

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the description of the Class D airspace area at Luke AFB, AZ, as published in the **Federal Register** on January 19, 1995 (60 FR 3741) and the description in FAA Order 7400.9B, which is incorporated by reference in 14 CFR 71.7, are corrected as follows:

§ 71.7 [Corrected]

On page 3742, in the second column, the description for the Luke AFB, AZ Class D airspace is corrected as follows:

AWP AZ D Phoenix, Luke Air Force Base, AZ [Corrected]

Phoenix Luke Air Force Base, AZ
(Lat. 33°32'06" N, long. 112°22'59" W)
Luke Air Force Base TACAN
(Lat. 33°32'16" N, long. 112°22'49" W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.4-mile radius of the Luke AFB and within 2.0 miles each side of the Luke TACAN 220° radial, extending from the 4.4-mile radius to 5.2 miles southwest of the Luke TACAN, and excluding that portion within the Glendale, AZ Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on February 22, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1262

RIN 2700-AC00

Equal Access to Justice Act in Agency Proceedings

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending its regulations under the Equal Access to Justice Act by updating the definition of "Adversary Adjudication" to conform to the amendments of 5 U.S.C. 504(b)(1)(C); to delete references to the NASA Board of Contract Appeals in 14 CFR 1262.307(a), since its functions have been assumed by the Armed Services Board of Contract Appeals pursuant to an interagency Memorandum of Agreement dated June

28, 1993, and effective July 12, 1993; and to correct typographical errors in §§ 1262.104(b)(4) and 1262.309.

EFFECTIVE DATE: March 8, 1995.

FOR FURTHER INFORMATION CONTACT: Sara Najjar-Wilson, Office of the General Counsel, 202-358-2465.

SUPPLEMENTARY INFORMATION: NASA published its final rule, 14 CFR Part 1262, "Implementation of the Equal Access to Justice Act in Agency Proceedings," in the **Federal Register** on April 23, 1986 (51 FR 15311). These changes to the rule are administrative in nature and do not require a period for public comment.

NASA has determined that this regulation is not a major rule as defined in Executive Order 12866.

This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small business entities.

List of Subjects in 14 CFR Part 1262

Claims, Equal access to justice, Lawyers.

For reasons set forth in the Summary of the Preamble, 14 CFR Part 1262 is amended as follows:

PART 1262—EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEDURES

1. The authority citation of 14 CFR Part 1262 is revised to read as follows:

Authority: 5 U.S.C. 504; 42 U.S.C. 2473(c)(1).

2. Section 1262.101 is amended by revising paragraph (b)(1) to read as follows:

§ 1262.101 Purpose of these rules.

* * * * *

(b) * * *

(1) *Adversary adjudication* means:

(i) An adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license;

(ii) Any appeal of a decision made pursuant to section 6 of the Contract Disputes Act (CDA) of 1978, as amended (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of the CDA (41 U.S.C. 607);

(iii) Any hearing conducted under Chapter 38 of Title 31 (added by section 6104 of the Program Fraud Civil Remedies Act of 1986 (Pub. L. 99-509, 100 Stat. 1948, Oct. 21, 1986), 31 U.S.C. 3801, et seq., as amended); and

(iv) The Religious Freedom Restoration Act (RFRA) of 1993 (added by section 4(b), of RFRA (Pub. L. 103-141, 107 Stat. 1489, Nov. 16, 1993), 42 U.S.C. 2000bb).

* * * * *

3. Section 1262.103 is revised to read as follows:

§ 1262.103 Proceedings covered.

(a) The Act applies to the following adversary adjudications conducted by the Agency:

(1) Adjudications under 5 U.S.C. 554 in which the position of NASA or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceedings;

(2) Appeals of decisions made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Board of Contract Appeals (BCA) as provided in Section 8 of that Act (41 U.S.C. 607);

(3) Any hearing conducted under Chapter 38 of Title 31 (31 U.S.C. 3801, et seq., as amended); and

(4) Adjudications under the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb).

(b) The Act does not apply to:

(1) Any proceeding in which this Agency may prescribe a lawful present or future rate;

(2) Proceedings to grant or renew licenses (note, however, that proceedings to modify, suspend, or revoke licenses are covered if they are otherwise adversary adjudications); and

(3) Proceedings which are covered by a compromise or settlement agreement, unless specifically consented to in such agreement.

(c) NASA may also designate a proceeding as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The Agency's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(d) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

4. In Section 1262.104, paragraph (b)(4), the citation "12 U.S.C. 1441j(a)" is revised to read "(12 U.S.C. 1141j(a))".

5. Section 1262.307 is amended by revising paragraph (a) introductory text to read as follows:

§ 1262.307 Decision.

(a) The adjudicative officer shall issue an initial decision on the application with 90 calendar days after completion of proceedings on the application. The decision shall include written findings and conclusions on such of the following as are relevant to the decision:

* * * * *

§ 1262.309 [Amended]

6. In section 1262.309, last sentence, the word "amont" is revised to read "amount".

Dated: March 3, 1995.

Daniel S. Goldin,

Administrator.

[FR Doc. 95-5669 Filed 3-7-95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket Nos. 89F-0011 and 93F-0384]

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sources of radiation to irradiate frozen, packaged meats for use in the National Aeronautics and Space Administration (NASA) space flight programs. FDA is also amending the food additive regulations to permit the use of packaging materials that are not otherwise listed in the regulations regarding food irradiation in the irradiation of frozen, packaged meats for use in the NASA space flight programs. This action is in response to two petitions filed by NASA.

DATES: Effective March 8, 1995; written objections and requests for a hearing by April 7, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3098.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of February 6, 1989 (54 FR 5679), FDA announced that a food additive petition (FAP 9M4125) had been filed by NASA, Washington, DC 20546, proposing that the food additive regulations be amended to provide for the safe use of sources of radiation to process beefsteaks for use in space flight programs.

In a tentative final rule published in the **Federal Register** of December 8, 1993 (58 FR 64526), FDA announced its tentative decision to amend the food additive regulations to provide for the safe use of sources of radiation to irradiate frozen, packaged beefsteak for use in NASA's space flight programs. FDA also announced its tentative final decision to amend the food additive regulations to permit the use of packaging materials that are not listed in the regulations regarding food irradiation in the irradiation of frozen, packaged beefsteak for use in the NASA space flight programs. The agency published a tentative final rule before proceeding to final action because it was including provisions regarding the packaging materials to be used with the beefsteaks that it had not announced in the notice of filing for the petition (FAP 9M4125). Interested persons were given the opportunity to comment on FDA's tentative decision. FDA did not receive any comments in response to this tentative final rule.

In the meantime, in a notice published in the **Federal Register** of November 19, 1993 (58 FR 61093), FDA announced that a food additive petition (FAP 3M4394) had been filed by NASA, Lyndon B. Johnson Space Center, Houston, TX 77058, proposing that the food additive regulations be amended to provide for the safe use of sources of radiation to process certain prepackaged meats for use in NASA space flight programs and to permit the use of packaging materials that are not listed in the regulations regarding food irradiation in the irradiation of the meats for use in NASA space flight programs. Interested persons were given the opportunity to comment on the environmental assessment submitted in the petition. No comments were received.

The amendment to the food additive regulations proposed in FAP 9M4125 is encompassed by that proposed in FAP 3M4394. This rule is the agency's final decision with respect to both FAP 3M4394 and FAP 9M4125.

II. Evaluation of Safety

In assessing the safety of food additives, including the use of irradiation in the processing of food, the agency usually considers the effects of lifetime daily exposure to the additive. The requested use, however, is limited to NASA's space flight programs. The amount of irradiated meat that could be consumed by individuals in the programs would constitute an extremely small fraction of their diets when considered over a lifetime. Because of this factor, questions regarding acute hazards, including those resulting from pathogenic organisms that could be present in the food, are more significant in evaluating this petitioned use of a source of radiation than they would ordinarily be in deciding whether to list a food additive. The petitions have requested that FDA authorize the use of irradiation processing only under conditions that ensure the microbial sterility of the product and the integrity of the product packaging. NASA has stated that it will ensure these qualities of sterility and packaging integrity by requiring adherence to an irradiation processing protocol (scheduled process) that it submitted with both petitions (Ref. 1). NASA's protocol specifies a minimum dose of 44 kiloGrays (kGy) in order to ensure sterility of the treated meat (Ref. 1).

Having evaluated the data in the petitions and other relevant material in its files, the agency finds that radiation-sterilized meats will be at least as nutritious as those sterilized by conventional means. FDA also finds that the total amount of radiolytic products that are produced in the meats during irradiation processing, and that will be consumed by individuals in the space flight programs, will be too small to be of any toxicological significance. Likewise, FDA finds that the total amount of radiolytic products that could be formed in the packaging materials during irradiation processing, and then migrate to the food and subsequently be consumed by individuals in the space flight programs, is too small to be of any toxicological significance (Refs. 2 and 3).

Section 179.25(c) (21 CFR 179.25(c)) restricts packaging materials used in the irradiation of prepackaged foods to those materials listed in § 179.45 (21 CFR 179.45), namely, those that have been demonstrated to be safe for use during irradiation of prepackaged foods, assuming that those foods would be consumed daily over a lifetime. The agency finds that this restriction is unnecessary for packaging that is to be used only in space flight programs. The