMS to operators of official poultry, rabbit, shell egg, and egg products plants undergo a cost analysis to determine if they are adequate to recover the cost of providing the services. The fees are determined by the employees' salaries and fringe benefits, cost of supervision, travel, and other overhead and administrative costs.

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing voluntary egg products inspection and voluntary egg, poultry, and rabbit grading services. These fees were last increased effective June 1, 1989. The Egg Products Inspection Act requires that the Agency recover costs of overtime, holiday, and appeal inspection services. These fees were last increased effective May 1, 1987.

Federal employees' salaries increased by 3.6 percent beginning in January 1990. Also, the cost of health benefits increased by about 18 percent, Federal employee retirement fringe costs increased by about 12 percent, and salaries of federally licensed State employees increased by about 11 percent. Based on analysis of these increases, resident fees and charges will be increased about 10 percent.

Resident fees reflect Federal and State salaries, health benefits, and workers' compensation costs.

Administrative service charges reflect the costs of supervision and other overhead and administrative expenses. These charges are assessed on each case of shell eggs and each pound of poultry handled in plants using resident grading service. In 1989, these rates were established at \$0.027 per case of shell eggs and \$0.00027 per pound of poultry. These rates are changed to \$0.029 per case of shell eggs and \$0.00029 per pound of poultry. Also, these charges were set at a minimum of \$135 and maximum of \$1,350 per billing period for each official plant. These amounts are changed to \$145 and \$1,450, respectively.

In like manner, based upon analysis of applicable cost increases, the hourly rate for nonresident voluntary grading and inspection service is increased from \$24.12 to \$27.28. The rate for such services performed on Saturdays, Sundays, or holidays is increased from \$25.92 each to \$27.36. The hourly rate for voluntary appeal gradings or inspections is increased from \$20.28 to \$23.20. The hourly rates for mandatory egg products inspection services is increased from \$20.52 to \$21.68 for overtime inspection, from \$14.20 to \$14.72 for holiday inspection, and from \$20.28 to \$23.20 for certain appeal inspections.

Administrative charges for the resident voluntary rabbit grading and voluntary egg products inspection programs and nonresident voluntary continuous poultry and egg grading programs will continue to be based on 25 percent of the grader's or inspector's total salary costs. The minimum charge per billing period for these programs is increased from \$135 to \$145 per official plant.

Based on analysis of costs to provide these services, a proposed rule to increase the fees for certain grading and inspection services for eggs, poultry, and rabbits was published in the *Federal Register* (55 FR 3963) on February 6, 1990. Comments on the proposed rule were solicited from interested parties until March 8, 1990. No comments were received. Therefore, the amendments are promulgated as proposed.

Pursuant to the provisions of 5 U.S.C. 553, good cause is found for making this rule effective less than 30 days after publication. Current revenue does not cover the costs of providing these services and the new fees should be made effective as soon as possible in

order to conform with normal monthly billing cycles. A 30-day comment period was provided for in the proposed rule, no comments were received, and provisions of this final rule are the same as those in the proposed rule. Accordingly, this rule is made effective May 1, 1990.

Information Collection Requirements and Recordkeeping

Information collection requirements and recordkeeping provisions contained in 7 CFR parts 55, 56, 59, and 70 have previously been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35, and 7 CFR part 55 has been assigned OMB No. 0581-0146; and 7 CFR part 56 has been assigned OMB No. 0581-0128; and 7 CFR part 59 has been assigned OMB No. 0581-0113; and 7 CFR part 70 has been assigned OMB No. 0581-0127.

List of Subjects

7 CFR Part 55

Eggs, Food grades and standards, Food labeling, Reporting and recordkeeping requirements, Voluntary inspection service.

7 CFR Part 56

Eggs, Food grades and standards, Food labeling, Reporting and recordkeeping requirements, Voluntary grading service.

7 CFR 59

Eggs, Exports, Food grades and standards, Food labeling, Imports, Mandatory inspection service, Polychlorinated biphenyls (PCB's), Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits, Reporting and recordkeeping requirements, Voluntary grading service.

For reasons set out in the preamble and under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), and the Egg Products Inspection Act (21 U.S.C. 1031-1056), title 7, parts 55, 56, 59, and 70 of the Code of Federal Regulations, is amended as follows.

PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for part 55 continues to read as follows:

Authority: Secs. 202-208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087-1091; 7 U.S.C. 1621-1627).

2. Section 55.510 is amended by revising paragraphs (b) and (c) to read as follows:

§ 55.510 Fees and charges for services other than on a continuous resident basis.

(b) Fees for product inspection and sampling for laboratory analysis will be based on the time required to perform the services. The hourly charge shall be \$27.28 and shall include the time actually required to perform the sampling and inspection, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of \$27.36 per hour. Information on legal holidays is available from the Supervisor.

3. Section 55.560 is amended by revising paragraph (a)(3) to read as follows:

§ 55.560 Charges for continuous inspection and grading service on a resident basis.

(a) * * *

(3) An administrative service charge equal to 25 percent of the grader's or inspector's total salary costs. A minimum charge of \$145 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

4. The authority citation for part 56 continues to read as follows:

Authority: Secs. 202-208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087-1091; 7 U.S.C. 1621-1627).

5. Section 56.46 is amended by revising paragraphs (b) and (c) to read as follows:

§ 56.46 On a fee basis.

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be \$27.28 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of \$27.36 per hour. Information on legal holidays is available from the Supervisor.

6. Section 56.47 is revised to read as follows:

§ 56.47 Fees for appeal grading or review of a grader's decision.

The cost of an appeal grading or review of a grader's decision shall be borne by the appellant at an hourly rate of \$23.20 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

(7) Section 56.52 is amended by revising paragraph (a)(4) to read as follows:

§ 56.52 Continuous grading performed on a resident basis.

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by \$0.029, except that the minimum charge per billing period shall be \$145 and the maximum charge shall be \$1,450. The minimum charge also applies where an approved application is in effect and no product is handled.

8. Section 56.54 is amended by revising paragraph (a)(2) to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of \$145 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

9. The authority citation for part 59 continues to read as follows:

Authority: Secs. 2-28 of the Egg Products Inspection Act (84 Stat. 1620-1635; 21 U.S.C. 1031-1056).

10. Section 59.126 is revised to read as follows:

§ 59.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly

assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant shall give reasonable advance notice to the inspector of any overtime service necessary and shall pay the Service for such overtime at an hourly rate of \$21.68 to cover the cost thereof.

11. Section 59.128 is amended by revising paragraph (a) to read as follows:

§ 59.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant shall, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and shall pay the Service thereof at an hourly rate of \$14.72 to cover the cost thereof.

12. Section 59.370 is amended by revising paragraph (b) to read as follows:

§ 59.370 Cost of appeals.

(b) The costs of an appeal shall be borne by the appellant at an hourly rate of \$23.20, including travel time and expenses if the appeal was frivolous, including but not being limited to the following: The appeal inspection discloses that no material error was made in the original inspection, the condition of the product has undergone a material change since the original inspection, the original lot has changed in some manner, or the Act or these regulations have not been complied with.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

13. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

14. Section 70.71 is amended by revising paragraphs (b) and (c) to read as follows:

§ 70.71 On a fee basis.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly

charge shall be \$27.28 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of \$27.36 per hour. Information on legal holidays is available from the Supervisor.

15. Section 70.72 is revised to read as follows:

§ 70.72 Fees for appeal grading, laboratory analysis, or examination or review of a grader's decision.

The costs of an appeal grading, laboratory analysis, or examination or review of a grader's decision will be borne by the appellant at an hourly rate of \$23.20 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, laboratory analysis, or examination or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

16. Section 70.76 is amended by revising paragraph (a)(2) to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of \$145 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

17. Section 70.77 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by \$0.00029, except that the minimum charge per billing period shall be \$145 and the maximum charge shall be \$1,450. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of \$145 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

Done at Washington, DC on April 5, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-8235 Filed 4-9-90; 8:45 am]

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7 CFR Part 1210

[WRPA Docket No. 1; FV-90-104 FR]

Watermelon Research and Promotion Plan; Rules and Regulations Thereunder

AGENCY: Agricultural Marketing Service (USDA).

ACTION: Final rule.

SUMMARY: This final rule establishes general rules and regulations under the Watermelon Research and Promotion Plan (Plan). The Plan is effective under the Watermelon Research and Promotion Act (Act). This action provides for an assessment of two cents per hundredweight on all watermelons produced for ultimate consumption as human food and an assessment of two cents per hundredweight on all watermelons first handled for ultimate consumption as human food. No assessments will be levied on watermelons grown by persons engaged in the growing of less than five acres of watermelons. This action was recommended by the National Watermelon Promotion Board, which is responsible for administration of the Plan.

EFFECTIVE DATE: Final rule is effective April 10, 1990.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-South, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 447-4140.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Watermelon Research and Promotion Plan (Plan) (7 CFR part 1210). The Plan is effective under the Watermelon Research and Promotion Act (title XVI, subtitle C of Pub. L. 99-198, 7 U.S.C. 4901–4916), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and

Departmental Regulation No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Act and Plan provide that all producers (not including persons engaged in the growing of less than five acres of watermelons) and handlers of watermelons are subject to regulation under the Plan for watermelons produced in the contiguous 48 States. The Act and Plan provide that watermelon producers and handlers pay equal assessments for operating the program. The Act and Plan further provide that handlers are responsible for collecting and submitting both producer and handler assessments to the National Watermelon Promotion Board (Board), reporting their handling of watermelons, and for maintaining any records necessary to verify their reportings. Such records include documents evidencing or relating to the production of watermelons by the handler; documents evidencing or relating to the acquisition or receipt of watermelons by the handler from producers, handlers, or any other source, or accounting to such producers, handlers, or others for watermelons acquired or received by the handler on account, by consignment, for storage, by purchase, or in any other way; documents evidencing or relating to the sale or other disposition of watermelons by the handler; and documents evidencing or relating to the shipment or any other transfer of possession or control of watermelons by the handler.

The record of the public hearing conducted in Las Vegas, Nevada, on February 18 and 19, 1987, and Atlanta, Georgia, on February 24 and 25, 1987, indicates that most handlers subject to this rule would meet the Small Business Administration's (SBA) definition of small agricultural service firms (13 CFR 121.2). Small agricultural service firms are defined as those having annual receipts of less than \$3,500,000. There may be as many as 300 such handlers of watermelon who will be subject to this rule. Small agricultural producers are defined by the SBA as having annual receipts of less than \$500,000. Record evidence from the public hearing to promulgate the Plan indicates that

watermelons are produced on almost 12,000 farms in the United States. The majority of these farms would meet the SBA's definition of small agricultural producers. As many as 5,000 of these 12,000 farms produce less than five acres of watermelons, and thus are exempt from the provisions of the Plan. The industry also includes a few large farms in excess of 400 acres.

These regulations are applicable to all watermelons domestically produced and handled in the contiguous 48 States. The Board, which is composed of producers, handlers, and a public member, recommended the methods contained in this final rule as the most effective and least burdensome way to carry out the program's intent. The Board reviewed provisions currently in effect under similar research and promotion programs for other agricultural commodities. The impact on the various industry segments resulting from the establishment of these rules and regulations was also considered. The Board considered current business practices used by the industry when recommending the reporting and recordkeeping requirements imposed upon producers and handlers covered under these regulations.

These rules assess producers and handlers an equal rate of two cents per hundredweight on watermelons produced and two cents per hundredweight on watermelons handled. The two cents per hundredweight assessment rate represents less than one percent of producer and handler income based on a seasonal average selling price of \$6 per hundredweight of watermelons. Accordingly, this assessment rate will not impose a financial burden on large or small producers and handlers. Furthermore, persons who are required to pay assessments may request a refund of any assessment paid. It is estimated that the proposed assessment rate could generate \$1,200,000 in funds before any refunds.

It is the Department's view that the impact of this action on producers and handlers will not be adverse. The anticipated costs to producers and handlers in implementing these regulations will be significantly offset when compared to the potential benefits of these regulations.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. chapter 35) and section 3504(h) of the PRA, the information collection and recordkeeping requirements contained in this subpart, and the handler

reporting and refund application forms to be used by the Board under the information collection provisions have been approved by the OMB under OMB number 0581-0158. Approximately 300 handlers will be affected by the reporting and recordkeeping requirements of these rules and regulations.

Based on comparable research and promotion programs, it has been estimated that it takes an average of 45 minutes to complete a handler reporting form and an average of 15 minutes for a producer or handler to complete a refund application. There are an estimated 7,000 producers who could request refunds. Reporting forms and applications could be filed as frequently as on a monthly basis. The estimated annual burden is 1,863 hours. Handlers are required to retain handler reports and records to verify the reports for at least two years beyond the marketing year of their applicability.

Section 1647(b)(2) of the Act and § 1210.327(b) of the Plan authorize the Board to recommend to the Secretary such rules and regulations as are necessary to effectuate the terms and conditions of the Plan. As recommended by the Board, §§ 1210.500 through 1210.540 establish the general rules and regulations which govern the collection of assessments, procedures for applying for refunds, the application of late payment and interest charges on past due assessments, and the filing of reports and maintenance of records by handlers. Section 1210.500 incorporates terms defined in the Plan.

The Board consists of 29 members, including 14 producer members, 14 handler members and one public member, appointed by the Secretary. The Secretary appoints the producer and handler members from nominations submitted by producers and handlers voting in district nomination conventions. The Secretary appoints the public member from nominations submitted by the Board.

These rules provide that the public member, to be nominated by the producer and handler members of the Board, shall have no direct financial interest in the commercial production or marketing of watermelons except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall nominate two individuals for this position on the Board. Voting for public member nominees shall be on the basis of one vote per Board member with election determined by a simple majority of those present and voting. Such election shall be held prior to

August 1, 1990, and every third August first thereafter. The Board may prescribe such additional qualifications, administrative rules and procedures for selection and voting for nominees as it deems necessary and the Secretary approves.

As provided for in § 1210.323 of the Plan, these rules provide that each person nominated for the position of public member on the Board shall qualify by filing a written acceptance with the Secretary of Agriculture within 14 calendar days of completion of the Board meeting at which public member nominees were selected.

The purpose of the Plan is to fund programs and projects relating to research, advertising, sales promotion, and market development to assist, improve, or promote the marketing, distribution and use of watermelons. Section 1210.507 of this rule provides that the Board, with the approval of the Secretary of Agriculture, may enter into contracts or make agreements with persons for the development and submission to it of programs or projects authorized by the Plan and for carrying out such programs or projects. Contractors shall be required to agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a Board contractor and who receive or otherwise utilize funds allocated by the Board shall also be subject to the provisions of this part. All records of contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Board or its auditors and the Secretary of Agriculture. This provision is included in this rule to insure that the Board's contracts comply, and are not inconsistent with, the provisions of this part. This provision also provides adequate safeguards to insure that Board funds are used properly.

The Act and Plan provide that all U.S. Department of Agriculture (Department) costs associated with the conduct of Department duties under the Plan be reimbursed. These costs will be billed quarterly by the Department to the Board. The funds to cover such expenses will be paid from assessments collected.

Pursuant to § 1210.341 of the Plan, this rule sets the assessment rate for both producers and handlers at two cents per hundredweight. It provides that watermelons used for non-human food purposes are exempt from assessment.

Assessments will be levied on all non-exempt watermelons produced and handled for human consumption. Because watermelons are marketed in many different ways, § 1210.517

provides examples to aid in identification of first handlers who are handlers responsible for remitting producer and handler assessments to the Board. Section 1210.517 also provides that in the event of a handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or the handler's estate shall be considered the handler of the watermelons.

The Board has recommended that handlers paying assessments to the Board report their handlings and remit the assessments immediately following the end of each month in which watermelons were handled. The provisions in § 1210.518 clarify how assessments are to be remitted to the Board.

Pursuant to § 1210.341 of the Plan, this rule provides that the assessment shall become due at the time the first handler handles the watermelons for non-exempt purposes.

No assessments shall be levied on watermelons grown by persons engaged in the growing of less than five acres of watermelons.

Pursuant to § 1210.341 of the Plan, this rule provides that the first handler is responsible for payment of both the producer's and the handler's assessment. The handler may collect the producer's assessment from the producer, or deduct the assessment from the proceeds paid to the producer.

Handlers shall remit the required producer and handler assessments directly to the Board not later than 20 days after the end of the month such assessments are due. Remittance shall be by check, draft, or money order payable to the National Watermelon Promotion Board. To avoid late payment charges the assessments must be mailed to the Board and postmarked within 20 days after the end of the month such assessments are due. Pursuant to § 1210.350 of the Plan, each handler shall file with the Board a report for each reporting period.

These regulations further provide that, in lieu of the monthly assessment and reporting requirements, the Board may permit handlers to make an advance payment of their total estimated assessments for the crop year. Handlers using such procedures shall provide a final annual report of actual handling and remit any unpaid assessments. Any overpayment of assessments will be returned to the handler after receipt by the Board of the final annual report. Handlers using such procedures shall, at the request of the Board to verify a producer's refund claim, provide a handling report on any and all producers for whom the handler has

provided handling services but has not yet filed a handling report with the Board.

A late payment charge is established pursuant to § 1210.341(e) of the Plan in the amount of ten percent of the outstanding balance due the Board. The amount of the late payment charge recommended by the Board was determined to be in keeping with good business practices in that it would encourage handlers to pay in a timely manner assessments owed by the handlers as well as collected from producers. Ten percent while not considered excessive was considered to be substantive enough that it should serve as an effective deterrent. Further, this rate is consistent with late payment charges levied by similar research and promotion programs. The late payment charge will be applied to all assessments not received before the thirtieth day after the end of the month such assessments are due. The late payment charge will not be applied to any late payments postmarked within 20 days after the end of the month such assessments are due.

In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including any accrued interest, will be added to any accounts delinquent over 30 days after the twentieth day after the end of the month such assessments are due, and will continue monthly until the outstanding balance is paid to the Board. This provision is authorized by § 1210.341(f) of the Plan and is intended to insure that assessments are remitted to the Board in a timely manner. This rate is consistent with interest charges levied by similar research and promotion programs.

Section 1210.518 also provides for assessments to be collected through a cooperating agency such as a regional watermelon association or State watermelon board. To qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes.

The Board recommended the inclusion of actions that the Board may take when a handler fails to submit reports and remittances according to the provisions of §§ 1210.341 and 1210.350 of the Plan and § 1210.518 of these rules and regulations. These actions include audits of the handler's books and records to determine the amount owed the Board and establishment of escrow accounts, as necessary, for the deposit of producer and handler assessments and referral to the Secretary for appropriate enforcement action. These actions are

consistent with the Board's responsibility for effectuation, administration, and enforcement of the assessment and reporting requirements of the Act, Plan, and regulations issued thereunder.

Section 1210.520 sets forth the procedures to be used by producers and handlers to apply for a refund of assessments. Producers and handlers desiring a refund of assessments are required to submit an application form within 90 days from the date the assessment became payable and was paid pursuant to § 1210.518 of these regulations. In order to safeguard the refunding process, producers and handlers are required to submit evidence satisfactory to the Board that the assessments have been paid. Refunds will be issued by the Board within 60 days from the date a properly executed application for refund is received by the Board.

The provisions of §§ 1210.521 through 1210.540 which involve reports of disposition of exempted watermelons; retention period for records; availability of records; confidential books, records, and reports; and Paperwork Reduction Act assigned number, are generally included in research and promotion programs. All such provisions are incidental to, and not inconsistent with, the terms and conditions of the Act and Plan.

Based on available information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the *Federal Register* on February 22, 1990 (55 FR 6261). Written comments were invited from interested persons until March 9, 1990. One comment was received from C.M. Leger, President, and Joe Marinaro, Compliance Subcommittee Chairman, on behalf of the National Watermelon Promotion Board.

The Board believes that for the purpose of further identifying the first handler, it is necessary to delete the words "field run" from the example of first handler given at paragraph 1210.517(a)(5). The connotation of "field run" indicates watermelons that are not sized or graded and the Board believes that such watermelons are well identified in paragraphs 1210.517(a)(3) and 1210.517(a)(4). The Board, further, believes that with the words "field run" deleted, the connotation is much more explicit in identifying the first handler in the example given at paragraph 1210.517(a)(5).

Deletion of the words "field run" would broaden the scope of the example

to include all watermelons of a producer's own production delivered by the producer to a handler who takes title to the watermelons. The example resulting from the suggested change is consistent with the intent of the Act and Plan.

For the reasons set forth herein, the words "field run" in paragraph 1210.517(a)(5) are deleted so as to make the example more explicit in identifying the first handler.

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register*, because the 1990 crop year is about to begin and therefore these rules and regulations should be in place as soon as possible to carry out the program. Generally, the affected persons in the watermelon industry are aware of this program and have planned their operations accordingly. This rule is necessary to set the rate of assessment and set forth the procedures handlers must follow in collection and remittance of assessments and reporting to the Board and implements the provisions of the Plan governing the collection of assessments and issuance of refunds. The Plan was promulgated pursuant to a formal rulemaking procedure in which producers and handlers participated.

List of Subjects in 7 CFR Part 1210

Agricultural promotion, Agricultural research, Market development, Reporting and recordkeeping requirements, Watermelons.

For the reasons set forth in the preamble, chapter XI of title 7 is amended by adding a subpart to part 1210 to read as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901-4916.

2. 7 CFR part 1210, is amended by adding subpart—Rules and Regulations (§§ 1210.500-1210.540), to read as follows:

Subpart—Rules and Regulations

Definitions

Sec.

1210.500 Terms defined.

General

1210.501 [Reserved]

1210.502 [Reserved]

1210.503 Public member nominations and selection.

Sec.

1210.504 Contracts.

1210.505 Department of Agriculture costs.

Assessments

1210.515 Levy of assessments.

1210.516 [Reserved]

1210.517 Determination of handler.

1210.518 Payment of assessments.

1210.519 Failure to report and remit.

1210.520 Refunds.

1210.521 Reports of disposition of exempted watermelons.

Records

1210.530 Retention period for records.

1210.531 Availability of records.

1210.532 Confidential books, records, and reports.

Miscellaneous

1210.540 Paperwork Reduction Act assigned number.

Subpart—Rules and Regulations

Definitions

§ 1210.500 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in subpart—Watermelon Research and Promotion Plan.

General

§ 1210.501 [Reserved]

§ 1210.502 [Reserved]

§ 1210.503 Public member nominations and selection.

(a) The public member shall be nominated by the producer members and handler members of the Board. The public member shall have no direct financial interest in the commercial production or marketing of watermelons except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall nominate two individuals for the public member position. Voting for public member nominees shall require a quorum of the Board and shall be on the basis of one vote per Board member. Election of nominees shall be on the basis of a simple majority of those present and voting. Such election shall be held prior to August 1, 1990, and every third August first thereafter. The Board may prescribe such additional qualifications, administrative rules and procedures for selection and voting for public member nominees as it deems necessary and the Secretary approves.

(b) Each person nominated for the position of public member on the Board shall qualify by filing a written acceptance with the Secretary within 14 calendar days of completion of the

Board meeting at which public member nominees were selected.

§ 1210.504 Contracts.

The Board, with the approval of the Secretary, may enter into contracts or make agreements with persons for the development and submission to it of programs or projects authorized by the Plan and for carrying out such programs or projects. Contractors shall agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a Board contractor and who receive or otherwise utilize funds allocated by the Board shall be subject to the provisions of this part. All records of contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Secretary.

§ 1210.505 Department of Agriculture costs.

Pursuant to § 1210.340, the Board shall reimburse the Department of Agriculture for referendum and administrative costs incurred by the Department with respect to the Plan. The Board shall pay those costs incurred by the Department for the conduct of Department duties under the Plan as determined periodically by the Secretary. The Department will bill the Board quarterly and payment shall be due promptly after the billing of such costs. Funds to cover such expenses shall be paid from assessments collected pursuant to § 1210.341.

Assessments

§ 1210.515 Levy of assessments.

(a) An assessment of two cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food and an assessment of two cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food.

(b) Watermelons used for non-human food purposes are exempt from assessment requirements but are subject to the safeguard provisions of § 1210.521.

§ 1210.516 [Reserved]

§ 1210.517 Determination of handler.

The producer and handler assessments on each lot of watermelons handled shall be paid by the handler. Unless otherwise provided in this section, the handler responsible for payment of assessments shall be the first handler of such watermelons. The first handler is the person who initially performs a handling function as heretofore defined. Such person may be a fresh shipper, processor, or other

person who first places the watermelons in the current of commerce.

(a) The following examples are provided to aid in the identification of first handlers:

(1) Producer grades, packs, and sells watermelons of own production to a handler. In this instance, it is the handler, not the producer, who places the watermelons in the current of commerce. The handler is responsible for payment of the assessments.

(2) Producer packs and sells watermelons of that producer's own production from the field, roadside stand, or storage to a consumer, trucker, retail or wholesales outlet, or other buyer who is not a handler of watermelons. The producer places the watermelons in the current of commerce and is the first handler.

(3) Producer delivers field-run watermelons of own production to a handler for preparation for market and entry into the current of commerce. The handler, in this instance, is the first handler, regardless of whether the handler subsequently handles such watermelons for the account of the handler or for the account of the producer.

(4) Producer delivers field-run watermelons of own production to a handler for preparation for market and return to the producer for sale. The producer in this instance, is the first handler, except when the producer subsequently sells such watermelons to a handler.

(5) Producer delivers watermelons of own production to a handler who takes title to such watermelons. The handler who purchases such watermelons from the producer is the first handler.

(6) Producer supplies watermelons to a cooperative marketing association which sells or markets the watermelons and makes an accounting to the producer, or pays the proceeds of the sale to the producer. In this instance, the cooperative marketing association becomes the first handler upon physical delivery to such cooperative.

(7) Handler purchases watermelons from a producer's field for the purpose of preparing such watermelons for market or for transporting such watermelons to storage for subsequent handling. The handler who purchases such watermelons from the producer is the first handler.

(8) Broker receives watermelons from a producer and sells such watermelons in the Broker's company name. In this instance, the Broker is the first handler, regardless of whether the Broker took title to such watermelons.

(9) Broker, without taking title or possession of watermelons, sells such

watermelons in the name of the producer. In this instance, the producer is the first handler.

(10) Processor utilizes watermelons of own production in the manufacture of rind pickles, frozen, dehydrated, extracted, or canned products for human consumption. In so handling watermelons the processor is the first handler.

(11) Processor purchases watermelons from the producer thereof. In this instance, the processor is the first handler even though the producer may have graded, packed, or otherwise handled such watermelons.

(b) In the event of a handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or the handler's estate shall be considered the handler of the watermelons for the purpose of this subpart.

§ 1210.518 Payment of assessments.

(a) *Time of payment.* The assessment shall become due at the time the first handler handles the watermelons for non-exempt purposes.

(b) *Responsibility for payment.* The first handler is responsible for payment of both the producer's and the handler's assessment. The handler may collect the producer's assessment from the producer, or deduct such producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the first handler handles the watermelons.

(c) *Payment direct to the Board.* (1) Except as provided in paragraph (e) of this section, each handler shall remit the required producer and handler assessments, pursuant to § 1210.341 of the Plan, directly to the Board not later than 20 days after the end of the month such assessments are due. Remittance shall be by check, draft, or money order payable to the National Watermelon Promotion Board, or NWPB, and shall be accompanied by a report, preferably on Board forms, pursuant to § 1210.350. To avoid late payment charges, the assessments must be mailed to the Board and postmarked within 20 days after the end of the month such assessments are due.

(2) Pursuant to § 1210.350 of the Plan, each handler shall file with the Board a report for each month that assessable watermelons were handled. All handler reports shall contain at least the following information:

(i) The handler's name, address, and telephone number;

(ii) Date of report (which is also the date of payment to the Board);

(iii) Period covered by the report;

(iv) Total quantity of watermelons handled during the reporting period, pursuant to § 1210.518;

(v) Date of last report remitting assessments to the Board; and

(vi) Listing of all persons for whom the handler handled watermelons, their addresses, hundredweight handled, and total assessments remitted for each producer. In lieu of such a list, the handler may substitute copies of settlement sheets given to each person or computer generated reports, provided such settlement sheets or computer reports contain all the information listed above.

(vii) Name, address, and hundredweight handled for each person claiming exemption for assessment.

(viii) If the handler handled watermelons for persons engaged in the growing of less than five acres of watermelons, the report shall indicate the name and address of such person and the quantity of watermelons handled for such person.

(3) The words "final report" shall be shown on the last report at the close of the handler's marketing season or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.

(4) Prepayment of assessments.

(i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit handlers to make an advance payment of their total estimated assessments for the crop year to the Board prior to their actual determination of assessable watermelons. The Board shall not be obligated to pay interest on any advance payment.

(ii) Handlers using such procedures shall provide a final annual report of actual handling and remit any unpaid assessments not later than 20 days after the end of the last month of the designated handler's marketing season or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.

(iii) Handlers using such procedures shall, after filing a final annual report, receive a reimbursement of any overpayment of assessments.

(iv) Handlers using such procedures shall, at the request of the Board to verify a producer's refund claim, provide the Board with a handling report on any and all producers for whom the handler has provided handling services but has not yet filed a handling report with the Board.

(v) Specific requirements, instructions, and forms for making such advance

payments shall be provided by the Board on request.

(d) *Late payment charges and interest.* (1) A late payment charge shall be imposed on any handler who fails to make timely remittance to the Board of the total producer and handler assessments for which any such handler is liable. Such late payment shall be imposed on any assessments not received before the thirtieth day after the end of the month such assessments are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 20 days after the end of the month such assessments are due.

(2) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including the late payment charge and any accrued interest, will be added to any accounts delinquent beyond 30 days after the twentieth day after the end of the month such assessments are due. Such interest will continue monthly until the outstanding balance is paid to the Board.

(e) *Payment through cooperating agency.* The Board may enter into agreements, subject to approval of the Secretary, authorizing other organizations, such as a regional watermelon association or State watermelon board, to collect assessments in its behalf. In any State or area in which the Board has entered into such an agreement, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers or producers. To qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided by the cooperating agency, it may acquire such evidence from individual handlers. All such agreements are subject to the requirements of the Act, Plan, and all applicable rules and regulations under the Act and the Plan.

§ 1210.519 Failure to report and remit.

Any handler who fails to submit reports and remittances according to the provisions of § 1210.518 shall be subject to appropriate action by the Watermelon Board which may include one or more of the following actions:

(a) Audit of the handler's books and records to determine the amount owed the Watermelon Board.

(b) Establishment of an escrow account for the deposit of assessments collected. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Watermelon Board with the approval of the Secretary.

(c) Referral to the Secretary for appropriate enforcement action.

§ 1210.520 Refunds.

Each watermelon producer or handler against whose watermelons an assessment became payable and was paid pursuant to this subpart may obtain a refund of the assessment amount for any calendar month by following the procedures prescribed in this section.

(A) *Application form.* A producer or handler shall obtain a refund application from the Board by written request which shall bear the producer's or handler's signature. For partnerships, corporations, associations, or other business entities, a partner or an officer of the entity must sign the request and indicate his or her title.

(b) *Submission of refund application to the Board.* Any producer or handler requesting a refund shall mail an application on the prescribed form to the Board within 90 days from the date the assessment became payable and was paid pursuant to § 1210.518. The refund application shall show the following:

- (1) Producer's name and address;
- (2) Handler's or Handlers' name(s) and address(es);
- (3) Number of hundredweight of watermelon on which refund is requested;
- (4) Total amount to be refunded;
- (5) Proof of payment as described below; and
- (6) Producer's or handler's signature.

Where more than one producer or handler shared in the assessment payment, the refund application shall show, in addition to other required information, the names, addresses and proportionate shares of such producers or handlers and the signature of each. Separate refund requests must be made by the producer and the handler where refunds are requested by both on the same lot of watermelons, except when the producer and handler are the same person. Requests for refund of assessments paid may be in part or total.

(c) *Proof of payment of assessment.* Evidence of payment of assessments satisfactory to the Board, such as the receipt or a copy of the receipt given to the producer by the handler, or a copy of

the handler's report, shall accompany the producer's or handler's refund application. Evidence submitted with refund applications shall not be returned to the applicant.

(d) *Payment of refund.* Within 60 days from the date the properly executed application for refund is received by the Board, the Board shall make remittance to the applicant. For joint applications, the remittance shall be made payable jointly.

§ 1210.521 Reports of disposition of exempted watermelons.

The Board may require reports by handlers on the handling and disposition of exempted watermelons and/or on the handling of watermelons for persons engaged in growing less than five acres of watermelons. Authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

Records

§ 1210.530 Retention period for records.

Each handler required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the marketing year of their applicability:

- (a) One copy of each report made to the Board; and
- (b) Such records as are necessary to verify such reports.

§ 1210.531 Availability of records.

Each handler required to make reports pursuant to this subpart shall make available for inspection and copying by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

§ 1210.532 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and all information with respect to refunds of assessments made to individual producers and handlers shall be kept confidential in the manner and to the extent provided for in § 1210.352.

Miscellaneous

§ 1210.540 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in the part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0581-0158.

Signed at Washington, DC on April 5, 1990.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 90-8236 Filed 4-9-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-201-AD; Amdt. 39-6572]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737-300 series airplanes, which requires a one-time inspection of the engines' nacelle strut firewall duct assemblies for proper application of firewall sealant. This amendment is prompted by a manufacturer's production report that firewall sealant may not have been applied to all the mating surfaces of the engines' nacelle strut firewall door assemblies. This condition, if not corrected, could compromise the integrity of the engines' nacelle strut firewall seal.

EFFECTIVE DATE: May 14, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737 series airplanes, which requires a one-time inspection of the engines' nacelle strut firewall duct assemblies for proper application of firewall sealant, was published in the

Federal Register on November 3, 1989 (54 FR 46400).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two comments were received requesting that the compliance period be expressed "at the next engine removal" and that the proposed one year compliance period be withdrawn or at least extended to an interval of 8,000 to 10,000 flight hours. The commenters believe that the proposed AD would cause a severe economic hardship on the operators by requiring unscheduled engine removals. The FAA concurs. The FAA has determined that the compliance time can be increased to 8,000 flight hours without unduly impacting safety and has revised the final rule to reflect the extended interval.

A comment was received opposing the 10-day reporting requirement for both negative and positive findings. The commenter believes that reporting of findings should only be required in immediate adopted rules issued as interim actions. In the general case, the FAA does not concur, since the purpose of such reporting requirements is to ensure that the FAA is able to gather as much information as possible as to the extent and nature of what appears to be a manufacturer's quality control problem, especially in cases where this information may not be available through other established means. Such information is necessary to ensure that proper corrective action is implemented. However, in this specific case, due to the extension of the compliance time as noted above, and an FAA evaluation of the quality control problem which is already underway, the FAA has determined that this reporting requirement is unnecessary. The final rule has been revised to delete the reporting requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 50 Model 737-300 series airplanes of the affected design in the worldwide fleet. It is estimated that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost

will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 series airplanes, listed in Boeing Service Bulletin 737-54-1028, dated August 17, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the integrity of the engines' nacelle strut firewall seal, accomplish the following:

A. At the next engine removal or within 8,000 flight hours after the effective date of this AD, whichever occurs sooner, inspect the engines' nacelle strut door assemblies for proper application of firewall sealant in accordance with Boeing Service Bulletin 737-54-1028, dated August 17, 1989. The door assemblies are located between nacelle

station 200.00 and 235.00 and attached to the underside of the strut and spar web at approximately nacelle waterline 132.00. If there are gaps, holes, or voids in the firewall sealant, apply sealant prior to further flight, in accordance with the previously described service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 14, 1990.

Issued in Seattle, Washington, on March 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 90-8194 Filed 4-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-265-AD; Amdt. 39-6573]

Airworthiness Directives; Fairchild Industries, Inc., Model F-27 and FH-227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fairchild Industries, Inc., Model F-27 and FH-227 series airplanes, which currently requires a dye penetrant inspection to detect cracks in the wing outer panel upper surface stringer splice fittings, and repair, if necessary. This action (1) allows the blending of cracked aluminum fittings if cracks detected are

within certain acceptable limits, (2) requires the installation of new steel fittings if the cracks found exceed the specified acceptable limits, (3) requires the eventual replacement of all aluminum fittings with the new steel fittings, and (4) eliminates the reporting requirement prescribed in the existing AD. This amendment is prompted by an analysis submitted by the manufacturer which provides a temporary repair by blending cracked fittings provided the cracks are within acceptable limits. This condition, if not corrected, could result in the inability of the airplane structure to carry required loads.

EFFECTIVE DATE: May 14, 1990.

ADDRESSES: The applicable service information may be obtained from Maryland Air Industries, Inc., Hagerstown, Maryland 21740. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT:

Mr. Anthony Socias, Airframe Branch, ANE-172, New York Aircraft Certification Office; telephone (516) 791-6220. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-15-01, Amendment 39-6292 (54 FR 31804; August 2, 1989), applicable to all Fairchild Industries, Inc., Model F-27 and FH-227 series airplanes, which (1) allows the blending of cracked aluminum fittings if cracks detected are within certain acceptable limits, (2) requires the installation of new steel fittings if the cracks found exceed the specified acceptable limits, (3) requires the eventual replacement of all aluminum fittings with the new steel fittings, and (4) eliminates the reporting requirements prescribed in the existing AD, was published in the *Federal Register* on January 26, 1990 (55 FR 2669).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The sole commenter, Air Line Pilots Association, fully supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air