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DEPARTMENT OF AGRICULTURE

Food And Consumer Service

7 CFR PART 250

RIN 0584–AB99

Waiver Authority Under the State Processing Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule and waiver.

SUMMARY: This final rule amends the Food Distribution Program regulations by giving the Food and Consumer Service authority to waive provisions contained in the Food Distribution Program regulations for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods. FCS is, at this time, invoking its authority under § 250.30(t) to waive certain provisions of § 250.30(f)(1)(i) in order to conduct a demonstration project.

EFFECTIVE DATE: This final rule is effective February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Ursula Key, Schools/Institutions Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 501, Alexandria, Virginia 22302; or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This final rule reflects no new information collection requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). The OMB control number assigned to the existing recordkeeping and reporting requirements was approved by OMB for Part 250 under control number 0584–0007. The current burden hours will not change as a result of this final rule.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments. For disputes involving procurement by distributing and recipient agencies, this includes any administrative appeal procedures to the extent required by 7 CFR Parts 3015 or 3016.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service (FCS) has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The cost of compliance to State processors of donated foods is expected to be reduced by the changes proposed in this rule.

Background

Section 250.30 of the current Food Distribution Program regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for processing donated foods and prescribes the minimum requirements to be included in such contracts.

On April 13, 1995, the Department published a proposed rule in the Federal Register at 60 FR 18781 which would permit FCS to waive any of the requirements of the Food Distribution Program regulations at Part 250 for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods. The proposed rule provided a 30-day comment period. This final rule incorporates the proposed waiver provision in the State processing regulations at 7 CFR 250.30(t).

Analysis of Comments

The Department received a total of 9 comment letters from two distributing agencies, a local school food authority, and six commercial food processors. All commenters were in favor of the proposed rule.

Four commenters responded favorably to the rule as it was proposed. They stated that by allowing FCS to waive certain provisions, more processors would be attracted to the program, and the cost of processed end products should be reduced. They further stated that some of the provisions contained in the State processing regulations are overly restrictive and have resulted in processors dropping out of the State processing program. These commenters believed that over-regulation results in increased costs which are passed on to recipient agencies. They supported FCS's proposal to allow pilot projects which could provide guideposts for simplification of the regulations. One commenter believed that demonstration projects will fully support modifications to the current program to generate more competition and improved efficiency.

Five commenters who also supported the proposed rule cited specific provisions they would like to see waived as soon as possible. Three commenters supported the removal of the Agricultural Marketing Service acceptance service grading requirement for processing meat and poultry, complaining of excessive costs for obtaining the services of AMS graders. However, one commenter favored

retaining the requirement. Four commenters supported removing the requirement for processors to submit annual certified public accountant audit reports, also due to the costs involved. The commenters claimed that the requirement has forced some processors out of the program. They stated that those companies complying with the audit provision are passing on audit costs in prices of end products to schools. FCS appreciates these comments and will take them into consideration when determining which requirements will be waived during the demonstration projects.

Waiver of Requirements

FCS is invoking its authority under 7 CFR 250.30(t) to waive the current prohibition in 7 CFR 250.30(f)(1)(i) of the substitution of poultry. In a notice published elsewhere in this issue, FCS is announcing a demonstration project under which it will permit selected poultry processors to substitute commercial chicken for donated chicken in the State processing of donated chicken.

Summary

Based on the comments received, this final rule adopts § 250.30(t) of the proposed rule without change.

List of Subjects in 7 CFR Part 250

Agricultural commodities, Food assistance programs, Food processing.

For reasons set forth in the preamble, 7 CFR Part 250 is amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. In Section 250.30, a new paragraph (t) is added to read as follows:

§ 250.30 State processing of donated foods.

* * * * *

(t) *Waiver authority.* The Food and Consumer Service may waive any of the requirements contained in this part for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

Dated: January 18, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

Appendix to Preamble of Final Rule—Regulatory Impact Analysis

Date: June 1995
Agency: USDA, FCS
Contact: Ursula Key
Phone: (703) 305–2644

1. *Title:* Food Distribution Program—Waiver Authority Under the State Processing Program.

2. *Action:*

a. *Nature:* Final Rule.

b. *Need and Purpose:* This action is discretionary and is taken to support the goal of regulatory relief, increased State flexibility, increased program efficiency, and paperwork reduction. This authority will be used to conduct demonstration projects to test program alternatives to determine whether changes or greater flexibility will improve the efficiency of the State processing program. Of particular interest are changes that would increase competition among processors, which should result in lower costs to recipient agencies.

This action amends the Food Distribution Program regulations by giving the Food and Consumer Service authority to waive provisions pertaining to State processing of donated commodities in the Food Distribution Program regulations at 7 CFR Part 250.30 only for the purpose of allowing demonstration projects. Current State processing regulations may be overly restrictive, thus increasing processor costs and discouraging the participation of processors.

3. *Background:* Section 250.30 of the current Food Distribution Program regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for processing donated foods and prescribes the minimum requirements to be included in such contracts. This activity is typically referred to as State processing.

State processing is an activity principally of the Child Nutrition Programs by which State or substate agencies arrange to have USDA donated commodities further processed into end products more readily usable by schools. For example, fresh bulk pack chicken might be processed into chicken nuggets, coarse ground beef into hamburger patties, whole turkeys into fully cooked breast meat and turkey ham, etc. About a third to half of all USDA donated meat and poultry is further processed under State processing contracts. For State processing, USDA either sends the commodities directly to a processor contracted by the State, or sends them to a State distributing agency, which in turn arranges to have the product backhauled to a processor. In either case, under State processing, State or recipient agencies pay the cost of any additional processing directly to the processor.

The total value of USDA commodities donated to the Child Nutrition Programs was $667 million in FY 1994. A little under half of this, of which a third, or $100 million worth, was further processed under State processing arrangements. This figure has been constant for the last several years. While the degree of State processing varies by the specific type of product donated by USDA, typically about two thirds of beef is processed under State contracts, while less than a third of the pork, chicken and turkey are processed. Under current FCS regulations, processors may substitute like kind commercial commodities for USDA commodities for their convenience in manufacturing, except the rules specifically prohibit the substitution of meat and poultry.

On April 13, 1995, the Department published a proposed rule in the Federal Register at 60 FR 18781 which would permit FCS to waive provisions relative to the State processing of donated commodities that are contained in the Food Distribution Program regulations at Part 250 for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods. The proposed rule provided a 30-day comment period. This final rule incorporates the proposed waiver provision in the State processing regulations at 7 CFR 250.30(t).

The Department received a total of 9 comment letters, all of which were in favor of the proposed rule.

Commenters stated that by allowing FCS to waive certain provisions of the State processing regulations, more processors would be attracted to the program, and the cost of processed end products should be reduced. They further stated that some of the provisions contained in the State processing regulations are overly restrictive and have resulted in processors dropping out of the State processing program. These commenters believed that over-regulation results in increased costs which are passed on to recipient agencies. They supported FCS's proposal to conduct demonstration projects which could provide guideposts for simplification of the regulations. One commenter believed that demonstration projects will fully support modifications to the current program requirements to generate more competition and improve efficiency.

One of the first demonstrations being considered is the substitution of commercially acquired chicken for USDA donated chicken. Currently, only four poultry processors are participating in the State processing of donated foods. Processors have stated that the current policy which prohibits the substitution of commercially acquired chicken for donated chicken reduces the quantity of donated chicken they are able to accept and process during a given period. The prohibition against the substitution came about as a result of program abuses by processors in the past (e.g., substituting lesser grade commercial chicken for donated chicken, substituting mechanically boned chicken meat for high quality breast meat, etc). In FY 1994, USDA donated approximately $68 million worth of chicken to the Child Nutrition Program, about a third of which underwent State processing. Chicken purchased by USDA for further processing is typically bulk chill packed. In

FY 1994, USDA donated 9.5 million pounds valued at $5.3 million. Processors must schedule production around deliveries of the donated chicken since it is a very highly perishable product. Some of the processors must schedule production around deliveries of donated chicken for up to 30 individual States. Vendors do not always deliver donated chicken to the processors as scheduled, causing delays in production of end products. These delays may be eliminated if the processors can substitute commercial chicken for donated chicken. Any substituted commercial chicken must be at least as high in quality as USDA chicken in terms of grade, condition, and other attributes.

The demonstration project will enable FCS to evaluate whether to amend program regulations to provide for the substitution of donated chicken with commercial chicken in the State processing program. Particular attention will be paid to whether such an amendment of the regulations would be likely to increase the number of processors participating, and whether it would probably increase the quantity of donated chicken that each processor accepts for processing. Also, FCS will attempt to determine whether the expected increase in competition and the expected increase in the quantity of donated chicken accepted for processing in fact enable processors to function more efficiently, producing a greater variety of processed chicken end products in a more timely manner at lower costs. Further, FCS must determine whether USDA and the States have the practical capability to ensure that substitutions are, in fact, for comparable or better quality product.

4. *Justification of Alternative:* This final rule would authorize the Department to conduct demonstration projects to study the effect of waiving certain expensive and burdensome requirements in the State processing program. For example, Agricultural Marketing Service (AMS) acceptance service grading certificates may be used in lieu of company generated production and quality control records. Through these demonstration projects, the Department hopes to determine if the cost of compliance for food manufacturers, as well as the record-keeping burden associated with the administration of the program, can be reduced. The Department's goal is to attract more manufacturers to participate in the State processing program. We are aware of three major poultry processors who sell commodity product to USDA but do not participate in the State processing program. We are not able to determine at this time exactly how many additional processors will decide to participate in the State processing program but AMS is optimistic that more processors will be interested in participating. This increased competition should ultimately lead to lower prices to recipient agencies. By conducting the demonstration projects, the Department can determine if relaxing certain requirements will adversely affect program accountability. It is important to note that all remaining controls and requirements of the State processing regulations and the State processing contracts will remain in effect. We are only considering reductions or waivers which are feasible because other program controls can perform the function of the changed or waived requirements. If the results of the demonstration projects indicate that certain requirements can be modified or waived without compromising program integrity, the Department can consider amending certain current State processing program requirements. The Department expects this rule will support efforts to streamline the administration of the State processing program and improve customer service to recipient agencies (primarily schools).

Two other alternatives were considered: (1) doing nothing and (2) eliminating the audit and substitution regulations entirely. The option of selected waivers for demonstration projects was the preferred alternative.

5. *Effects:*

a. *Effects on food manufacturers:* Through conducting demonstration projects, FCS can determine if it is possible to eliminate or reduce reporting and recordkeeping requirements for processors. Some of the more burdensome requirements include inventory records, production records, quality control records, sales records, monthly performance reports, grading and inspection requirements, performance, supply, and surety bonding requirements, and the certified public accountant audit requirement. For example, processors which receive donated food valued at $250,000 or more each year are required to submit an annual independent certified public accountant audit report. This requirement may be relaxed to require an audit every two or three years for those processors with a history of good performance. The Department is interested in determining whether any of the above requirements can be eliminated or reduced while still maintaining program accountability for the donated food. Also, the Department intends to determine how much costs can be reduced for processors as a result of participation in the demonstration projects. Since program controls may not be as strong as under current rules, FCS would seek to determine the extent to which the benefits of burden reduction are worth potential costs due to less control.

b. *Effects on State distributing agencies:* Through the demonstrations projects, the Department will determine if it is possible to streamline the administration of the processing program at the State level. Currently, States must enter into agreements or renew them annually. Additionally, States must review end product data schedules, performance, supply, and surety bonds, performance reports and grading certificates on a monthly basis, and certified public accountant audit reports as submitted. During the demonstration projects, the Department hopes to review the current responsibilities of the State agencies and determine areas where there is duplication of effort and where reductions in reporting may be possible.

c. *Effects on Recipient agencies:* Currently the processors' costs of all the record-keeping and reporting requirements (e.g., acceptance service grading, performance, supply, and surety bond, and certified public accountant audit reports) are being passed on to the recipient agencies via higher prices for end products. Also, fewer processors are participating in the program, claiming that certain requirements are too burdensome and expensive. FCS has been informed that the typical cost of an independent certified public accountant audit report can run from $10,000 to $25,000 depending on the volume of food processed by a manufacturer. If we could require the audits less frequently for processors with a history of good performance, their costs could be significantly reduced. Since processors pass their costs on to recipient agencies, this should enable them to reduce the prices of the products they sell to schools. By conducting demonstration projects to study the possibility of removing or reducing some of the requirements, the Department hopes that more processors will participate in the State processing program, thereby increasing the competitive base. By reducing costs for the processors and increasing competition, it should be possible to reduce prices of end products to the schools. Processing adds about $0.78 to $1.09 per pound to the value of the end product. For example, coarse ground beef costing USDA $1.08 per pound would be worth $1.86 to $2.17 per pound to the State after processing. In other words, processing roughly doubles the value of donated beef.

As with beef, processing typically adds about $0.78 to $1.09 per pound in value to chicken, roughly the same per pound as beef processing. It is hoped that the flexibilities offered through the demonstrations under this rule could reduce this by perhaps 5 to 10 percent. If the demonstrations prove these savings out, and the flexibilities had been available and fully used in 1994, States would have saved about $1 to $2 million of their processing costs (i.e., 25 million pounds times $0.93 per pound processing (the midpoint) equals $23 million minus 5 percent to 10 percent equals $1.2 to $2.3 million). If a comparable savings rate were achieved in all processed meat and poultry in 1994, the States would have saved perhaps $7 to $14 million total. The demonstration projects will allow FCS to quantify potential savings more accurately. See attached tables for more detailed illustration.

d. *Effects on program costs and integrity:* As demonstration projects are conducted, the Department hopes to determine if certain administrative costs associated with the State processing program can be reduced. The Department is also concerned that program integrity be maintained. If elimination of audit requirements or allowance of substitution should result in an increase in fraudulent behavior, the potential savings desirable could be completely eliminated.

e. *Effects on small entities:* This rule would not have a significant economic impact on a substantial number of small entities. Commercial food processors participating in the demonstration projects will be most affected to the extent that they have the greatest record-keeping and reporting requirements in the State processing program.

TABLE 1.—CHILD NUTRITION PROGRAMS, COMMODITY DONATIONS

	Dollars in thousands					Pounds in thousands				
	1990	1991	1992	1993	1994	1990	1991	1992	1993	1994
Child nutrition commodities:										
Entitlement	$520,845	$533,188	$558,154	$573,281	$574,598	952,311	1,009,384	842,193	887,012	894,648
Bonus	110,601	84,306	122,162	90,163	92,226	139,820	109,105	315,727	163,940	147,851
Total commodities	631,446	617,494	680,316	663,444	666,824	1,092,131	1,118,489	1,157,920	1,050,952	1,042,499
of which:										
Beef patties, frz	10,484	11,545	12,732	14,335	6,801	7,748	8,426	9,262	10,597	4,986
Beef patties, frz w/vpp	12,350	19,004	25,193	25,067	20,749	11,428	16,909	22,177	22,514	19,068
Beef patties, extra lean	.....	.....	6,810	10,736	8,931	.....	.....	3,830	6,771	5,563
Beef frozen ground	103,661	110,964	115,473	116,522	94,796	80,778	84,581	88,938	92,698	74,104
Beef roasts, choice	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Beef, canned W/J	942	.....	906	753	72	612	.....	612	504	47
Beef, frz grd course process	7,014	8,880	11,759	16,035	21,039	5,437	6,930	9,072	12,390	16,422
Subtotal, beef	134,451	150,393	172,873	183,448	152,388	106,003	116,846	133,891	145,474	120,190
Chicken, canned boned	.....	.....	.....	.....	2,103	.....	.....	.....	.....	1,083
Chickens, chilled bulk	6,260	5,844	7,274	5,594	5,343	10,908	11,232	14,611	10,188	9,496
Chickens, chill leg	.....	.....	.....	4,807	5,377	.....	.....	.....	9,108	9,830
Chickens, drums	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Chickens, frozen, cut up	36,732	32,187	33,257	19,869	20,536	55,506	53,946	60,454	31,737	31,753
Chickens, frozen breaded	3,235	.....	4,596	12,544	13,646	2,611	.....	3,988	11,424	12,762
Chickens, leg qtrs	.....	.....	.....	.....	1,133	.....	.....	.....	.....	3,080
Chickens, nuggets frz soc	.....	.....	241	4,183	1,370	.....	.....	468	2,652	2,028
Chickens, diced frz	.....	.....	22,107	12,074	18,066	.....	.....	9,921	5,271	8,133
Chickens, patties, soc	.....	.....	.....	121	474	.....	.....	.....	78	702
Chickens, thighs	.....	.....	.....	.....	1	.....	.....	.....	.....	.....
Subtotal, chicken	46,227	38,031	67,475	59,192	68,048	69,025	65,178	89,442	70,458	78,867
Pork, canned W/NJ	336	2,045	923	680	1,572	252	1,369	720	540	1,269
Pork, frz ground	17,481	23,833	15,349	20,217	15,794	16,252	20,744	16,947	19,744	15,579
Pork, frz grd coarse process	.....	.....	1,986	3,170	3,733	.....	.....	2,020	3,247	3,841
Pork, frz patties	.....	.....	.....	.....	291	.....	.....	.....	.....	277
Pork, ham, frz cooked	19,618	114	9,641	.....	25,513	12,915	72	6,652	.....	16,011
Subtotal, pork	37,435	25,992	27,899	24,067	46,903	29,419	22,185	26,339	23,531	36,977
Turkey roasts, frozen	26,122	26,769	18,637	34,166	27,634	18,747	20,071	13,221	24,874	19,962
Turkey, commercial pack	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Turkey, frozen ground	5,957	5,928	5,978	11,012	9,858	9,098	8,189	7,847	18,817	16,926
Turkey, frozen whole	11,700	12,191	7,551	7,612	9,364	17,352	17,754	10,949	12,406	15,043
Turkey, chilled, bulk	3,832	3,613	5,870	8,212	7,287	5,976	5,544	9,821	13,752	11,720
Turkey, frz ground burgers	.....	.....	809	3,166	1,648	.....	.....	756	3,348	1,872
Turkey, sausage chubbs	.....	.....	.....	.....	371	.....	.....	.....	.....	468
Turkey, sausage patties	.....	.....	.....	.....	606	.....	.....	.....	.....	540
Turkey, sausage links	.....	.....	.....	.....	409	.....	.....	.....	.....	320
Subtotal, turkey	47,611	48,501	38,845	64,168	57,177	51,173	51,558	42,594	73,197	66,851
Total, meat and poultry	265,724	262,917	307,092	330,875	324,516	255,620	255,767	292,266	312,660	302,885

TABLE 2.—CHILD NUTRITION PROGRAMS, COMMODITY DONATIONS

	Dollars in thousands					Pounds in thousands				
	1990	1991	1992	1993	1994	1990	1991	1992	1993	1994
Likely to be further processed by States:										
Beef, frozen ground	$103,661	$110,964	$115,473	$116,522	$94,796	80,778	84,581	88,938	92,698	74,104
Beef, frz grd coarse process	7,014	8,880	11,759	16,035	21,039	5,437	6,930	9,072	12,390	16,422
Subtotal, beef	110,675	119,844	127,232	132,557	115,835	86,215	91,511	98,010	105,088	90,526
Additional processing costs at $0.93 per pound	.....	.....	.....	.....	84,189	.....	.....	.....	.....	90,526
Chicken, chilled bulk	6,260	5,844	7,274	5,594	5,343	10,908	11,232	14,611	10,188	9,496
Subtotal, chicken	6,260	5,844	7,274	5,594	5,343	10,908	11,232	14,611	10,188	9,496
Additional processing costs at $0.93 per pound	.....	.....	.....	.....	8,831	.....	.....	.....	.....	9,496
Pork, frz ground	17,481	23,833	15,349	20,217	15,794	16,252	20,744	16,947	19,744	15,579
Pork, frz grd course process	.....	.....	1,986	3,170	3,733	.....	.....	2,020	3,247	3,841
Subtotal, pork	17,481	23,833	17,335	23,387	19,527	16,252	20,744	18,967	22,991	19,420

TABLE 2.—CHILD NUTRITION PROGRAMS, COMMODITY DONATIONS—Continued

	Dollars in thousands					Pounds in thousands				
	1990	1991	1992	1993	1994	1990	1991	1992	1993	1994
Additional processing costs at $0.93 per pound	.....	.....	.....	.....	18,061	.....	.....	.....	.....	19,420
Turkey, frozen ground	5,957	5,928	5,978	11,012	9,858	9,098	8,189	7,847	18,817	16,926
Turkey, chilled bulk	3,832	3,613	5,870	8,212	7,287	5,976	5,544	9,821	13,752	11,720
Subtotal, turkey	9,789	9,541	11,848	19,224	17,145	15,074	13,733	17,668	32,569	28,646
Additional processing costs at $0.93 per pound	.....	.....	.....	.....	26,641	.....	.....	.....	.....	28,646
Total, meat and poultry	144,205	159,062	163,689	180,762	157,850	128,449	137,220	149,256	170,836	148,088
Additional processing costs at $0.93 per pound	.....	.....	.....	.....	137,722	.....	.....	.....	.....	148,088
Potential State processing savings at:										
1 percent	.....	.....	.....	.....	1,377	.....	.....	.....	.....	.....
5 percent	.....	.....	.....	.....	6,886	.....	.....	.....	.....	.....
10 percent	.....	.....	.....	.....	13,772	.....	.....	.....	.....	.....

Approved:
Dated: June 28, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

Dated: August 29, 1995.

Stephen B. Dewhurst,

Director, Office of Budget and Program Analysis.

Dated: August 4, 1995.

Keith Collins,

Acting Chief Economist.

Dated: September 11, 1995.

Ellen Haas,

Assistant Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 96–2177 Filed 2–9–96; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–162–AD; Amendment 39–9504; AD 96–03–07]

Airworthiness Directives; Beech Model 400, 400A, and MU–300–10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400, 400A, and MU–300–10 airplanes, that requires installation of an improved adjustment mechanism on the flightcrew seats and replacement of the existing aluminum seat reinforcement assemblies with steel assemblies. This amendment is prompted by reports of incomplete latching of the existing adjustment mechanism and cracked reinforcement assemblies, which could result in sudden shifting of a flightcrew seat. The actions specified by this AD are intended to prevent such shifting of a flightcrew seat, which could impair the flightcrew's ability to control the airplane.

DATES: Effective March 13, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Beech Model 400, 400A, and MU–300–10 airplanes was published in the Federal Register on May 25, 1995 (60 FR 27705). That action proposed to require installing an improved adjustment mechanism on the flightcrew seats, and replacing the existing aluminum seat reinforcement assemblies with steel assemblies.

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

The commenter suggests that the corrective action for this proposed AD is much simpler than that specified in the proposal. The commenter perceives the problem to be that some pilots may not carefully check the security and locking of their seats after making an adjustment. Therefore, the seat can slide during taxi, climb out, or turning. The commenter believes the corrective action involves flightcrew awareness; the flightcrew should be responsible in determining if the seat is locked into position by attempting to make the seat slide out of position by rocking the seat fore and aft. The commenter suggests that, if this method were employed, the costs associated with the accomplishment of the actions specified in this proposed AD would not be necessary. The commenter agrees that if the seat locking pins are worn or the mechanism bent, those parts should be repaired.

The FAA does not concur with the commenter's suggestion that attempting to make the seat slide out of position by rocking the seat fore and aft sufficiently addresses the unsafe condition. In this case, the FAA has received several reports of incomplete latching of the existing adjustment mechanism, and cracking of the aluminum seat reinforcement assemblies. Cracking of the aluminum seat reinforcement assemblies is an indicator of a