REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 396 Effective Date, June 20, 1996]

| From | To | MEA |
|---|---|---|
| **Atlantic Routes** | | |
| **AR 7** | | |
| **Is Amended To Delete** | | |
| Bimini/DCMSND, BF NDB | Vally, FL FIX | 2000 |
| **A301** | | |
| **Is Amended To Read in Part** | | |
| Bimini, BF VORTAC | Bkene, BF FIX | 4000 |
| Bkene, BF FIX | Fowee, FL FIX | 4000 |
| Fowee, FL FIX | Zolla, OA FIX | 8000 |
| Zolla, OA FIX | Ursus, OA FIX | 10000 |
| **A555** | | |
| **Is Amended by Adding** | | |
| Bimini, BF VORTAC *11000–MRA | *Rajay, BF FIX | 4000 |
| Rajay, BF FIX | Nassau, BF VOR/DME | 4000 |
| Nassau, BF VOR/DME | Victs, BF FIX | 3000 |
| Victs, BF FIX | Gerot, OA FIX | 3000 |
| **Is Amended To Read in Part** | | |
| Gerot, OA FIX | Stella Maris, BF NDB | 3000 |
| **A636** | | |
| **Is Amended by Adding** | | |
| Great Inagua, BF NDB | Albee, BF FIX | 4000 |
| **§ 95.6003 VOR Federal Airway 3 Is Amended To Read in Part** | | |
| Palm Beach, FL VORTAC *2000–MOCA | Vero Beach, FL VORTAC | *3000 |
| **§ 95.6055 VOR Federal Airway 55 Is Amended To Read in Part** | | |
| Siren, WI VOR/DME | Brainerd, MN VORTAC | 3000<br>MAA–1400 |
| **§ 95.6082 VOR Federal Airway 82 Is Amended To Read in Part** | | |
| Brainerd, MN VORTAC | Gopher, MN VORTAC | 3000 |
| **§ 95.6133 VOR Federal Airway 133 Is Amended To Read in Part** | | |
| Marquette, MI VOR/DME *3000–MOCA | Bride, MI FIX | *3600 |
| **§ 95.6161 VOR Federal Airway 161 Is Amended To Read in Part** | | |
| Gopher, MN VORTAC | Brainerd, MN VORTAC | 3000 |
| **§ 95.6210 VOR Federal Airway 210 Is Amended To Read in Part** | | |
| Mingg, OK FIX *4200–MRA **2500–MOCA | *Loboe, OK FIX | **4000 |
| **§ 95.6218 VOR Federal Airway 218 Is Amended To Read in Part** | | |
| Grand Rapids, MN VOR/DME *3000–MOCA | Gopher, MN VORTAC | *5500 |
| **§ 95.6266 VOR Federal Airway 266 Is Amended To Read in Part** | | |
| Mazon, VA FIX *1500–MOCA | Sunns, NC FIX | *2000 |
| Sunns, NC FIX | Elizabeth City, NC VOR/DME | *5000 |
| **§ 95.6492 VOR Federal Airway 492 Is Amended To Read in Part** | | |
| La Belle, FL VORTAC *1500–MOCA | Palm Beach, FL VORTAC | *2000 |

[FR Doc. 96–13776 Filed 5–31–96; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 100, 101, 103, 104, 105, 109, 137, 161, 163, 172, 182, 186, 197, and 700

**[Docket No. 95N–310F]**

### Revocation of Certain Regulations Affecting Food

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is revoking certain regulations that it has determined are obsolete, no longer in use, or in conflict with applicable law. These regulations have been identified for revocation as the result of a page-by-page review of the agency's regulations that cover food and cosmetics. This regulatory review is in response to the administration's ''Reinventing Government'' initiative that seeks to streamline Government to ease the burden on regulated industry and consumers. This document also is amending the food additive listing for folic acid (folicin) to reflect the fact that grits are now a nonstandardized food.

**DATES:** Effective July 3, 1996, except for the amendment to § 172.345 which is

effective June 3, 1996. Written objections and requests for a hearing for part 105 and § 172.345(d) by July 3, 1996. Any labels or labeling that require revision as a result of these revocations shall comply no later than January 1, 1998.

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

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

**SUPPLEMENTARY INFORMATION:**

I. Background

On March 4, 1995, President Clinton announced plans for the reform of the Federal regulatory system as part of his ''Reinventing Government'' initiative. Part of this reform effort is aimed at deleting prescriptive regulations which can sometimes undermine their stated purpose. In his March 4, 1995, directive, entitled ''Regulatory Reinvention Initiative,'' the President ordered all Federal agencies to conduct a page-by-page review of all of their regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.''

In response to this directive, FDA issued proposals to revoke a number of regulations (60 FR 53480, October 13, 1995 (hereinafter referred to as the October 1995 proposal); 60 FR 56513 and 56541, November 9, 1995) and an advance notice of proposed rulemaking (ANPRM) to review standards of identity, quality, and fill of container (60 FR 67492, December 29, 1995) (hereinafter referred to as the December 1995 ANPRM). This document is a final rule that responds to that portion of the agency's October 1995 proposal that described the agency's intent to revoke certain regulations that pertain to food and cosmetics.

II. The Proposal

In the October 1995 proposal, FDA proposed to eliminate a number of regulations on various grounds, including that they were either obsolete, redundant, of no public interest, or statements of policy that did not need to be in the Code of Federal Regulations (CFR). The agency stated that any revocation would become effective 30 days after date of publication of a final rule in the Federal Register. Interested persons were given until January 11, 1996, to comment on the proposal.

III. Summary of and Response to Comments to Proposal

FDA received 12 letters from industry and affected trade associations containing one or more comments on the October 1995 proposal. The majority of comments supported the administration's reinventing Government initiative. Several comments agreed that certain regulations are obsolete, unnecessary, or duplicative and should be revoked. Some comments agreed with the proposal in general terms but did not specifically refer to individual sections of the CFR, or did not elaborate on why certain sections should be revoked beyond the reasons given by the agency in its October 1995 proposal. A few comments contained concerns about, or requested clarification on, the agency's proposal to revoke certain sections. A summary of the comments and the agency's responses follows:

*A. General Agreement with Proposal to Revoke*

All comments supported, either generally or specifically, revocation of the following sections:

1. Section 100.120 *Artificially red-dyed yellow varieties of sweet potatoes* (21 CFR 100.120).
2. Section 100.130 *Combinations of nutritive and nonnutritive sweeteners in ''diet beverages''* (21 CFR 100.130).
3. Section 100.135 *Disposition of incubator reject eggs* (21 CFR 100.135).
4. Section 100.140 *Label declaration of salt in frozen vegetables* (21 CFR 100.140).
5. Section 100.145 *Notice to packers of comminuted tomato products* (21 CFR 100.145).
6. Section 100.150 *Notice to packers and shippers of shelled peanuts* (21 CFR 100.150).
7. Section 101.33 *Label declaration of D-erythroascorbic acid when it is an ingredient of a fabricated food* (21 CFR 101.33).
8. Section 101.103 *Petitions requesting exemptions from or special requirements for label declaration of ingredients* (21 CFR 101.103).
9. Part 103—Quality Standards for Foods With No Identity Standards (21 CFR part 103).
10. Section 104.19 *Petitions* (21 CFR 104.19).
11. Section 105.69 *Foods used to regulate sodium intake*.
12. Section 109.5 *Petitions* (21 CFR 109.5).
13. Section 161.131 *Extra large oysters* (21 CFR 161.131).
14. Section 161.132 *Large oysters* (21 CFR 161.132).
15. Section 161.133 *Medium oysters* (21 CFR 161.133).
16. Section 161.134 *Small oysters* (21 CFR 161.134).
17. Section 161.135 *Very small oysters* (21 CFR 161.135).
18. Section 161.137 *Large Pacific oysters* (21 CFR 161.137).
19. Section 161.138 *Medium Pacific oysters* (21 CFR 161.138).
20. Section 161.139 *Small Pacific oysters* (21 CFR 161.139).
21. Section 161.140 *Extra small Pacific oysters* (21 CFR 161.140).
22. Subpart F—Dietary Supplements of part 182 (21 CFR part 182).
23. Section 186.1025 *Caprylic acid* (21 CFR 186.1025).
24. Part 197—Seafood Inspection Program (21 CFR part 197).
25. Section 700.10 *Shampoo preparations containing eggs as one of the ingredients* (21 CFR 700.10).

Thus, in view of the support expressed by comments on the October 1995 proposal, and given the Government's resolve to eliminate obsolete, redundant, or conflicting regulations, FDA is revoking these sections. The agency concludes that this action will benefit consumers and industry by eliminating regulations that are unnecessary and that, therefore, have the potential to be confusing and, as a result, burdensome.

FDA advises that where the agency has determined a section is obsolete, unnecessary, or duplicative (e.g., §§ 100.130 and 100.140), once the section is revoked, generally, no further action is required. Where the section being revoked is a statement of policy (e.g., § 100.135), the agency may decide that it is in the public interest to develop a Compliance Policy Guide (CPG), or other appropriate means, to make the public aware of this policy. FDA will publish a notice in the Federal Register of the availability of any policy statements that it develops.

*B. Sections About Which Comments Expressed Concern or Requested Clarification About the Impact of Revocation*

One or more comments objected to, expressed concern about, or requested clarification on, FDA's proposal to revoke the following sections:

Section 100.160 *Tolerances for moldy and insect-infested cocoa beans* (21 CFR 100.160)

1. FDA received one letter from a trade association commenting that the tolerances set out in § 100.160 are useful because they have been universally adopted. This comment expressed concern that any change in the

tolerances for defective cocoa beans could have a serious impact on the market value of warehoused cocoa beans and on the value of cocoa futures contracts. The comment maintained that, because of the value of this market, any change in the tolerances should be subject to public scrutiny at open hearings. Finally, the comment stressed the need for the tolerances to be widely known.

In response to this comment, FDA advises that it did not propose to change the action levels for defective cocoa beans set out in § 100.160. Rather, the agency tentatively concluded that, because this section is a statement of policy, it need not appear in the CFR. Further, the agency cannot envision any situation where it would be compelled to change these levels without seeking input from interested parties. FDA concludes, therefore, that, because it is not altering the defect action levels in the policy statement, the comment's concern in this regard is without merit.

In addition, as mentioned in section III.A. of this document, where the agency concludes that the policy statements covered by this review need not appear in the CFR, but where it remains necessary to communicate the policy to interested parties, FDA intends to set out the policy in a CPG or by other appropriate means. FDA advises that the CPG system for assembling and maintaining statements of policy has been in place since 1969. The agency notes that CPG's have a history of including statements that contain regulatory action guidance information of the type set out in § 100.160 (e.g., CPG number 7101.06 ''Green Coffee Beans—Adulteration with Insects; Mold''). In fact, CPG 7105.12 ''Cacao Beans—Adulteration by Mold, Insect Infestation, and Mammalian Excreta'' sets out, among other things, the same defect action levels for moldy or insect damaged cacao beans as § 100.160.

On June 20, 1995 (60 FR 32159), the agency published a notice of availability for a new, reorganized, and bound edition of the FDA Compliance Policy Guides (CPG manual). The purpose of the CPG manual is to provide to FDA personnel and to other interested parties a more convenient and user friendly system for statements of FDA compliance policy. In addition, the agency provides notice in the Federal Register of the availability of new or revised CPG's. Such notices are also widely reported in trade association newsletters, other newsletters, and professional journals.

Accordingly, FDA concludes that removing § 100.160 from the CFR will change the location of the information that it contained, but not the effective communication of that information. The agency further concludes that reducing the number of nonregulatory sections that appear in the CFR, which, by definition, is a compendium of Federal regulations, is consistent with the administration's goal of streamlining the regulatory process. Therefore, FDA is revoking § 100.160, as proposed.

Section 105.67 *Label statement relating to food for use in the diet of diabetics*

In the October 1995 proposal, FDA noted that this section is not in accordance with current dietary advice for persons with diabetes. The agency tentatively concluded that the regulations that it had adopted in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535), including the new ingredient labeling regulations, should ensure that food labels contain sufficient information to assist diabetics in making educated food choices.

2. FDA received five letters, from trade associations, a manufacturer, health professionals, and a health professional association, commenting on its proposal to delete this section. Some of the comments agreed with the agency's tentative conclusion that § 105.67 is not consistent with current dietary advice for persons with diabetes and should, therefore, be revoked. One comment noted that healthy eating is the cornerstone of diabetes self management, and that it is essential that persons with diabetes have access to accurate nutrition information regarding the foods they eat. Other comments supported the agency's conclusion that nutrition labeling and ingredient declaration requirements ensure that consumers have access to the information necessary to plan a healthy diet. These comments also maintained that, because current dietary advice is based on the premise that no specific food is either good or bad for persons with diabetes, label statements identifying specific foods as being useful to diabetics would be misleading. One comment argued that § 105.67 continues the myth that persons with diabetes should have a restricted diet insofar as the variety of foods they eat. The comment noted that this view is contrary to current evidence and practice. The comment stated that, for example, there is no scientific basis for unnecessarily restricting sucrose and other sugars in the diet of persons with diabetes. However, according to the comment, the predominant use of § 105.67 is to make certain foods more appealing to diabetics relative to sucrose and sucrose replacements.

Conversely, one comment maintained that label statements identifying foods for diabetic use may be useful. The comment argued that there is no clear consensus that some foods and beverages are not better for people with diabetes, and that, therefore, labeling to identify foods for diabetic use should be allowed. The comment maintained that the conclusion of a health professional association that polyols (i.e., sugar alcohols) have no significant advantage over other nutritive sweeteners is in error because, according to the comment, that association's conclusion is based on the assumption that polyols have the same energy value as other nutritive sweeteners (i.e., 4 calories per gram). The comment cited the article entitled ''Helpful Hints: Using the 1995 Exchange Lists for Meal Planning'' in *Diabetes Spectrum* that acknowledges the reduced caloric values for polyols and instructs people with diabetes on how to factor this reduction into meal planning. The comment also maintained that products sweetened with polyols and other low calorie sweeteners cause a lower glycemic response, and, consequently, that identifying these products as, ''useful to diabetics on the advice of a physician,'' would assist persons with diabetes in formulating meal plans. The comment concluded, therefore, that such labeling would not be false or misleading.

The fact that there is not universal agreement that a statement that a specific food would be particularly useful in the diets of diabetics is false does not mean that it is appropriate for such a statement to appear in food labeling. The weight of evidence and current recommendations by recognized authorities is that no specific food is, or is not, more useful than others in the diets of diabetics. Rather, current recommendations promote a varied diet (Ref. 1).

In addition, § 101.9(c)(1)(i)(D) on nutrition labeling allows manufacturers to use specific FDA approved food factors to calculate the energy value of ingredients such as polyols. Therefore, the calorie declaration within nutrition labeling reflects the reduced energy value of polyols. Accordingly, nutrition labeling and ingredient declarations provide persons with diabetes with the information that they need to determine how a food fits into their meal plan.

Therefore, consistent with current dietary advice, FDA concludes that the provisions for diabetic labeling in § 105.67 are outdated and misleading. Consequently, the agency is deleting section § 105.67 as proposed.

Because § 105.67 was adopted under authority of section 403(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(j)) (the act), this revocation must be made in accordance with the formal rulemaking procedures in section 701(e) of the act (21 U.S.C. 371(e)). Under these procedures, there is an opportunity to object to a final rule and to request a public hearing based upon such objection.

3. One comment, while supporting revocation of § 105.67, expressed concern that deleting § 105.67(c) (which contains requirements for how the term ''diabetic'' is to appear in labeling) may be seen by some manufacturers as license to label products as ''diabetic'' without restriction. The comment urged FDA to make clear in any final rule revoking § 105.67 that label statements such as ''diabetic'' or ''for diabetics'' are no longer allowed.

FDA points out that § 105.67(c) pertained only to the prominence of terms such as ''diabetic.'' Based on FDA's conclusion that § 105.67 is contrary to current dietary recommendations, and that use of label statements identifying specific foods as particularly useful for diabetics is misleading, the prominence of such terms is a moot issue. FDA has no evidence that removal of the specific restrictions in § 105.67(c), or in any other paragraph of that section, would be misinterpreted by manufacturers to mean that the terms covered therein could be used without limitation. The nutrient content and health claim provisions in section 403(r) of the act along with section 403(a) should provide an adequate regulatory framework to prevent any use of the term ''diabetic'' that is not scientifically valid or that is misleading.

*C. Standards of Identity Issues*

FDA proposed to revoke several standards of identity because it tentatively concluded that they were obsolete, unnecessary, or no longer in the public interest. After it published the October 1995 proposal, but before the close of the comment period in this rulemaking, FDA published the December 1995 ANPRM (60 FR 67492 at 67493) that announced the agency's intent to begin a broader review of its regulations that set out standards of identity, quality, and fill of container (hereinafter referred to as the ''reinventing standards initiative''). In that document, FDA asked for comments on the benefit of such regulations in facilitating domestic and international commerce and their value to consumers. The agency also solicited comment on alternative means of accomplishing the statutory objectives of food standards, i.e., to promote honesty and fair dealing in the interest of consumers.

Sections 137.230 *Corn grits* (21 CFR 137.230), 137.235 *Enriched corn grits* (21 CFR 137.235), 137.240 *Quick grits* (21 CFR 137.240), and 137.245 *Yellow grits* (21 CFR 137.245)

The standards for grits describe the foods as corn (white corn or yellow corn) that is ground to a particular fineness. They provide maximum content requirements for moisture, fat, and crude fiber. In addition, the standard for enriched corn grits specifies minimum and maximum content requirements for thiamin, riboflavin, niacin, and iron and optional levels of vitamin D and calcium. In a final rule published in the Federal Register of March 5, 1996 (61 FR 8781) (hereinafter referred to as the March 1996 final rule), FDA added folate to the list of nutrients that must be added to enriched corn grits. The standard for quick grits specifies that the food is grits that have been lightly steamed and compressed to reduce cooking time for the consumer.

4. FDA received two letters specifically commenting on its proposal to revoke the standards of identity for corn grits, enriched corn grits, quick grits, and yellow grits (hereinafter referred to as ''the standards for grits''). One comment supported the administration's efforts to streamline Government to ease the burden on consumers and regulated industries. The comment argued that the standards for grits are unneeded and unnecessary, serve no public health benefit, and should be revoked. The comment stated that revoking obsolete and unnecessary food standards that serve no public interest, including the standards for grits, is a positive step towards achieving the administration's goals. According to the comment, the standards for grits inhibit the development of new products that may have benefits for consumers.

Conversely, the second comment maintained that the need for the standards for grits is current and ongoing. The comment expressed concern about the potential characteristics of products manufactured and labeled as ''grits'' in the absence of a standard of identity. The comment noted, for example, that particle size or other parameters may change, slowly migrating from the original, the migration dictated by economic or other commercial forces. In addition, the comment stated that the standard of identity for yellow grits should be maintained since consumers have preferences between cereal products made from white or yellow corn. The comment argued that consumers should not be forced to wait until they get home and open the package to find out whether the grits they purchased are white or yellow grits.

The comment also hypothesized that, in the absence of a standard of identity, in a short yellow corn crop, products labeled as ''yellow grits'' might be made from a blend of white and yellow corn. The comment further suggested that products labeled as ''yellow grits'' could even be white grits made to appear yellow. According to the comment, yellow colorant could be added to products made from white corn but identified as ''yellow grits'' so long as the colorant's use is listed in the ingredient declaration.

The comment argued that it is in the best interest of consumers that products they have come to trust as a specific product not be allowed to change according to economic or market pressures. In support of maintaining the standards for enriched corn grits and for quick grits, the comment cited consumer reliance on enriched cereal products and consumer benefit from quick preparation.

FDA acknowledges the comment's concerns that products that have long enjoyed the protection of standards of identity may change in the absence of those standards. They are similar to concerns raised by some of the early comments the agency has received in response to its reinventing standards initiative.

However, the agency disagrees with the comment's contention that the absence of standards will allow the proliferation of adulterated or misbranded products. The names ''grits'' and ''yellow grits'' were widely accepted as the common or usual names of the corn products to which these names apply before FDA adopted standards of identity. In the preamble to its proposed rule on these standards (12 FR 69 at 70; January 4, 1947) (hereinafter referred to as the 1947 standards proposal), FDA noted that the common or usual name of grits milled from white corn was, as it remains, the unqualified term ''grits,'' and that the names ''hominy grits'' and ''corn grits'' were synonyms for ''grits.'' The agency further noted that the common name of the corresponding food made from yellow corn is ''yellow grits,'' ''yellow hominy grits,'' or ''yellow corn grits.'' Thus, there is a longstanding common understanding of what foods can appropriately be called ''grits.'' Because

of this understanding, if the term ''grits'' is inappropriately applied to a food, that food will be misbranded under both section 403(i)(1) of the act (a food shall be deemed to be misbranded ''Unless its label bears * * * the common or usual name of the food, if any there be * * *'') and section 403(b) (a food is deemed to be misbranded ''If it is offered for sale under the name of another food.'') Thus, the comment's suggestion that consumers will be left unprotected if the standard is revoked is without merit.

FDA also disagrees with the comment's suggestion that, in the absence of a standard of identity, consumers will be unable to tell from labeling what type of grits they have purchased. The general principles for common or usual names in § 102.5 (21 CFR 102.5) require that the common or usual name of a food accurately describe the basic nature of a food or its characterizing properties or ingredients. Thus, if the food is from yellow corn, the name must reflect that fact. If the food is colored to appear yellow, the name must reflect that fact. If the food is a mixture of yellow and white corn but also contains a sufficient amount of white corn grits to be characterizing, it must be labeled using an appropriately descriptive phrase, e.g., ''Mixed grits, a blend of white and yellow corn grits.''

In response to the comment's concern about changes in particle size, FDA points out that grits, as evidenced by the record in the 1947 standard setting proceeding, are generally understood to be the coarsest of the products prepared by grinding corn, which also include corn meal and corn flour. FDA finds that migration in particle size will be limited by two factors. First, corn meal and corn flour will continue, at least pending the outcome of FDA's broader rulemaking on food standards, to be subject to standards of identity. Thus, any attempt to call a too finely ground product ''grits'' would misbrand the food under sections 403(b) and (g) of the act. Second, grits is a unique food in that its name directly reflects its characterizing property, i.e., that it consists of coarsely ground yet small particles of corn. As noted in the 1947 standards proposal and recognized by the comment itself, particle size affects the eating and cooking properties of the food. Thus, a product with particles that are too large will simply not have the gritty mouth feel that characterizes this food. Given the well established character of grits, drift towards a larger particle size will create a significant possibility of consumer rejection of the product. This strong possibility should serve as a disincentive to migration towards larger particle size.

Finally, even though FDA is revoking these standards, manufacturers remain free to make, and, to the extent they do, consumers remain free to purchase, products such as ''quick grits'' and ''enriched grits.'' For all these reasons, FDA has not been convinced by the comment to retain the standards of identity for grits. Accordingly, FDA is revoking the standards for corn grits (§ 137.230), enriched corn grits (§ 137.235), quick grits (§ 137.240), and yellow grits (§ 137.245).

5. One comment expressed concern about the impact of deleting the standard for enriched grits on other enriched products. While the comment did not specifically agree or disagree with the proposed revocation of the standards for grits, it urged the agency to consider the contribution from all cereal flour enrichment to the health and well-being of consumers.

FDA advises that a copy of this comment has been placed in the docket for the reinventing standards initiative (Docket No. 95N–0294) and will be considered in that rulemaking. FDA also advises that its decision to revoke the standard of identity for enriched grits should have no effect on the health and well-being of consumers. In the March 1996 final rule on folic acid, the agency foresaw the possibility that it would revoke the standard for enriched grits. In that document, FDA recognized the dietary significance of enriched cereal grain products, including grits. FDA stated that should the enriched grits standard be revoked, it would amend the food additive regulation on folic acid (§ 172.345) to include grits in the list of nonstandardized foods to which folic acid may be added. FDA is making that conforming change in this document. Therefore, the total amount of folate available from the diet should not be affected by the decision to revoke the standard of identity for enriched grits.

Removing the standard of identity for enriched grits does not affect the agency's finding that the use of folic acid in this food is safe. Consequently, FDA is amending the food additive regulation in § 172.345(d) to continue authorization of this use at the level permitted by the former standard for enriched grits. Specifically, the agency is amending § 172.345(d) by adding at the end of that paragraph '', and to corn grits at a level such that each pound of the corn grits contains not more than 1.0 milligram of folic acid.'' The agency advises that, because this amendment does not change the currently approved uses of folic acid, it has no effect on the safe use of folic acid. For this reason, and because this change was foreshadowed in the final rule establishing a folic acid fortification level for standardized, enriched grain products, FDA is issuing this amendment as a final rule.

Section 163.150 *Sweet cocoa and vegetable fat coating*, Section 163.153 *Sweet chocolate and vegetable fat coating*, and Section 163.155 *Milk chocolate and vegetable fat coating.*

The standards for sweet cocoa and vegetable fat coating, sweet chocolate and vegetable fat coating, and milk chocolate and vegetable fat coating (hereinafter referred to as ''coatings made with vegetable fat'') describe foods that resemble traditional milk chocolate and sweet chocolate products except for specified deviations to achieve certain performance characteristics. The primary deviation from traditional chocolate products is that a vegetable fat, having a higher or lower melting point than cacao fat, replaces part of the cacao fat in the food. In addition, the standards for coatings made with vegetable fat are somewhat more flexible in permitting the use of optional ingredients compared to the standards of identity for traditional chocolate products. For example, any safe and suitable dairy-derived ingredient may be used in sweet chocolate and vegetable fat coating (§ 163.153(b)(2)), while the standard for sweet chocolate (§ 163.123(b)(4)) provides a list of specific dairy ingredients (e.g., milk, cream, or skim milk) that may be used in the food. Conversely, the standards of identity for both the traditional chocolate products and for coatings made with vegetable fat require that the foods meet minimum and maximum milk solids content requirements based on those dairy ingredients referred to in § 163.123(b)(4). Sweet cocoa and vegetable fat coating resembles sweet chocolate and vegetable fat coating except that cocoa may replace all, or part, of the chocolate liquor in the sweet chocolate and vegetable fat coating. The standards of identity for coatings made with vegetable fat also contain labeling requirements for the name of the food and for ingredient declaration.

6. FDA received five letters specifically commenting on the agency's proposal to revoke the standards for sweet cocoa and vegetable fat coating, sweet chocolate and vegetable fat coating, and milk chocolate and vegetable fat coating. Three comments supported the proposal, maintaining that the standards for coatings made with vegetable fat are unnecessary and serve no useful function or public interest. One comment argued that the standards are not necessary because the

ingredient declaration would sufficiently inform consumers about the nature of these products. Another comment noted that the current nomenclature for the products covered by these standards is so unwieldy and confusing that inherent marketplace value normally associated with a standard of identity is severely undermined. In fact, most of the comments on this issue, regardless of whether or not they supported revocation, acknowledged that industry typically uses the term ''chocolate flavor coating'' to identify these products rather than the names provided for in the standards.

One comment acknowledged that, technically, this terminology constitutes misbranding under section 403 of the act. Another comment maintained that because of the long history of use of the term ''chocolate flavor coating'' to describe these products, they would be adequately covered by the common or usual name regulations in § 101.3 if the standards were revoked. Finally, these comments argued that deleting the standards for coatings made with vegetable fat would increase flexibility and innovation, thereby encouraging the introduction of new products in the market place. One comment maintained that, despite the increased flexibility afforded by 21 CFR 130.10 *Requirements for foods named by use of a nutrient content claim and a standardized term*, eliminating the standards for coatings made with vegetable fat would allow greater flexibility in the use of new technologies that could result in new product introductions (e.g., lower fat or lower calorie products) than is possible under the constraints of the standards.

On the other hand, two comments maintained that the standards of identity for coatings made with vegetable fat are not obsolete, unnecessary, or no longer serving the public interest. One comment argued that limiting the deviations in these products has guaranteed that the products have the same general sensory and quality characteristics (e.g., meet the same minimum dairy or cacao solids content requirements) as traditional chocolate products. One comment maintained that the standards for coatings made with vegetable fat are every bit as necessary as the standards for the traditional chocolate products to prevent the historical economic adulteration of products labeled ''chocolate.'' These comments supported maintaining the standards for coatings made with vegetable fat but suggested certain amendments, e.g., revising nomenclature, simplifying provisions, and combining the standards for sweet cocoa and vegetable fat coating with sweet chocolate and vegetable fat coating. One comment noted the complexity of the nomenclature issue and stated that FDA and the industry should work together to resolve this issue rather than revoking the standards for coatings made with vegetable fat.

FDA notes that its proposal to revoke the standards for coatings made with vegetable fat was probably the most contentious issue in this rulemaking. The agency admits that it was somewhat surprised by the relatively large number of comments on this issue and by the diversity of viewpoints expressed therein. The proposal to remove these standards was based, in part, on findings during the recent rulemaking to update the standards for cacao products in part 163 (58 FR 29523 at 29529, May 21, 1993) that the standardized nomenclature was not being used for these products. In that rulemaking, FDA shortened the names from, e.g., ''Sweet chocolate and vegetable fat other than cacao fat coating'' to ''Sweet chocolate and vegetable fat coating.'' However, it was not able to change the names of these foods to ''chocolate flavor coating,'' as requested, because codifying the term would place manufacturers of nonstandardized confectionery products at a serious disadvantage.

Since that rulemaking, informal communications with manufacturers have revealed that at least some manufacturers would rather see the standards of identity for coatings made with vegetable fat eliminated than be required to label products with the nomenclature provided for in the standards (Ref. 2). Thus, in the course of its page-by-page review of regulations, the agency questioned whether there was a need to retain these standards. The validity of raising the question was borne out by the comments that agreed with the agency's proposal to revoke the standards.

As noted at the beginning of this section, a number of comments stated that revoking these standards would increase flexibility and foster innovation. Several comments expressed frustration about issues that the agency had not been able to resolve to the commenters' satisfaction in the 1993 final rule updating the cacao standards and suggested that, absent a resolution of those issues, the standards were of little benefit and should be revoked.

Conversely, as noted previously, a number of comments, particularly a comment from a trade association representing chocolate manufacturers, raised substantive objections to the agency's proposal to revoke the standards for coatings made with vegetable fat. According to these comments, the standards for coatings made with vegetable fat are necessary for the continued accurate and truthful labeling of chocolate and chocolate-coated products. As such, the standards are useful to the industry and to consumers.

FDA notes that it is not dismissing the comments that supported revocation. The agency is committed to increasing flexibility while continuing to promote honesty and fair dealing in the interest of consumers. Although the standards for coatings made with vegetable fat were recently updated to keep pace with advances in technology, to increase flexibility for manufacturers, and to improve consumers' product choices, some limitations remain. At the same time, because of the nature of these foods (i.e., chocolate coatings made with vegetable fat and cocoa coatings made with vegetable fat are highly formulated products, the composition of which consumers are not likely to be aware), the standards of identity are a way, above and beyond other label information, to ensure that consumers receive a product with the expected characteristics.

Because of the complexity of the issues and because of indications that a significant proportion of the confectionery industry favors retaining these standards in some form, FDA concludes that it would be premature to revoke the standards for coatings made with vegetable fat. To do so at this time would not be in the best interest of consumers or of the regulated industry. Rather, the comment suggesting that the agency defer any action on these standards to the broader reinventing standards initiative has merit.

FDA notes that it proposed to revoke the standards for coatings made with vegetable fat before it published the ANPRM announcing its reinventing standards initiative. The standards for the other cacao products in part 163, including the sweet chocolate and milk chocolate products that the coatings made with vegetable fat resemble, are being reviewed as part of the reinventing standards initiative. It makes sense from a resource standpoint to review all these standards at that time. Further, it may be possible, under a revised system of standards, to resolve some of the issues that the agency was not able to resolve at the time of the 1993 cacao final rule. If that is the case, the agency may be able to eliminate or modify those aspects of the standards

that comments perceive to be burdensome. Alternatively, it may be that under a new standards system, some or all of these standards will no longer be necessary, and they could therefore be revoked.

Consequently, contrary to its proposal, FDA is not revoking the standards for coatings made with vegetable fat.

## IV. Filing of Objections and Request for a Hearing

Any person who will be adversely affected by the amendments to part 105 or to § 172.345(d) may at any time on or before July 3, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets at the heading of this document. Any objections received in response to the revocation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. If the removal or amendment of any provisions stayed by, or as a result of, the filing of proper objections, FDA will publish timely notice in the Federal Register.

## V. Economic Impact

FDA has examined the impact of this final rule under Executive Order 12866 and the Regulatory Flexibility Act. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is ''economically significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered ''significant'' under Executive Order 12866 if it raises novel legal or policy issues. The Regulatory Flexibility Act (Pub. L. 96–354) requires Federal agencies to minimize the economic impact of their regulations on small businesses. FDA finds that this final rule is neither an economically significant nor significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act and the Regulatory Fairness Act of 1996, FDA certifies that this final rule will not have a significant impact on a substantial number of small businesses.

Comments raised a number of issues relevant to the analysis of the costs and benefits of this action that were not addressed in the economic analysis that accompanied the notice of proposed rulemaking.

One comment objected to the revocation of § 100.160, which sets tolerances for defective cocoa beans at the time of import. This comment claimed that this defect action level is featured in standard contracts for cocoa beans, and that the value of these contracts will change if this section is revoked.

As previously pointed out, FDA is not revoking the defect action level that is reflected in § 100.160. However, even if the agency were to take such an action, any change in the value of contracts linked to this provision could not properly be considered a cost of revocation because the value of a contract linked to anything subject to change during the life of the contract, such as a Federal regulation, already reflects the fact that such change may occur.

One comment objected to the revocation of the standards of identity for corn grits, enriched corn grits, quick grits, and yellow grits. This comment suggested that the combination of these product names and the associated standards of identity convey information about product characteristics to consumers, that consumers are interested in the information conveyed, and that consumers might experience difficulty obtaining this information in the absence of these standards.

The issues discussed in this comment involve legitimate potential costs of eliminating this standard of identity which were not discussed in the economic analysis of the proposed rule. However, these costs are attenuated to some degree by the fact that the labeling of nonstandardized products cannot be false or misleading, and that the name of the product itself, which can still be used even if the product is not standardized, defines its characteristics.

In addition, the elimination of these standards of identity is associated with countervailing benefits that were also not discussed in the economic analysis of the proposed rule. Eliminating these standards eliminates the costs that would be associated with revising these standards in response to industry petitions and the costs associated with preparing and submitting those petitions. In addition, eliminating these standards may increase the variety of grits products offered to consumers and reduce the costs associated with adopting new methods of producing these products. Although the comment suggested that costs are associated with the elimination of these standards, the comment provided no way of determining the magnitude of these costs or to compare these costs with the potential benefits of eliminating these standards. A more thorough discussion of the societal benefits and costs is contained in the December 1995 ANPRM (60 FR 67492 at 67499).

Finally, one comment objected to the revocation of § 105.67 (label statement relating to food for use in the diet of diabetics). This comment did not dispute the contention that there is no scientific consensus that the relevant claims are true but suggested, instead, that there is also no scientific consensus that the relevant claims are false. The point of this comment was probably that the current scientific consensus is that these claims are neither clearly true nor clearly false, but in some third category, such as possibly but not proven true, or possibly but not proven false.

If this comment were correct about the state of the scientific consensus on these claims, then the phenomena discussed in this comment would represent potentially legitimate costs of this action that were not discussed in the economic analysis of the proposed rule. In that case, the deletion of § 105.67 would prevent a claim from appearing on food labels that scientific consensus did not hold to have been proven false, and that some consumers might have wished to use to make food consumption choices. However, these costs would be attenuated by the fact that this type of label claim is not the only means by which consumers may identify foods with desired characteristics. As previously pointed out, the regulations adopted in response to the 1990 amendments, including the new ingredient labeling regulations,

provide information on a wide variety of product characteristics.

In addition, deletion of § 105.67, even under the conditions suggested in the comment, would be associated with a countervailing benefit that was also not discussed in the economic analysis of the notice of proposed rulemaking. This benefit is the maintenance of the relatively high informational content of label claims made possible by restricting such claims to those that current scientific consensus finds to be true rather than restricting such claims to those that current scientific consensus does not find to have been conclusively proven false. This restriction of allowable claims reduces the need for consumers to investigate the basis and relative credibility of label claims on their own.

Estimating the benefits and costs of allowing label claims having various degrees of scientific plausibility is quite difficult. However, in general, the availability of other means of identifying food with desired characteristics suggests that the benefit of maintaining a relatively high standard for information presented in label claims probably outweighs the costs of restricting these claims to those supported by scientific consensus. These issues are discussed in more detail in the regulatory impact analysis for the final rule to amend the food labeling regulations in the Federal Register of January 6, 1993 (58 FR 2927).

In addition, FDA does not agree that there is no scientific consensus that the relevant claims are false. Not only is there no scientific consensus that such claims are true, but the current scientific consensus is that such claims are false. The comment provided no information on the current state of scientific consensus to support its contention that there is no consensus that such claims are false.

Finally, the cost of the associated label changes was not addressed in the economic analysis of the notice of proposed rulemaking. Affected firms will have a minimum of 1 year to make the required label changes because any required label changes need not be made until the next uniform effective date after publication of the final rule in the Federal Register. In general, the average cost of changing a label under a compliance period of 1 year is estimated to be $1,000 per label, if the claim is on the principal display panel, and $425 per label, if the claim is located elsewhere on the label. FDA has no information on the number of labels affected or on the location of the relevant claims on those labels. However, the specificity of the relevant claims suggests the number of affected labels is probably small.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. References

The following references has been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. American Diabetes Association, Position Statement—Food Labeling, *Diabetes Care*, 19:543–544, 1996.

2. Smith, M. A., Communications regarding standards for coatings made with vegetable fat, memorandum to file, May 29, 1996.

List of Subjects

*21 CFR Part 100*

Administrative practice and procedure, Food labeling, Food packaging, Foods, Intergovernmental relations.

*21 CFR Part 101*

Food labeling, Nutrition, Reporting and recordkeeping requirements.

*21 CFR Part 103*

Beverages, Bottled water, Food grades and standards.

*21 CFR Part 104*

Food grades and standards, Frozen foods, Nutrition.

*21 CFR Part 105*

Dietary Foods, Food grades and standards, Food labeling, Infants and children.

*21 CFR Part 109*

Food packaging, Foods, Polychlorinated biphenyls (PCB's).

*21 CFR Part 137*

Cereal(s) (food), Food grades and standards.

*21 CFR Part 161*

Food grades and standards, Frozen foods, Seafood.

*21 CFR Part 172*

Food additives, Reporting and recordkeeping requirements.

*21 CFR Part 182*

Food ingredients, Food packaging, Spices and flavorings.

*21 CFR Part 186*

Food ingredients, Food packaging.

*21 CFR Part 197*

Food grades and standards, Reporting and recordkeeping requirements, Seafood.

*21 CFR Part 700*

Cosmetics, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 100, 101, 103, 104, 105, 109, 137, 161, 172, 182, 186, 197, and 700 are amended as follows:

## PART 100—GENERAL

1. The authority citation for 21 CFR part 100 continues to read as follows:

Authority: Secs. 201, 301, 307, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 337, 342, 343, 348, 371).

### § 100.120 [Removed]

2. Section 100.120 *Artificially red-dyed yellow varieties of sweet potatoes* is removed.

### § 100.130 [Removed]

3. Section 100.130 *Combinations of nutritive and nonnutritive sweeteners in ''diet beverages''* is removed.

### § 100.135 [Removed]

4. Section 100.135 *Disposition of incubator reject eggs* is removed.

### § 100.140 [Removed]

5. Section 100.140 *Label declaration of salt in frozen vegetables* is removed.

### § 100.145 [Removed]

6. Section 100.145 *Notice to packers of comminuted tomato products* is removed.

### § 100.150 [Removed]

7. Section 100.150 *Notice to packers and shippers of shelled peanuts* is removed.

### § 100.160 [Removed]

8. Section 100.160 *Tolerances for moldy and insect-infested cocoa-beans* is removed.

## PART 101—FOOD LABELING

9. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409,

701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

**§ 101.33 [Removed]**

10. Section 101.33 *Label declaration of D-erythroascorbic acid when it is an ingredient of a fabricated food* is removed.

**§ 101.103 [Removed]**

11. Section 101.103 *Petitions requesting exemptions from or special requirements for label declaration of ingredients* is removed.

## PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

## PART 103 [REMOVED]

12. Part 103 is removed.

## PART 104—NUTRITIONAL QUALITY GUIDELINES FOR FOODS

13. The authority citation for 21 CFR part 104 continues to read as follows:

Authority: Secs. 201, 403, 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 371(a)).

**§ 104.19 [Removed]**

14. Section 104.19 *Petitions* is removed.

## PART 105—FOODS FOR SPECIAL DIETARY USE

15. The authority citation for 21 CFR part 105 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 411, 701, 721 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 350, 371, 379e).

**§ 105.67 [Removed]**

16. Section 105.67 *Label statement relating to food for use in the diet of diabetics* is removed.

**§ 105.69 [Removed]**

17. Section 105.69 *Foods used to regulate sodium intake* is removed.

## PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL

18. The authority citation for 21 CFR part 109 continues to read as follows:

Authority: Secs. 201, 306, 402, 406, 408, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 336, 342, 346, 346a, 348, 371).

**§ 109.5 [Removed]**

19. Section 109.5 *Petitions* is removed.

## PART 137—CEREAL FLOURS AND RELATED PRODUCTS

20. The authority citation for 21 CFR part 137 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

**§ 137.230 [Removed]**

21. Section 137.230 *Corn grits* is removed.

**§ 137.235 [Removed]**

22. Section 137.235 *Enriched corn grits* is removed.

**§ 137.240 [Removed]**

23. Section 137.240 *Quick grits* is removed.

**§ 137.245 [Removed]**

24. Section 137.245 *Yellow grits* is removed.

## PART 161—FISH AND SHELLFISH

25. The authority citation for 21 CFR part 161 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

**§ 161.131 [Removed]**

26. Section 161.131 *Extra large oysters* is removed.

**§ 161.132 [Removed]**

27. Section 161.132 *Large oysters* is removed.

**§ 161.133 [Removed]**

28. Section 161.133 *Medium oysters* is removed.

**§ 161.134 [Removed]**

29. Section 161.134 *Small oysters* is removed.

**§ 161.135 [Removed]**

30. Section 161.135 *Very small oysters* is removed.

**§ 161.137 [Removed]**

31. Section 161.137 *Large Pacific oysters* is removed.

**§ 161.138 [Removed]**

32. Section 161.138 *Medium Pacific oysters* is removed.

**§ 161.139 [Removed]**

33. Section 161.139 *Small Pacific oysters* is removed.

**§ 161.140 [Removed]**

34. Section 161.140 *Extra small Pacific oysters* is removed.

## PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

35. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

36. Section 172.345 is amended by revising paragraph (d) to read as follows:

**§ 172.345 Folic acid (folacin).**

* * * * *

(d) Folic acid may be added, at levels not to exceed 400 micrograms (μg) per serving, to breakfast cereals, as defined under § 170.3(n)(4) of this chapter, and to corn grits at a level such that each pound of the corn grits contains not more than 1.0 milligram of folic acid.

* * * * *

## PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

37. The authority citation for 21 CFR part 182 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

**Subpart F [Removed]**

38. Subpart F, consisting of §§ 182.5013 through 182.5997, is removed and reserved.

## PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

39. The authority citation for 21 CFR part 186 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

**§ 186.1025 [Removed]**

40. Section 186.1025 *Caprylic acid* is removed.

## PART 197—SEAFOOD INSPECTION PROGRAM

**Part 197 [Removed]**

41. Part 197 is removed.

## PART 700—GENERAL

42. The authority citation for 21 CFR Part 700 continues to read as follows:

Authority: Secs. 201, 301, 502, 505, 601, 602, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374).

**§ 700.10 [Removed]**

43. Section 700.10 *Shampoo preparations containing eggs as one of the ingredients* is removed.

Dated: May 29, 1996.

William B. Schultz,

*Deputy Commissioner for Policy.*

[FR Doc. 96–13829 Filed 5–30–96; 1:06 pm]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## 25 CFR Parts 65, 66, and 76

**RIN 1076 AD31**

## Enrollment of Indians; Removal of Regulations

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is eliminating 25 CFR Parts 65, 66, and 76 as mandated by Executive Order 12866 to streamline the regulatory process and enhance the planning and coordination of new and existing regulations. The necessity for these rules no longer exists.

**EFFECTIVE DATE:** July 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** Bettie Rushing, (202) 208–3463.

**SUPPLEMENTARY INFORMATION:**

### Background

The purpose for which these rules were promulgated has been fulfilled and the rules are no longer required. Members of the San Pasqual Band have been enrolled as required in satisfaction of judgments of the United States Claims Court docket 80–A. Members of the Delaware Tribe of Indiana and the Absentee Delaware Tribe of Western Oklahoma have been enrolled as the basis for distribution of judgment funds awarded in Indian Claims Commission dockets 27–A, and 241, 289, 27–B and 338, and 27 E and 202, 27.

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

*Executive Order 12778:* The Department has certified to the Office of Management and Budget (OMB) that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

*Executive Order 12866:* This rule is not a significant regulatory action under Executive Order 12866 and does not require review by the Office of Management and Budget.

*Regulatory Flexibility Act:* This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*Executive Order 12630:* The Department has determined that this rule does not have ''significant'' takings implications. This rule does not pertain to ''taking'' of private property interests, nor does it impact private property.

*Executive Order 12612:* The Department has determined that this rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

*NEPA Statement:* The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

*Unfunded Mandates Act of 1995:* This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

*Paperwork Reduction Act of 1995:* This rule contains no information collection requirement the elimination of which would require notification to the Office of Management and Budget.

*Drafting Information:* The primary author of this document is Bettie Rushing, Bureau of Indian Affairs.

List of Subjects in 25 CFR Parts 65, 66 CFR 76.

Indians—enrollment, Indians—claims.

## PARTS 65, 66, 76—[REMOVED]

Under the authority of Executive Order 12866, and for the reasons stated above, 25 CFR Parts 65, 66, and 76 are removed.

Dated: May 22, 1996.

Ada E. Deer,

*Assistant Secretary—Indian Affairs.*

[FR Doc. 96–13730 Filed 5–31–96; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 62

**[CGD–94–091]**

**RIN 2115–AF14**

## Conformance of the Western Rivers Marking System With the United States Aids to Navigation System

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** As part of the President's Regulatory Reinvention Initiative, the Coast Guard will replace the solid-color crossing dayboards in the Western Rivers Marking System (WRMS) with checkered non-lateral dayboards used in the United States Aids to Navigation System (USATONS); the latter dayboards would have the same meaning and be the same size and shape as the former, but would be easier to see. These changes would help mariners to better see the crossing dayboards, making the Western Rivers safer.

**DATES:** This rule is effective June 3, 1996. The first checkered non-lateral dayboards will appear on the Western Rivers no sooner than September 3. The last solid-color crossing dayboards will disappear from the Western Rivers not later than June 3, 1996.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–091), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

**FOR FURTHER INFORMATION CONTACT:** LTJG Chad Asplund, Short Range Aids to Navigation Division, Telephone: (202) 267–1386.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The principle persons involved in drafting this document are LTJG Chad Asplund, Project Manager, Short Range Aids to Navigation Division, and Patrick J. Murray, Project Counsel, Office of Chief Counsel.

### Regulatory History

On March 27, 1996, the Coast Guard published an NPRM entitled Conformance of the Uniform State Waterway Marking System and the Western Rivers Marking System with