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DEPARTMENT OF DEFENSE

5 CFR Chapter XXVI

32 CFR Part 40

RIN 3209–AA00, 3209–AA04, 3209–AA14, 3209–AA15, and 0790–AF08

Supplemental Standards of Ethical Conduct for Employees of the Department of Defense

AGENCY: Department of Defense (DoD).

ACTION: Interim rule, with request for comments.

SUMMARY: DoD, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim rule which establishes standards of ethical conduct for DoD employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE effective February 3, 1993. The interim rule is a necessary supplement because it addresses ethical issues specific to DoD. The interim rule: (1) Designates separate agency components; (2) establishes additional exceptions to the prohibitions on gifts from outside sources; (3) imposes additional limitations on gifts between DoD employees; (4) requires notification of disqualifications; (5) limits sales to subordinates; (6) requires prior approval for certain outside activities; and (7) establishes an additional disclaimer requirement for certain speeches and writings. DoD is also revising its existing standards of conduct regulation, 32 CFR part 40, to retain the 18 U.S.C. 208(b) waiver provision and to cross-reference to executive branch-wide standards of ethical conduct, financial disclosure and post-employment regulations, and to this supplemental regulation.

DATES: Interim rule effective September 10, 1993. Comments are invited and must be received on or before October 9, 1993.

ADDRESSES: Send comments to the Standard of Conduct Office, Office of General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600.

FOR FURTHER INFORMATION CONTACT: Randi Elizabeth DuFresne, DoD Standards of Conduct Office, (703) 697–5305, FAX (703) 697–1640.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 52583. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorized executive branch agencies to publish agency-specific supplemental regulations that are necessary to implement their agency ethics programs. The Department of Defense and OGE have determined that the following interim rule which appears in new 5 CFR chapter XXVI, is necessary in light of DoD's particular programs and operations.

II. Analysis of the Regulations

§ 3601.101 Purpose

Section 3601.101 of the interim rule explains that the regulations contained in the interim rule apply to Department of Defense employees and are supplemental to the executive branch-wide Standards in 5 CFR part 2635. Further, all DoD employees must comply with the executive branch-wide regulations, these supplemental regulations and applicable guidance and procedures implementing both.

§ 3601.102 Designation of Separate Agency Components

5 CFR 2635.202(a) prohibits an employee from soliciting or accepting a gift from a prohibited source. A prohibited source is defined by 5 CFR 2635.203(d) to include a person who has a specific relationship with an employee's agency. For purposes of identifying an employee's agency, 5 CFR 2635.203(a) authorizes an executive department, by supplemental regulation, to designate as separate agencies components of the department that exercise distinct and separate functions. Designations made pursuant to section 2635.203(a) are used also for purposes of applying the prohibition in 5 CFR 2635.807(a) on receipt of compensation for teaching, speaking or writing related to an employee's duties.

Section 3601.102(a) of the interim rule designates 15 components of the Department of Defense as separate agencies. In addition to the Office of the Inspector General and Uniformed Services University of the Health Sciences, these include each of the three military departments and 10 components that are generally recognized as separate agencies within DoD because they exercise separate and distinct functions. As further amplified in § 3601.102(b), DoD employees not employed in one of the 15 designated agencies are to be deemed employees of an agency that consists of all parts of the Department, other than the 15 designated agencies, and that is separate and distinct from each of those agencies. Thus, for example, an Army contractor would be a prohibited source for all employees of the Department of the Army, but not for employees of the Department of the Navy. Neither would that Army contractor be a prohibited source for employees of the Office of the Secretary of Defense (OSD) unless the contractor had a matter pending before OSD or a DoD component other than one of the 15 designated as separate agencies. The separate agency designations made by § 3601.102(a) are used in § 3601.103(a) of this supplemental for purposes of determining agency interest, in § 3901.107 for determining whether an employee must obtain approval for outside employment or business activities with a prohibited source, and in § 3601.108 for purposes of identifying when a DoD employee engaged in teaching, speaking or writing must make the disclaimer required by that section.

§ 3601.103 Additional Exceptions for Gifts From Outside Sources

Section 3601.103 of this interim rule provides two additional exceptions to the prohibitions in 5 CFR 2635.202(a) on gifts from outside sources. It thus supplements the gift exceptions in 5 CFR 2635.204, paragraph (k) of which permits an employee to accept any gift which is specifically authorized by a supplemental agency regulation.

Under § 3601.103(a) of the interim rule, a DoD employee may accept free attendance at certain events sponsored by State or local governments or by qualifying civic organizations when his attendance has been determined to serve the DoD employee's agency's community relations interests. The free attendance must not have been solicited by the employee. The cost of DoD employee's attendance and, when invited, the cost of a spouse's attendance must be provided by the sponsor of the event in accordance with the standard set forth in 5 CFR 2635.204(g)(5).

5 CFR 2635.204 contains two exceptions to the prohibitions on gifts from outside sources that are specifically tailored to permit employees to attend certain events. Free attendance at certain widely attended gatherings is permitted by § 2635.204(g)(2) and, under § 2635.204(h), employees may accept certain social invitations from persons who are not prohibited sources. While these two exceptions permit free attendance at a wide range of events, DoD has determined that they do not provide enough flexibility to meet its community relations needs. Largely unique to DoD, these community relations needs arise from DoD's system of installations located throughout the country. Many of these installations are major factors in the local communities where they are located and a reasonable degree of social interchange between DoD personnel and members of the local community is mutually beneficial.

By virtue of utility and other arrangements for installation support services, many State and local governments are prohibited sources for DoD personnel. The commanding officer of a local installation, therefore, may be unable to avail himself of the exception at CFR 2635.204(h) to accept an invitation to attend a local government-sponsored luncheon for local community leaders. Although the particular luncheon may fail to rise to the level of a widely attended gathering, DoD views the commanding officer's attendance at this sort of event as appropriate to meet its community relations interests. The exception at § 3601.103(a) is intended to permit attendance at events of this nature. As used in this section, the term "event" is not intended to permit one-on-one entertainment of a DoD employee, as in the case of a local official taking a military officer and his spouse out to dinner at the expense of the local government. Where such entertainment is provided by a prohibited source or because of the DoD employee's official position, it may be accepted only if covered by an exception contained in 5 CFR 2635.204.

Section 3601.103(b) of the interim rule supplements the authority of 5 CFR 2635.204(d) for acceptance of certain awards for meritorious public service and achievement. While § 2635.204(d) will permit employees to accept many scholarships and grants awarded on the basis of merit, DoD has determined that it will not always permit DoD employees and their dependents to accept many scholarships and grants under programs that have been tailored specifically for DoD personnel. As in the case of a one-time scholarship for DoD personnel who served in Operation Desert Storm, not all such scholarships are funded to ensure continuation on a regular basis nor are they necessarily to be awarded on the basis of merit. Section 3601.103(b)(1) incorporates many of the conditions found in 5 CFR 2635.204(d), but does not limit acceptance to those scholarships and grants given for meritorious public service or meritorious achievement. Section 3601.103(b)(2) permits even one-time scholarships and grants when awarded under written standards approved by the Secretary concerned.

§ 3601.104 Additional Limitations on Gifts Between DoD Employees

Section 3601.104 supplements subpart C of 5 CFR by adding two provisions that limit use of the exceptions in 5 CFR 2635.305 regarding certain gifts between employees.

Under 5 CFR 2635.302 a DoD employee is generally prohibited from accepting a gift from an employee receiving less pay than himself and may not donate toward a gift for an official superior. As an exception to this general prohibition, § 2635.304(b) permits an employee to accept an appropriate gift on certain special, infrequent occasions, such as retirement or marriage. In recognition of such occasions, § 2635.304(c)(1) also permits employees to contribute nominal amounts for an appropriate group gift to a superior and it permits a superior to accept an appropriate group gift, even though a subordinate may have contributed to its purchase. Within DoD, commanding officers and other supervisors may have authority over hundreds, if not thousands, of employees and enlisted personnel. The very size of some DoD components and offices, on occasion, has meant that small amounts collected from subordinates have been sufficient, in the aggregate, to finance gifts that are lavish and beyond what would meet the requirement in 5 CFR 2635.304(b) that the gift be appropriate to the occasion.

To ensure that group gifts are appropriate to the special, infrequent occasions for which they are given, § 3601.104(a) limits to $300 the value of a gift or gifts an employee may accept from any single donating group if the employee knows or has reason to know that one or more of the persons donating to the gift is his subordinate. In addition to those items that are excluded from the definition of a gift by 5 CFR 2635.203(b), this limitation does not apply to the cost of food, refreshments and entertainment provided to the employee and his personal guests at an event, such as a retirement party. The section provides, however, that the value of gifts from two or more groups will be aggregated and treated as gifts from a single group, and thus subject to a single $300 limitation, if the recipient knows or has reason to know that any subordinate is a member of more than one such group. This supplemental regulation places the obligation to decline the gift on the employee who is the recipient of the gift, not on the subordinate who may have contributed.

Nothing in § 3601.104(a) places a limitation on the number of group gifts that may be accepted by an employee to mark the special, infrequent occasions permitted by 5 CFR 2635.304(b). To help ensure, however, that the number of group gifts given is not compounded by individual contributions that fail to meet the requirement in 5 CFR 2635.304(c) that they be nominal in amount, § 3601.104(b) of the interim rule specifies that an employee may not contribute more than $10 to a group gift for a superior. It excludes from the $10 limitation nominal amounts separately and voluntarily contributed for food, refreshments and entertainment for the superior, the superior's personal guests and others who attend the event.

§ 3601.105 Standard for Accomplishing Disqualification

Section 3601.105 of the interim rule supplements the standards for disqualification contained in 5 CFR part 2635. Under § 2635.402(c) of this title, it is the employee's obligation to disqualify from participation in matters affecting his own financial interests or those of persons whose interests are imputed to him under 18 U.S.C. 208(a). Under 5 CFR 2635.502(e) and 2635.604 the same is true when an employee is required to disqualify to avoid an appearance of lack of impartiality or to avoid participating in a matter affecting the financial interests of a prospective employer. Under each of these sections, the executive branch-wide Standards generally permit disqualification to be accomplished simply by not participating in the matter, although each provides that the disqualified employee should notify the person responsible for his assignment.

For a number of years, it has been the practice throughout DoD to require written notice of employee disqualifications. Because of the problems of managing its vast workforce, DoD has determined that it is necessary to the success of its mission, and to the success of its ethics program, to continue its procedures for written notice of disqualifications. DoD recognizes the problems noted by the Office of Government Ethics in adopting a requirement for written notice of disqualification on an executive branch-wide basis. See 57 FR 35024. It is not DoD's purpose to impose an overly technical requirement that would result in disciplining an employee for failure to provide written notice by some arbitrary deadline. Thus, the notice requirement imposed by § 3601.105 is phrased to give an employee flexibility in determining precisely when he will give notice of disqualification from a matter to which he has been assigned. Notice is to be given when the employee determines that he will not participate in the matter. In no way does this notice requirement affect the employee's primary obligation to not participate in the matter.

§ 3601.106 Limitation on Solicited Sales

5 CFR part 2635 prohibits an employee from using public office for private gain, but contains no specific prohibition on sales to junior personnel where the sale price is fair and does not result in a gift to the superior. Because of its command structure, senior personnel within DoD exert a degree of authority over junior personnel that exceeds that present in most civilian agencies. DoD standards of conduct regulations have long contained a prohibition on sales to subordinates and § 3601.106 of this interim rule is a restatement, with minor modifications, of that prohibition. It prohibits a DoD employee from soliciting or making solicited sales to DoD personnel who are junior in rank, grade or position or to the family members of such personnel, regardless of whether the solicitation or sale takes place on or off duty. The section specifically permits employees to post sales notices on DoD bulletin boards provided for those purposes. And, in the absence of coercion or intimidation, it permits sale or lease of the employee's own personal or real property and sales made by an employee during outside employment in a retail establishment.

§ 3601.107 Prior Approval for Outside Employment and Business Activities

When it is determined that such a requirement is necessary or desirable for the purpose of administering its ethics program, 5 CFR 2635.803 provides that an agency may, by supplemental regulation, require its employees to obtain prior approval before engaging in outside employment or other outside activities. To ensure that the outside activities of its many employees do not violate the executive branch-wide standards in 5 CFR 2635, any provision of these supplemental regulations, or any other provision of law or regulation, DoD has determined that it is necessary to the successful administration of its ethics program to require employees to obtain prior written approval before engaging in a business activity or compensated outside employment with a prohibited source. Section 3601.107(a) of the interim rule imposes a requirement to obtain approval before engaging in such activities and contains definitions of the terms "business activity," "employment," and "prohibited source" used in stating that requirement.

To ensure that § 3601.107 is not itself construed as authority to deny permission to engage in any outside activity, it includes a sentence specifying that approval will be granted unless the activity is expected to involve conduct prohibited by statute or regulation. Where a determination can be made that those activities are not likely to be prohibited, § 3601.107(b) delegates to the designated agency ethics official or his designee authority to issue written notice exempting categories of business activities or employment from the requirement for prior approval.

§ 3601.108 Disclaimer for Speeches and Writings Devoted to Agency Matters

Under 5 CFR 2635.807(a) an employee may not accept compensation for, but otherwise may engage in outside teaching, speaking or writing related to his official duties. In connection with such activities, 5 CFR 2635.807(b) prohibits the use of an employee's official title or position to identify the DoD employee in connection with the outside teaching, speaking or writing activity, except when given as one of several biographical details or, when accompanied by a appropriate disclaimer, in connection with an article published in a scientific or professional journal. Nothing in the executive branch-wide Standards, however, limits an employee's use of a military rank to identify himself in connection with the teaching, speaking or writing activity.

Even though not required to do so by 5 CFR 2635.807(b), § 3601.108 of the interim rule requires an employee to make an appropriate disclaimer when any reference is made to the DoD employee's rank, or to his official title or position, in connection with teaching, speaking or writing when the subject matter deals in significant part with an ongoing or announced policy, program or operation of the DoD employee's agency. This supplement to the standards in 5 CFR 2635.807(b) has been determined by DoD to be necessary to avoid any suggestion that a DoD employee is speaking on behalf of his agency or otherwise presenting an agency position. For the purpose of determining whether subject matter deals with a policy, program or operation of the DoD employee's agency, § 3601.108 incorporates the separate agency designations made by § 3601.102 of the interim rule. It also contains a requirement to ensure that the disclaimer is given prominence appropriate to the activity.

32 CFR Part 40 Standards of Conduct

32 CFR part 40 is revised to remove standards of conduct superseded by 5 CFR part 2635. Section 40.1 retains 18 U.S.C. 208(b) waivers for DoD, the Army, the Navy, and the Air Force. Sections 40.2 through 40.7 cross-reference to OGE regulations.

III. Matters of Regulatory Procedure

Administrative Procedure Act

As the Secretary of Defense, I have found good cause, pursuant to 5 U.S.C. 553(b), for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules. It is important to a smooth transition from DoD's prior ethics rules to the new executive branch-wide Standards that these rule-making actions take place as soon as possible. Furthermore, this rule-making is related to DoD's organization, procedure and practice. As an interim rule, there is provision for a 30-day public comment period. DoD will review comments received within the comment period and will consider modifications that appear appropriate in adopting these rules as final, with the concurrence of OGE.

Executive Order 12291, Federal Regulation

As the Secretary of Defense, I have determined that this is not a major rule as defined in section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As the Secretary of Defense, I have determined under the regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only DoD employees.

Paperwork Reduction Act

As the Secretary of Defense, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 3601

Conflict of interests, Ethics standards, Executive branch standards of conduct, Government employees.

32 CFR Part 40

Conflict of interests, Ethics standards, Executive branch standards of conduct, Government employees, Financial disclosure, Honoraria, Post-employment.

Dated: August 30, 1993.

Les Aspin,

Secretary of Defense.

Approved: September 3, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Defense, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 32, chapter I, part 40 of the Code of Federal Regulations as follows:

Title 5—[Amended]

1. A new chapter XXVI, consisting of part 3601, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER XXVI—DEPARTMENT OF DEFENSE

PART 3601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF DEFENSE

Sec.

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.204(k), 2635.803.

§ 3601.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Defense (DoD) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. DoD employees are required to comply with part 2635, this part, and implementing guidance and procedures.

§ 3601.102 Designation of separate agency components.

(a) Pursuant to 5 CFR 2635.203(a), each of the following components of DoD is designated as a separate agency for purposes of the regulations in subpart B of 5 CFR part 2635 governing gifts from outside sources and 5 CFR 2635.807 governing teaching, speaking and writing:

(1) Department of the Army;
(2) Department of the Navy;
(3) Department of the Air Force;
(4) Defense Commissary Agency;
(5) Defense Contract Audit Agency;
(6) Defense Finance and Accounting Service;
(7) Defense Information Systems Agency;
(8) Defense Intelligence Agency;
(9) Defense Investigative Service;
(10) Defense Logistics Agency;
(11) Defense Mapping Agency;
(12) Defense Nuclear Agency;
(13) National Security Agency;
(14) Office of the Inspector General; and
(15) Uniformed Services University of the Health Sciences.

(b) Employees of DoD components not designated as separate agencies, including employees of the Office of the Secretary of Defense, will be treated as employees of DoD which shall be treated as a single agency that is separate from the above listed agencies for purposes of determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d) and for identifying the DoD employee's agency under 5 CFR 2635.807 governing teaching, speaking and writing.

§ 3601.103 Additional exceptions for gifts from outside sources.

In addition to the gifts which come within the exceptions set forth in 5 CFR 2635.204, and subject to all provisions of 5 CFR 2635.201 through 2635.205, a DoD employee may accept gifts from outside sources otherwise prohibited by 5 CFR 2635.202(a) as follows:

(a) *Events sponsored by States, local governments or civic organizations.* A DoD employee may accept a sponsor's unsolicited gift of free attendance for himself and an accompanying spouse at an event sponsored by a State or local government or by a civic organization exempt from taxation under 26 U.S.C. 501(c)(4) when:

(1) The agency designee has determined that the community relations interests of the agency will be served by the DoD employee's attendance;

(2) The cost of the DoD employee's and the spouse's attendance is provided by the sponsor in accordance with 5 CFR 2635.204(g)(5); and

(3) The gift of free attendance meets the definition in 5 CFR 2635.204(g)(4).

(b) *Scholarships and grants.* A DoD employee, or the dependent of a DoD employee, may accept an educational scholarship or grant from an entity that does not have interests that may be substantially affected by the performance or non-performance of the involved DoD employee's official duties, or from an association or similar entity that does not have a majority of members with such interests, if the designated agency ethics official or designee determines that:

(1) The scholarship or grant is made as part of an established program of grants or awards that is funded, wholly or in part, to ensure its continuation on a regular basis and under which recipients are selected pursuant to written standards; or

(2) The scholarship or grant is established for the benefit of DoD employees, or the dependents of DoD employees, and recipients are selected pursuant to written standards approved by the Secretary of Defense or, where the scholarship or grant is available only to military members or their dependents, by the Secretary of the military department concerned.

§ 3601.104 Additional limitations on gifts between DoD employees.

The following limitations shall apply to gifts from groups of DoD employees that include a subordinate and to voluntary contributions to gifts for superiors permitted under 5 CFR 2635.304(c)(1):

(a) *Gifts from a group that includes a subordinate.* Regardless of the number of DoD employees contributing to a gift on a special, infrequent occasion as permitted by 5 CFR 2635.304(c)(1), a DoD employee may not accept a gift or gifts from a donating group if the market value exceeds an aggregate of $300 and if the DoD employee knows or has reason to know that any member of the donating group is his subordinate.

(1) The cost of items excluded from the definition of a gift by 5 CFR 2635.203(b) and the cost of food, refreshments and entertainment provided to the DoD employee and his personal guests to mark the occasion for which the gift is given shall not be included in determining whether the value of a gift or gifts exceeds the $300 aggregate limit.

(2) The value of a gift or gifts from two or more donating groups shall be aggregated and shall be considered to be from a single donating group if the DoD employee offered the gift knows or has reason to know that an individual who is his subordinate is a member of more than one of the donating groups.

(b) *Voluntary contribution.* For purposes of 5 CFR 2635.304(c)(1), the nominal amount of a voluntary contribution that a DoD employee may solicit from another DoD employee for a group gift to the contributing DoD employee's superior for any special, infrequent occasion shall not exceed $10. A voluntary contribution of a nominal amount for food, refreshments and entertainment for the superior, the personal guests of the superior and other attendees at an event to mark the occasion for which a group gift is given may be solicited as a separate, voluntary contribution not subject to the $10 limit.

§ 3601.105 Standard for accomplishing disqualification.

(a) *Disqualifying financial interests.* A DoD employee who is required, in accordance with 5 CFR 2635.402(c), to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.4029(c) (1) and (2), provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

(b) *Disqualification to ensure impartiality.* A DoD employee who is required, in accordance with 5 CFR 2635.502(e), to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.502(e) (1) and (2), provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

(c) *Disqualification from matter effecting prospective employees.* A DoD employee who is required, in accordance with 5 CFR 2635.604(a), to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.604 (b) and (c), provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

(d) *Withdrawal of notification.* A DoD employee may withdraw written notice under paragraphs (a), (b) or (c) of this section upon deciding that disqualification from participation in the matter is no longer required.

§ 3601.106 Limitation on solicited sales.

A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's noncommercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal building management policies does not constitute solicitation for purposes of this section.

§ 3601.107 Prior approval for outside employment and business activities.

(a) A DoD employee, other than a special Government employee, who is required to file a financial disclosure report (SF 450 or SF 278) shall obtain written approval from the agency designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given in accordance with paragraph (b) of this section. Approval shall be granted unless a determination is made that the business activity or compensated outside employment is expected to involve conduct prohibited by statute or regulation. For purposes of this section, the following definitions apply:

(1) *Business activity.* Any business, contractual or other financial relationship not involving the provision of personal services by the DoD employee. It does not include a routine commercial transaction or the purchase of an asset or interest, such as common stock, that is available to the general public;

(2) *Employment.* Any form of non-Federal employment or business relationship involving the provision of personal services by the DoD employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee; and

(3) *Prohibited source.* See 5 CFR 2635.203(d) (modified by the separate DoD component agency designations in § 3601.102 of this part).

(b) The DoD component designated agency ethics official or designee may, by a written notice, exempt categories of business activities or employment from the requirement of paragraph (a) of this section, for prior approval based on a determination that business activities or employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or regulation.

§ 3601.108 Disclaimer for speeches and writings devoted to agency matters.

A DoD employee who uses or permits the use of his military rank or who includes or permits the inclusion of his title or position as one of several biographical details given to identify himself in connection with teaching, speaking or writing, in accordance with 5 CFR 2635.807(b), shall make a disclaimer if the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's agency, as defined in § 3601.102, and the DoD employee has not been authorized by appropriate agency authority to present that material as the agency's position. The disclaimer shall be made as follows:

(a) The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its components.

(b) Where a disclaimer is required for an article, book or other writing, the disclaimer will be printed in a reasonably prominent position in the writing itself.

(c) Where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation.

Title 32—National Defense

CHAPTER I—DEPARTMENT OF DEFENSE

2. Part 40 of 32 CFR chapter I is revised to read as follows:

PART 40—STANDARDS OF CONDUCT

Authority: 5 U.S.C. 7301.

§ 40.1 18 U.S.C. 208(b) waivers.

Under 18 U.S.C. 208(b) categories of financial interests may be made non-disqualifying for purposes of 18 U.S.C. 208(a) by a general regulation published in the **Federal Register**. Shares of a widely held, diversified mutual fund or regulated investment company have been exempted by a general regulation as being too remote or inconsequential to affect the integrity of Government personnel.

§ 40.2 Cross-reference to Standards of Ethical Conduct for Employees of the Executive Branch.

DoD employees should refer to the Office of Government Ethics (OGE) regulation, Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Department of Defense (DoD) regulation that supplements the OGE regulation, 5 CFR 3601.101, for standards of conduct provisions, including standards for gifts from outside sources, gifts between employees, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position, and outside activities.

§ 40.3 Cross-reference to Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees.

DoD employees should refer to the OGE regulation, Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees, 5 CFR part 2634, for financial disclosure provisions.

§ 40.4 Cross-reference to Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria.

DoD employees should refer to the OGE regulation, Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria, 5 CFR part 2636, for provisions on outside employment and honoraria.

§ 40.5 Cross-reference to Regulations Concerning Post-Employment Conflict of Interest.

DoD employees and former DoD employees should refer to the OGE regulation, Regulations Concerning Post-Employment Conflict of Interest, 5 CFR part 2637, for provisions on post-employment applicable to those who left DoD employment prior to January 1, 1991.

§ 40.6 Cross-reference to Office of Government Ethics and Executive Agency Ethics Program Responsibilities.

DoD employees should refer to the OGE regulation, Office of Government Ethics and Executive Agency Ethics Program Responsibilities, 5 CFR part 2638, for provisions establishing executive branch ethics programs, including ethics training programs.

§ 40.7 Cross-reference to Post-Employment Conflict of Interest Restrictions.

DoD employees and former DoD employees should refer the to OGE regulation, Post-Employment Conflict of Interest Restrictions, 5 CFR part 2641, for provisions on post-employment applicable to those who left DoD employment on or after January 1, 1991.

[FR Doc. 93–22128 Filed 9–9–93; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 91–006I]

RIN 0583–AB34

Nutrition Labeling of Meat and Poultry Products; Technical Amendments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule; technical amendments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its final nutrition labeling regulations, which were published in the **Federal Register** on January 6, 1993 (58 FR 632). FSIS is taking this action to improve the clarity and accuracy of the regulations, and to provide regulations that parallel the Food and Drug Administration's (FDA) nutrition labeling regulations to the maximum extent possible.

DATES: Interim rule effective date is July 6, 1994; comments must be received on or before October 12, 1993.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Mr. Charles Edwards, (202) 254–2565. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this interim final rule. Written comments should be sent to the Policy Office and refer to Docket No. 91–006I. Any person desiring an opportunity for an oral presentation of views, as provided by the Poultry Products Inspection Act, should make such request to Mr. Charles Edwards, so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted in response to this interim final rule will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

On January 6, 1993, FSIS published in the **Federal Register** (58 FR 632) final regulations on nutrition labeling for meat and poultry products. FSIS's nutrition labeling regulations parallel, to the extent possible at that time, FDA's nutrition labeling regulations promulgated under the Nutrition Labeling and Education Act. FSIS published its final regulations on nutrition labeling simultaneously with FDA's publication.

After the publication of FSIS's final regulations on nutrition labeling, FSIS received several comments from various interested parties contending that portions of FSIS's regulations were unclear, contained technical, unintended consequences in a specific provision, or were not parallel to FDA's nutrition labeling regulations. Those portions included provisions related to: (a) Providing nutrition labeling by alternate means for packages that have a total surface area available to bear labeling of less than 12 square inches; (b) the saturated fat criterion for the "lean" definition; and (c) the use of nutrient content claims on infant and toddler foods.

After considering these comments and conducting an in-depth review of FDA's final nutrition labeling regulations, FSIS believes that its final regulations are inconsistent with FDA's regulations in certain areas where uniformity should exist. FSIS has also determined that several provisions were inadvertently omitted in its final regulations.

Accordingly, FSIS is issuing technical amendments to its nutrition labeling regulations to provide more well-defined regulations that reflect accuracy and clarity regarding the nutrition labeling of meat and poultry products. The amendments consist of clarifications that are essential to understanding and complying with published provisions, changes that are necessary to avoid technical, unintentional consequences in specific provisions, and additional provisions that were inadvertently omitted.

Technical Amendments

Exemptions

In its final nutrition labeling regulations, FSIS exempted individually wrapped packages of less than ½ ounce net weight from nutrition labeling requirements. This decision was based on providing consistency with the Agency's current net weight exemption. In addition, comments on the proposed rule did not reveal a consensus on the definition of a small package. FSIS has since received and evaluated a number of requests to allow for nutrition labeling to be provided by alternate means for packages that have a total surface area available to bear labeling of less than 12 square inches. FSIS believes these requests have merit, and recognizes the need for incorporating sufficient flexibility. FSIS agrees with the comments that alternate means of providing nutrition labeling should be in harmony with FDA. Accordingly, FSIS is adding provisions at § 317.400(d) and § 381.500(d) of the regulations to permit manufacturers to provide an address or telephone number on the package for consumers to write or call for nutrition information, provided that the labels for these products bear no nutrition claims or nutrition information. These provisions do not affect the exemption for individually wrapped packages of less than ½ ounce net weight.

FSIS inadvertently omitted a small business exemption provision from its final nutrition labeling regulations. FSIS received numerous comments on its supplemental proposed rule (57 FR 10298). Commenters stated that the fluctuation of business activity for small firms (i.e., production of specialty foods, regional and seasonal foods, a large number of product lines and low volume sales per product) should be considered. Additionally, the commenters stated that products are constantly being created and removed to account for seasonal gift buying, and product variety is often a primary selling point. In many cases, survival of the small firm is based on adding product lines, rather than on increasing the volume on existing lines. Based on these comments received in response to its supplemental proposed rule and comments received at the three small business exemption public forums, FSIS has determined that the calculation of poundage will be based on the most recent 2-year average of business activity. Although this was addressed in the preamble to the January 6, 1993, final rule, FSIS omitted the regulatory provision reflecting this determination. Therefore, FSIS is adding a provision to § 317.400(a) and § 381.500(a) of the regulations stating that the calculation of poundage shall be based on the most recent 2-year average of business activity.

Nutrition Label Content

In its final nutrition labeling regulations, FSIS used the term "insignificant amount" in prescribing conditions when nutrition information may be presented in a simplified format. The term "insignificant amount" is defined as that amount that may be rounded to zero in nutrition labeling, except that for total carbohydrate, dietary fiber, and protein, it is an amount less than 1 gram. The definition of an insignificant amount for calories is less than 5 calories. Because 1 gram of each of these three nutrients yields 4 or less calories, a 1-gram amount of each yields an insignificant amount of calories. FSIS has determined that sugars is another nutrient with a caloric contribution which is consistent with that for total carbohydrate, dietary fiber, and protein. One gram of sugars yields 4 calories. Therefore, when used in reference to the simplified format, an insignificant amount of sugars is that amount which is less than 1 gram. FSIS is amending §§ 317.309(g)(1) and 381.409(g)(1) of the regulations by revising the definition of insignificant amount to indicate that an insignificant amount of sugars is an amount less than 1 gram.

FSIS made reference in §§ 317.345(a)(1) and 381.445(a)(1) of the regulations to a retailer providing nutrition information on the label of single-ingredient, raw products without referring to a manufacturer. As stated in the preamble to the final rule, FSIS makes no distinction between products packaged in official establishments and those packaged at retail level. The Agency does not believe that the site where a product is packaged and labeled has any relevance to its inclusion or exclusion from the voluntary program. However, to clarify any misunderstanding regarding these provisions, FSIS is modifying §§ 317.345(a)(1) and 381.445(a)(1) of the regulations to include reference to a manufacturer.

Reference Amounts

In §§ 317.312(b) and 381.412(b) of the regulations, Table 1.—Reference Amounts Customarily Consumed Per Eating Occasion—Infant and Toddler Foods, FSIS inadvertently omitted product categories for plain meats and plain poultry for infants and meat sticks and poultry sticks for toddlers. In 21 CFR 101.12(b), FDA included a product category for eggs/egg yolks, ready-to-serve, for infants and toddlers with a reference amount of 55 grams. Egg yolks are used in a manner similar to the plain meat and poultry items in the infant diet. Also, the 2.5 ounce single-serve jar used for egg yolks, plain meats, plain poultry, meat sticks, and poultry sticks contains 63 grams of egg yolk, 71 grams of meat or poultry, and 71 grams of meat or poultry sticks. Because the 2.5 ounce jar is currently the single-serve unit for baby and toddler plain meat and poultry food products, a 55-gram reference amount would be consistent with FDA's reference amount established for egg yolks and consistent with the single-serving container definition. Additionally, a 55-gram reference amount which was the average amount of frankfurter eaten per occasion by 1–2 and 3–5 year olds, based on data from the 1977–78 Nationwide Food Consumption Survey, is also appropriate for meat sticks and poultry sticks. FSIS is amending Table 1 to include product categories for plain meats and meat sticks and plain poultry and poultry sticks with reference amounts of "55 g."

In §§ 317.312(b) and 381.412(b) of the regulations, Table 2.—Reference

Amounts Customarily Consumed Per Eating Occasion—General Food Supply, FSIS erred by listing meat lasagna and poultry lasagna as examples under the product category of mixed dishes not measurable with a cup. Based on food consumption data, these food products belong in the category of mixed dishes measurable with a cup. FSIS fully intended to harmonize its product categories with similar FDA categories. FDA lists vegetable lasagna as an example of a mixed dish measurable with a cup in its extended list of products for each product category, which is referenced in footnote 4 of 21 CFR 101.12(b), Table 2. FSIS is moving the lasagna examples to the category of mixed dishes measurable with a cup and also adding meat and poultry filled pasta as further examples of products in this category.

For purposes of clarification and to more fully harmonize with FDA requirements, FSIS is revising footnote 4 to Table 2 in §§ 317.312(b) and 381.412(b) of the regulations by adding the following words at the end: "except for products in which both the solids and liquids are customarily consumed."

Nutrient Content Claims

FSIS's final nutrition labeling regulations define the term "lean" with a saturated fat criterion. FSIS has received a comment suggesting a change in the saturated fat criterion for the "lean" definition to reflect the change in the saturated fat definition. The comment stated that the saturated fat criterion has become largely unrealistic and virtually unobtainable for many meal-type products. A number of products that qualified for the "lean" definition, as originally proposed, no longer qualify due to the change in definition for saturated fat. The comment stated that this situation is particularly true of meal-type products containing dairy-based ingredients.

In its proposed rule published in the **Federal Register** on November 27, 1991 (56 FR 60302), FSIS proposed to adopt FDA's definition of saturated fat as the sum of lauric, myristic, palmitic, and stearic acids. FDA, in its proposed rule also published in the **Federal Register** on November 27, 1991 (56 FR 60366) specifically required comments to which fatty acids should be included or excluded from the definition. FSIS and FDA received a number of comments supporting the fact that there was substantial controversy regarding the inclusion or exclusion of specific fatty acids in the definition. Based on comments, FSIS and FDA determined that a chemical definition for saturated fat was appropriate for various reasons described in FDA's final regulation. Therefore, the final regulations of both agencies define saturated fat as the sum of all fatty acids containing no double bonds.

FSIS is aware that the modification to the saturated fat definition may possibly impact a product's ability to qualify for the "lean" definition. Meat and poultry meal-type products containing dairy ingredients, such as cheese and cream-based sauces, which met the "lean" criteria based on the proposed definition of saturated fat may be unable to meet criteria based on the definition of saturated fat in the final regulation. The Agency believes it is necessary to modify the "lean" definition to reflect the change in the saturated fat definition. Inclusion of all fatty acids with no double bonds in the definition of saturated fat can inflate the level of saturated fat as previously defined by approximately 15 percent. To offset this unintended effect, FSIS will increase the saturated fat criterion for the "lean" definition from less than 4 grams to 4.5 or less grams.

FSIS's cross-reference to 21 CFR 101.13 (a) and (b) caused confusion concerning the use of nutrient content claims on infant and toddler foods. FSIS received requests to clarify the provisions concerning nutrient content claims on foods for infants and children under 2 years of age. Sections 317.313(a) and 381.413(a) of the regulations inadvertently contained the language "except that nutrient content claims may not be made on products intended specifically for use by infants and toddlers less than 2 years of age." This language was used in the proposal and inadvertently repeated in the final regulation. This section was modified in FDA's final regulation. In response to comments, FDA reconsidered the propriety of nutrient content claims on foods specifically intended for infants and children less than 2 years of age. FDA believed that the complete prohibition of nutrient content claims on foods for infants and children under 2 years of age may have been overly broad. FSIS agrees with this position. Therefore, FSIS is changing §§ 317.313(a) and 381.413(a) of the regulations to omit the following language "except that nutrient content claims may not be made on products intended specifically for use by infants and toddlers less than 2 years of age."

It was FSIS's intent to allow percentage labeling of vitamins and minerals on foods intended for use by infants and children less than 2 years of age, as provided for by FDA in 21 CFR 101.13(q)(3). Therefore, FSIS is amending §§ 317.313(q)(3) and 381.413(q)(3) of the regulations to allow percentage labeling of vitamin and minerals on such foods.

In cross-referencing FDA's final regulation, FSIS inadvertently omitted paragraphs (e) and (f) as contained in 21 CFR 101.66, label statements relating to usefulness in reducing or maintaining body weight. Generally, for meat and poultry products, "sugar free" claims are not particularly relevant. However, to harmonize with FDA regulations, FSIS has added provisions regarding the labeling of products as "sugar free" and "no added sugar," and the use of label terms suggesting low calorie or reduced calorie foods. FSIS is amending §§ 317.380 and 381.480 of the regulations to incorporate the provisions of 21 CFR 101.66 (e) and (f).

Need for Interim Final Rule

FSIS has determined that issuing these amendments as a proposed rule is unnecessary, time-consuming, and contrary to the public interest, and, thus, is issuing these amendments as an interim final rule. The Administrative Procedure Act provides for notice and opportunity for public comment on proposed Agency rules to ensure meaningful public input into Agency rules that affect the public. FSIS believes that it has fulfilled the intent of this requirement by providing several prior opportunities for public comment on nutrition labeling: The advance notice of proposed rulemaking (ANPR) published on April 2, 1991 (56 FR 13564); the 1991 proposed and 1992 supplemental proposed rules, previously addressed in this document; and the proposed rule concerning format published on August 28, 1992 (57 FR 39332). FSIS considered all comments on its ANPR and proposed rules in reaching the determinations set forth in its final regulations. In addition, FSIS held three public forums concerning the small business exemption. The determinations contained in this interim final rule stem from the final regulations and were addressed, in some fashion either directly or indirectly, throughout the rulemaking process on nutrition labeling.

Second, failure to codify the amendments in a timely manner may deprive consumers of the health benefits of nutrition labeling on certain meat or poultry products, and may substantially reduce the time for industry to comply with the new changes. Establishments require a sufficient amount of time to study all provisions of the nutrition labeling regulation to determine which portions relate to their specific labels. Afterward, they need time to devise new labels as necessary under the new regulations, to obtain FSIS approval of these labels, and to print the labels for use on their meat and poultry products.

Finally, FSIS believes that failure to codify the amendments in a timely manner could add to the implementation cost that industry will incur. In issuing the final nutrition labeling regulation, FSIS believed it necessary to provide establishments with sufficient time for implementing the regulations to minimize industry costs. Accordingly, FSIS provided an 18-month implementation period, with an effective date of July 6, 1994. In its Nutrition Labeling Regulatory Impact Analysis, FSIS estimated that the total inventory costs for all establishments (small, medium, and large) dropped from approximately $22.6 million with a 6-month implementation period to $8.49 million at 18 months. The total labeling printing costs for all establishments dropped from approximately $517.3 million with a 6-month implementation period to $320.9 million at 18 months. Thus, the longer the implementation period, the less costs industry incurs in complying with the regulations. Some establishments have already revised their labels, or are in the process of doing so, in compliance with the new nutrition labeling regulations. Because this interim final rule may prompt establishments to make even further label revisions, FSIS sees an immediate need to issue this interim final rule in light of possible additional costs for label revisions and reprinting.

FSIS will receive comments on these technical amendments for 30 days after publication of this interim final rule. FSIS does not anticipate significant issues to surface from any comments that would further delay the implementation period for complying with the nutrition labeling regulation. FSIS simply wants to ensure that the technical amendments set forth in this interim final rule meet the general expectations and understanding of all affected parties. A final rule will be published shortly thereafter to respond to any comments received and to promulgate the changes as part of the nutrition labeling regulations.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Interim Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.309 is amended by revising the last sentence of paragraph (g)(1) to read as follows:

§ 317.309 Nutrition label content.

* * * * *

(g)(1) * * *. An insignificant amount shall be defined as that amount that may be rounded to zero in nutrition labeling, except that for total carbohydrate, dietary fiber, sugars, and protein, it shall be an amount less than 1 gram.

* * * * *

§ 317.312 [Table 1 amended]

3. Table 1 in § 317.312(b) is amended by adding under the Product Category, at the end thereof, a new Product Category to read: "Plain meats and meat sticks, ready-to-serve." Furthermore, under the Reference Amount column, a Reference Amount of "55 g" is added for the new category.

§ 317.312 [Table 2 amended]

4. Table 2 in § 317.312(b) is amended by removing the words "meat lasagna" from the Product Category "Mixed dishes NOT measurable with a cup," and by adding the words "meat lasagna" and "meat filled pasta," at the end thereof, to the Product Category "Mixed dishes measurable with a cup." Furthermore, footnote 4 is revised to read: "If packed or canned in liquid, the Reference Amount is for the drained solids, except for products in which both the solids and liquids are customarily consumed."

5. Section 317.313 is amended by revising paragraphs (a) and (q)(3) to read as follows:

§ 317.313 Nutrient content claims; general principles.

(a) This section applies to meat products that are intended for human consumption and that are offered for sale.

* * * * *

(q) * * *

(3) A statement that describes the percentage of a vitamin or mineral in the food, including foods intended specifically for use by infants and children less than 2 years of age, in relation to a Reference Daily Intake (RDI) as defined in § 317.309 may be made on the label or in the labeling of a food without a regulation authorizing such a claim for a specific vitamin or mineral.

* * * * *

§ 317.345 [Amended]

6. Section 317.345(a)(1) is amended by adding to the first sentence the words "or manufacturer" after the word "retailer."

§ 317.362 [Amended]

7. Section 317.362(c)(1) is amended by removing the words "less than 4 grams saturated fat" and instead, adding the words "4.5 grams or less saturated fat."

8. Section 317.380 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 317.380 Label statements relating to usefulness in reducing or maintaining body weight.

* * * * *

(e) *"Label terms suggesting usefulness as low calorie or reduced calorie foods".* A product whose label contains terms suggesting usefulness as a low calorie or reduced calorie product shall be in accordance with 21 CFR 105.66.

(f) *"Sugar free" and "no added sugar".* A product whose label contains the terms "sugar free" and "no added sugar" shall be labeled in accordance with 21 CFR 105.66.

9. Section 317.400 is amended by adding new paragraphs (a)(1)(iii) and (d) to read as follows:

§ 317.400 Exemption from nutrition labeling.

(a) * * *

(1) * * *

(iii) For purposes of this paragraph, calculation of the amount of pounds shall be based on the most recent 2-year average of business activity. Where firms have been in business less than 2 years or where products have been produced for less than 2 years, reasonable estimates must indicate that the annual pounds produced will not exceed the amounts specified.

* * * * *

(d) Products in packages that have a total surface area available to bear labeling of less than 12 square inches, provided that the labels for these products bear no nutrition claims or other nutrition information. The manufacturer, packer, or distributor shall provide, on the label of packages that qualify for and use this exemption, an address or telephone number that a consumer can use to obtain the required nutrition information (e.g., "For nutrition information call 1–800–123–4567").

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

10. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

11. Section 381.409 is amended by revising the last sentence of paragraph (g)(1) to read as follows:

§ 381.409 Nutrition label content.

* * * * *

(g) * * *

(1) * * *. An insignificant amount shall be defined as that amount that may be rounded to zero in nutrition labeling, except that for total carbohydrate, dietary fiber, sugars, and protein, it shall be an amount less than 1 gram.

* * * * *

§ 381.412 [Table 1 amended]

12. Table 1 in § 381.412(b) is amended by adding under the Product Category, at the end thereof, a new Product Category to read: "Plain poultry and poultry sticks, ready-to-serve." Furthermore, under the Reference Amount column, a Reference Amount of "55 g" is added for the new category.

§ 381.412 [Table 2 amended]

13. Table 2 in § 381.412(b) is amended by removing the words "poultry lasagna" from the Product Category "Mixed dishes NOT measurable with a cup," and by adding the words "poultry lasagna" and "poultry filled pasta", at the end thereof, to the Product Category "Mixed dishes measurable with a cup." Furthermore, footnote 4 is revised to read: "If packed or canned in liquid, the Reference Amount is for the drained solids, except for products in which both the solids and liquids are customarily consumed."

14. Section 381.413 is amended by revising paragraphs (a) and (q)(3) to read as follows:

§ 381.413 Nutrient content claims; general principles.

(a) This section applies to poultry products that are intended for human consumption and that are offered for sale.

* * * * *

(q) * * *

(3) A statement that describes the percentage of a vitamin or mineral in the food, including foods intended specifically for use by infants and children less than 2 years of age, in relation to a Reference Daily Intake (RDI) as defined in § 381.409 may be made on the label or in the labeling of a food without a regulation authorizing such a claim for a specific vitamin or mineral.

* * * * *

§ 381.445 [Amended]

15. Section 381.445(a)(1) is amended by adding to the first sentence the words "or manufacturer" after the word "retailer."

§ 381.462 [Amended]

16. Section 381.462(c)(1) is amended by removing the words "less than 4 grams saturated fat" and instead, adding the words "4.5 grams or less saturated fat."

17. Section 381.480 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 381.480 Label statements relating to usefulness in reducing or maintaining body weight.

* * * * *

(e) *"Label terms suggesting usefulness as low calorie or reduced calorie foods"*. A product whose label contains terms suggesting usefulness as a low calorie or reduced calorie product shall be in accordance with 21 CFR 105.66.

(f) *"Sugar free" and "no added sugar"*. A product whose label contains the terms "sugar free" and "no added sugar" shall be labeled in accordance with 21 CFR 105.66.

18. Section 381.500 is amended by adding new paragraphs (a)(1)(iii) and (d) to read as follows:

§ 381.500 Exemption from nutrition labeling.

(a) * * *

(1) * * *

(iii) For purposes of this paragraph, calculation of the amount of pounds shall be based on the most recent 2-year average of business activity. Where firms have been in business less than 2 years or where products have been produced for less than 2 years, reasonable estimates must indicate that the annual pounds produced will not exceed the amounts specified.

* * * * *

(d) Products in packages that have a total surface area available to bear labeling of less than 12 square inches, provided that the labels for these products bear no nutrition claims or other nutrition information. The manufacturer, packer, or distributor shall provide, on the label of packages that qualify for and use this exemption, an address or telephone number that a consumer can use to obtain the required nutrition information (e.g., "For nutrition information call 1–800–123–4567").

* * * * *

Done at Washington, DC, on: September 2, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–22117 Filed 9–9–93; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–88; Special Conditions No. 25–ANM–76]

Special Conditions: Dornier Model 328–100 Airplane; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions with request for comments.

SUMMARY: These special conditions are issued for the Dornier Model 328–100 airplane manufactured by Dornier GmbH, Federal Republic of Germany. This airplane is equipped with high-technology digital avionics systems that perform critical or essential functions. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: The effective date of these special conditions is August 31, 1993. Comments must be received on or before October 25, 1993.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–88, 1601 Lind Avenue SW., Renton, Washington, 98055–4506; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked; Docket No. NM–88. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–1112.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–88," The postcard will be date stamped, and returned to the commenter.

Background

On April 5, 1989, Dornier GmbH of Friedrichshafen, Federal Republic of Germany, made application for a new U.S. Type Certificate for their Model 328–100 airplane. The Model 328–100 is a 30-passenger turboprop, commuter-type airplane, powered by two Pratt & Whitney 119B engines and new composite 6-blade propellers, with a maximum takeoff weight of 30,000 pounds. The Model 328–100 airplane is equipped with high-technology digital avionics systems, including an electronic flight instrument system (EFIS), which is vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of § 21.17, Dornier must show that the Model 328–100 meets the applicable provisions of part 25 of the FAR, as amended by Amendments 25–1 through 25–64.

The certification basis for the Dornier Model 328–100 airplane has been established as follows: Part 25 of the FAR, effective February 1, 1965, including Amendments 25–1 through 25–61, as well as Amendments 25–62, 25–63, and 25–64, which Dornier has requested to be added to the certification basis. In addition, the certification basis includes certain exemptions and later amended sections of part 25 that are not relevant to these special conditions.

In addition to the applicable airworthiness regulations and special conditions, the Model 328–100 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36; and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

If the Administrator finds that the applicable airworthiness regulations (i.e. part 25, as amended) do not contain adequate or appropriate safety standards for the Dornier Model 328–100 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new technology avionics and electronic systems. There are two regulations that specifically pertain to lightning protection: one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dornier Model 328–100 airplane that would require that new technology electrical and electronic systems, such as electronic flight instrument systems, electronic engine information displays, and digital avionics systems be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the lightning special conditions, clarification of the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular (AC) 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition, with the exception of the multiple burst environment which has been changed to agree with the latest recommendations from the Society of Automotive Engineers (SAE) AE4L Committee.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard that is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. The effect of these threats on the airplane and its systems depends upon several factors, including installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike-Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level.

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of repetitive Component H waveforms in 3 sets of 20 pulses each. The minimum time between individual Component H pulses within a burst is 50 microseconds; the maximum is 1000 microseconds. The 3 bursts are distributed according to the following constraints: (1) the minimum period between bursts is 30ms, and (2) the maximum period between bursts is 300ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t)=I_o\,(e^{-at}-e^{-bt})$

where:

t=time in seconds,

i=current in amperes, and

		Severe Strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=	218,810	109.405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:					
i_{peak}	=	200 KA	100 KA	50 KA	10 KA
and,					
$(di/dt)_{max}$(amp/sec)	=	1.4×10^{11}	1.4×10^{11}	0.7×10^{11}	2.0×10^{11}
		@t=0+sec	@t=0+sec	@t=0+sec	@t=0+sec
di/dt, (amp/sec)		=	1.0×10^{11}	1.0×10^{11}	0.5×10^{11}
		@t=.5μs	@t=.25μs	@t=.25μs	....
Action Integral (amp^2 sec)		=	2.0×10^{6}	0.25×10^{6}	0.0625×10^{6}

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz– 2MHz	70	70
2 MHz– 30 MHz	200	200
30 MHz– 70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz– 1 GHz	1,700	170
1 GHz– 2 GHz	5,000	990
2 GHz– 4 GHz	6,680	840
4 GHz– 6 GHz	6,850	310
6 GHz– 8 GHz	3,600	670
8 GHz– 12GHz	3,500	1270
12 GHz– 18GHz	3,500	360
18 GHz– 40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Aviation Authorities.

Conclusion

This action affects only certain unusual or novel design features on the Dornier Model 328–100 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation Safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dornier Model 328–1000 airplanes.

1. Lightning Protection

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each electrical or electron system that performs essential functions must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on August 31, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 93–22163 Filed 9–9–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ANM–14]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the descriptions of several Very High Frequency Omnidirectional Range (VOR) Federal airways located in Colorado, Nebraska, and Wyoming to accommodate the new Denver International Airport, scheduled to open in December, 1993. Two new VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) facilities, Mile High (DVV) and Falcon (FQF), have been established north and south of the new Denver International Airport. This action will realign the en route airway structure to the new navigational aids and enhance the efficient utilization of airspace.

EFFECTIVE DATE: 0701 UTC, December 19, 1993.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On March 31, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of several VOR Federal airways located in Colorado, Nebraska, and Wyoming to accommodate the new Denver International Airport, scheduled to open in December, 1993 (57 FR 10847). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The FAA received 14 comments on the proposal.

The Air Transport Association (ATA) concurred without comment.

The Aircraft Owners and Pilots Association (AOPA) requested that the FAA reconsider its proposal to realign V–83 because it would create a new intersection over the Calhan Airport (5V4). AOPA noted the Calhan Airport has an active parachute drop zone with a ceiling of 17,000 feet mean sea level (Front Range Skydivers) and an aerobatic box west of the field. Further, the proposed realignment of V–83 would place the airway over Meadow Lake Airport (OOV), an active gliderport.

These concerns were shared by the Pikes Peaks Area Council of Governments, a flight instructor, several members of the Front Range Skydivers, Inc., and several private pilots. These commenters believe that the new intersection would create an unnecessary safety risk by further congesting the airspace in the proximity of the Calhan Airport. They content that the realignment of the airways over Calhan, CO would impact the operations and economics of the existing activities of the aviation community. One commenter recommended maintaining V–593 as it currently exists, intersection V–366 near the Kiowa VORTAC. The Kiowa VORTAC is scheduled to be decommissioned, but this will not prevent it from becoming an airway intersection. Other suggestions were to retain the current routing of V–83 to the proposed intersection of Kiowa.