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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 73 and 74

RIN 3150-AE27

Licensees' Announcements of Safeguards Inspections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations concerning safeguards inspections at facilities that possess a formula quantity of strategic special nuclear material in unirradiated form. The purpose of the rule is to ensure that the presence of NRC safeguards inspectors at affected facilities is not announced nor widely communicated to licensee and contractor personnel without the expressed request to do so by the safeguards inspector. The rule will increase the effectiveness of unannounced safeguards inspections and enable a safeguards inspector to obtain a more accurate view of operations at the facility.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2478.

SUPPLEMENTARY INFORMATION:

Background

The Commission is concerned that the effectiveness of unannounced safeguards inspections at certain facilities required to maintain safeguards may be diminished by the announcement or other communication of the presence of a safeguards inspector on-site, without the expressed request of the safeguards inspector. On November

3, 1992 (57 FR 49656), the Commission published a proposed rule that would prohibit a licensee or its contractors from using an access control measure or other means to intentionally give notice to other persons of the arrival or presence of an NRC safeguards inspector at facilities possessing a formula quantity of strategic special nuclear material in unirradiated form. Similar requirements are in place for power reactor sites as required by 10 CFR 50.70(b)(4).

Safeguards inspections are comprised of material control and accounting inspections, and physical security inspections. The proposed rule was limited to safeguards inspections due to the expediency by which most safeguards degradation can typically be compensated for after the announcement of the presence of an NRC safeguards inspector, such as, by the posting of a security officer. The proposed amendment would impose only procedural changes and is expected to have no economic impact on affected licensees or the public. Violation of these rules may subject a person to the criminal penalties in section 223 of the Atomic Energy Act of 1954, as amended. Notwithstanding, the Commission reiterates the position stated in the notice of proposed rulemaking regarding enforcement action.

As the NRC said when it promulgated 10 CFR 50.70(b)(4), which prohibits nuclear power reactor licensees from communicating the arrival or presence of an NRC inspector unless asked to do so by the inspector:

Recognizing the possibility of inadvertent communication of an inspector's presence, the NRC expects to reserve enforcement action [only] for significant intentional violations of the [prohibition]. An honest response by an employee to an innocent inquiry that he [or] she just saw an NRC inspector is not [proscribed by] the rule.

Therefore, an employee would not be required to lie, in response to a question, about the presence of an NRC inspector (53 FR 42940; October 25, 1988).

Similarly, the NRC recognizes the possibility that some communication of an inspector's presence may even be necessary on occasion. For instance, the person directly in charge of an area being inspected may need to inform certain other people, perhaps higher-level managers, that, because of the inspection, he or she cannot attend a

previously scheduled meeting. An employee would not be required by the rule to cancel previous engagements without giving timely and sufficient reason.

Public Comment on the Proposed Rule

The 90-day public comment period for the rule expired on February 1, 1993. Affected licensees sent no comments on the proposed amendment. One letter of comment was received from a concerned citizen. The concerned citizen recommended strengthening the rule to prohibit the announcement of inspections by anyone, not just the licensee, and cited what were considered to be general violations of the existing prohibition contained in 10 CFR 50.70(b)(4). The Commission notes that the comment appears to focus on inspections at power reactor sites, as opposed to the facilities affected by the rule, that is, facilities possessing a formula quantity of strategic special nuclear material in unirradiated form. Further, announced inspections are conducted as part of an overall inspection program. There are many occasions when it is proper and necessary that a licensee have advance notice of an inspection. Notice of these inspections may be widely communicated. The Commission's regulatory authority for prohibiting the announcement of an inspection does not extend beyond its licensees and its own employees. The extension of this authority, as suggested by the comment, is not within the Commission's Federal mandate.

One change has been made to the rule's text published for comment. The Commission has clarified the text that describes those facilities affected by amendments to 10 CFR 74.81. No other changes have been made to the proposed rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this amendment is the type of action described in categorical exclusion 10 CFR 55.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the final rule.

Paperwork Reduction Act Statement

This final rule contains no new nor amended information collection requirements and, therefore, is not

subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval numbers 3150-002 and 3150-0123.

Regulatory Analysis

This final rule will have no significant impact on State and local governments and geographical regions. It may have an impact on health, safety, and the environment, but only in the sense of preventing adverse impacts on health, safety, and the environment through more effective safeguards inspections at affected facilities. The final rule makes it clear that NRC safeguards inspectors are to have a realistic picture of the actual conditions at a site during the inspection process and, therefore, be better able to identify conditions and/or practices for corrective action, and to ensure that licensees comply with laws, regulations, and orders administered by NRC. The final rule imposes procedural changes only on affected licensees at minimal or no cost. This constitutes the regulatory analysis for the final rule.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final amendments will not impose significant cost on any affected licensees regardless of size.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because affected facilities are not licensed under 10 CFR part 50 and, therefore, a backfit analysis is not required. This final rule affects only those facilities that possess a formula quantity of strategic special nuclear material in unirradiated form and imposes only procedural changes at minimal or no cost to the licensee.

List of Subjects

10 CFR Part 73

Criminal penalties, Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection,

Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIAL

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended; sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); secs. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.46, paragraph (d)(15) is added to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(d) * * *

(15) The licensee may not announce or otherwise communicate to its employees or site contractors the arrival or presence of an NRC safeguards inspector unless specifically requested to do so by the NRC safeguards inspector.

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PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

3. The authority citation for part 74 continues to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

4. In § 74.81, paragraph (d) is added to read as follows:

§ 74.81 Inspections.

* * * * *

(d) At a facility using and possessing a formula quantity of strategic special nuclear material in unirradiated form, the licensee may not announce or otherwise communicate to its employees or site contractors the arrival or presence of an NRC safeguards

inspector unless specifically requested to do so by the safeguards inspector.

Dated at Rockville, MD this 17th day of May 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-12094 Filed 5-20-93; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 92-AWP-21]

Amendment to Restricted Areas R-2516, R-2534A, and R-2534B; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the title of Restricted Areas R-2516, R-2534A, and R-2534B located in California, to Vandenberg AFB, CA. It also changes the controlling agency and using agency for R-2516. These are administrative changes initiated by the U.S. Air Force to reflect its reorganization. There are no changes to the boundaries, altitudes, times of use, or activities conducted within the affected restricted areas.

EFFECTIVE DATE: 0901 u.t.c. July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Diane Bodenhamer, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-3178.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the title of R-2516 from "Naval Missile Facility Point Arguello, CA," to "Vandenberg AFB, CA." The title of R-2534A and R-2534B is changed from "Point Arguello, CA," to "Vandenberg AFB, CA." This action also changes the controlling agency for R-2516 from "Western Space and Missile Center, Vandenberg AFB, CA," to "FAA, Los Angeles ARTCC," and the using agency for R-2516 from "Western Space and Missile Center (WSMC)/SE, Vandenberg AFB, CA," to "U.S. Air Force, Commander, 30th Space Wing (30 SPW/CC), Vandenberg AFB, CA." These

administrative changes were initiated by the Department of the Air Force to reflect its reorganization. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.25 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

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

Environmental Review

This action is an administrative change and does not affect the boundaries, altitudes, times of use, or activities of the restricted areas. Accordingly, this action will have no effect on current air traffic procedures or routing of civil aircraft operations in the area. The FAA, therefore, finds that there will be no significant impact on the environment as a result of this action.

List of Subjects in 14 CFR Part 73

Aviation safety, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.25 [Amended]

2. Section 73.25 is amended as follows:

R-2516 Naval Missile Facility Point Arguello, CA—[Amended]

By removing the title "R-2516 Naval Missile Facility Point Arguello, CA," and

substituting "R-2516 Vandenberg AFB, CA," and by removing the present controlling agency and using agency and substituting the following:

"Controlling agency. FAA, Los Angeles ARTCC. Using agency. U.S. Air Force, Commander, 30th Space Wing (30 SPW/CC), Vandenberg AFB, CA."

R-2534A Point Arguello, CA—[Amended]

By removing the title "R-2534A Point Arguello, CA," and substituting "R-2534A Vandenberg AFB, CA."

R-2534B Point Arguello, CA—[Amended]

By removing the title "R-2534B Point Arguello, CA," and substituting "R-2534B Vandenberg AFB, CA."

Issued in Washington, DC, on May 11, 1993.

Willis C. Nelson,

Acting Manager, Airspace Rules and Aeronautical Information Division.

[FR Doc. 93-12068 Filed 5-20-93; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 163

[Docket No. 86P-0297]

Cacao Products; Amendment of the Standards of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this final rule to amend the standards of identity for certain cacao products. The amendments will: Provide for the use of safe and suitable nutritive carbohydrate sweeteners, neutralizing agents, and emulsifiers in these products; revise the current milkfat content requirements for milk chocolate, buttermilk chocolate, skim milk chocolate, and mixed dairy product chocolates; eliminate the current nonfat milk solids-to-milkfat ratio for certain cacao products; and revise the standards for coatings. The final rule will also update the language and format of the standards. The amendments will promote honesty and fair dealing in the interest of consumers and, to the extent practicable, will achieve consistency with the Codex Alimentarius Commission (the Codex) International Standards for Chocolate and for Cocoa Powders (Cocoas) and Dry Cocoa—Sugar Mixtures.

DATES: July 20, 1993, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. The

Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 163.5, effective July 20, 1993.

FOR FURTHER INFORMATION CONTACT:

Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5106.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of June 5, 1992 (57 FR 23989), FDA published a tentative final rule to amend the standards of identity for cacao products in part 163 (21 CFR part 163). This tentative final rule addressed comments received in response to a proposed rule on the cacao product standards that was published in the Federal Register of January 25, 1989 (54 FR 3615), and that responded to a citizen petition submitted by the Chocolate Manufacturers Association of the United States of America (CMA).

This rulemaking, based on the CMA petition, was initiated under authority of section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)) which required formal rulemaking in any action for the issuance, amendment, or repeal of a food standard. However, the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101-535), enacted November 8, 1990, removed rulemakings on food standards (except for actions for the amendment or repeal of food standards of identity for dairy products or maple sirup) from the coverage of 21 U.S.C. 371(e). To ensure that no one was prejudiced by this change in procedure, and to ensure that FDA was apprised of all relevant concerns before deciding on a final rule, the agency prepared the June 5, 1992, document as a tentative final rule. In addition, during the time between the proposed rule and the tentative final rule, a number of issues were raised that were outside the scope of the original proposal. Therefore, FDA divided the June 5, 1992, tentative final rule into two sections: Section II.A. *Tentative Final Rule*; and section II.B. *Issues for Future Rulemaking*. (FDA published a notice in the Federal Register (57 FR 54195, November 17, 1992) announcing that it was reopening until May 17, 1993, the comment period for those issues in section II.B. of the tentative final rule.)

The agency announced that it intended to issue a final rule on section