service's Key Deer National Wildlife Refuge, no Federal involvement with *Cereus robinii* is currently known.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62 and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Cereus robinii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the U.S. to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibition activities involving endangered species under certain circumstances. *Cereus robinii* is already on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which requires a permit for export. International and interstate commercial trade in this species is minimal or nonexistent. It is anticipated that few trade permits would ever be sought or issued since these cacti are not common in the wild or in cultivation.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition now applies to *Cereus robinii*, which occurs on land under Federal jurisdiction (U.S. Fish and Wildlife Service, Key Deer National Wildlife Refuge) in Monroe County, Florida. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. Requests for copies of the regulations on plants, and inquires regarding them, may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

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Author

The primary author of this final rule is Mr. Donald T. Palmer, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following in alphabetical order under Cactaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cactaceae—Cactus family:						
*	*	*	*	*	*	
Cereus robinii	Key tree-cactus	U.S.A. (FL), Cuba	E	NA	NA	
*	*	*	*	*	*	

Dated: July 3, 1984.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-19091 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Selecting Open Season Dates for Hunting Migratory Game Birds in Alaska, Puerto Rico and the Virgin Islands for the 1984–85 Season

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final frameworks (i.e. the outside limits for dates and times when shooting may begin and end, and the number of birds that may be taken and possessed) from which wildlife conservation agency officials in Alaska, Puerto Rico and the Virgin Islands may select season dates for hunting certain migratory birds during the 1984–85 season. Selected season dates will then be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) for publication in the **Federal Register** as amendments to §§ 20.101 and 20.102 of 50 CFR Part 20.

DATES: Effective on July 19, 1984. Season selections due from Alaska, Puerto Rico and the Virgin Islands by July 27, 1984.

ADDRESS: Season selections from Alaska, Puerto Rico and the Virgin Islands are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Public documents may be inspected in the Service's Office of Migratory Bird Management, Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202, 254–3207).

SUPPLEMENTARY INFORMATION: On March 23, 1984, the Service published for public comment in the **Federal Register** (49 FR 11120) a proposal to amend 50 CFR Part 20, with a comment period ending June 21, 1984. That document dealt with the establishment of seasons, limits and shooting hours for migratory game birds under §§ 20.101 through 20.107 of Subpart K of 50 CFR Part 20, including frameworks for Alaska, Puerto Rico and the Virgin Islands. A supplemental proposed rulemaking appeared in the **Federal Register** on June 13, 1984 (49 FR 24417) and another on July 9, 1984 (49 FR 28026). The July 9, document contained no information relevant to Alaska, Puerto Rico and the Virgin Islands. This final rulemaking is the fourth in a series of proposed and final rulemaking documents for migratory bird hunting regulations and deals specifically with final frameworks for the 1984–85 season from which wildlife conservation agency officials in Alaska, Puerto Rico and the Virgin Islands may select season dates for hunting certain migratory game birds. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Public Hearing

A public hearing was held in Washington, D.C., on June 21, 1984, as announced in the **Federal Register** dated March 23, 1984 (48 FR 11120). The public was invited to participate in the hearing and/or submit written statements.

Presentations at Public Hearing

Dr. James C. Bartonek, Pacific Flyway Representative for the Service, discussed the status of five populations of Pacific Flyway geese that nest in Alaska and are declining in numbers, i.e., dusky Canada geese, cackling Canada geese, Pacific Flyway Population of white-fronted geese, Pacific brant and emperor geese. Excessive harvests by sport and subsistence hunters are the probable cause for the declines in four of these populations. The objectives for reducing the harvest of these geese throughout the Pacific Flyway during the 1984–85 season were described.

Comments Received at Public Hearing

Ms. Jennifer Lewis, representing the Humane Society of the United States (HSUS) and the World Society for the Protection of Animals (WSPA), first expressed HSUS's concern with the annual killing, solely for sport or recreation, of migratory birds and noted the Society's commitment to development of a new ethic which places a primary value on the humane treatment and welfare of wildlife. She then expressed the joint concern of HSUS and WSPA that proposed regulations inadequately protect resident species of Puerto Rican waterfowl and recommended the Service close the season on all waterfowl in the Commonwealth to shield resident species which are actively nesting and rearing young during this period. Ms. Lewis noted that several species of resident waterfowl have declined since the late 1950's and early 1960's; that the lack of information of year-by-year population and kill data for resident or wintering waterfowl complicates the development of responsible hunting frameworks; that no justification existed for the institution of a split season in 1983–84; that the impact of two opening dates on native waterfowl was not given proper consideration and that there is a lack of effective law enforcement of migratory bird regulations. She urged the Service to work with the Puerto Rico Department of Natural Resources (DNR) to initiate population studies, upgrade law enforcement efforts and implement existing proposals for the preservation of wetland habitats.

Concerning the management of columbid species in Puerto Rico, Ms. Lewis stated that the Service implements seasons without reliable population and harvest data and that substantial enforcement problems exist. She recommended that the Service close the seasons on all columbid species until adequate data can be obtained and analyzed so that proper management decisions can be made, and work with the DNR to improve their law enforcement efforts.

Response. Concerns by WSPA regarding the management of migratory waterfowl in Puerto Rico have been previously detailed in the June 13, 1984, **Federal Register** (49 FR 24422). Hunting regulations in Puerto Rico include restrictive measures for certain migrant and resident waterfowl (see 49 FR 11133, March 23, 1984). The season on coots will be closed during 1984–85 to provide protection for the Caribbean coot (*Fulica caribaea*). The proper management of migratory waterfowl wintering in Puerto Rico and the protection of resident species which breed during the proposed season dates warrant further evaluation. A review of the population status and breeding chronology of resident waterfowl species in Puerto Rico will be initiated in cooperation with the Puerto Rico DNR.

Hunting seasons on threatened species of columbids are presently closed. There is no information to indicate that the species presently hunted in Puerto Rico are being adversely affected by hunting. The Service and the Puerto Rico DNR intend to initiate migratory bird censuses and waterfowl harvest surveys in the Commonwealth. The enforcement of migratory bird regulations in Puerto Rico and the Virgin Islands will be assessed with the view of seeking improvements where necessary.

Written Comments Received

Interested persons were given until June 21, 1984, to comment on the March 23 proposed rulemaking. They were also

invited to participate in the June 21 public hearing. Since responding to comments in the June 13, 1984, **Federal Register** (49 FR 24422), two additional comments were received on the proposed regulations frameworks for Alaska, Puerto Rico and the Virgin Islands.

In the March 23, 1984, **Federal Register** (49 FR 11130), the Service noted the substantial declines in populations of dusky Canada geese, Pacific Flyway white/fronted geese, cackling Canada geese and Pacific brant, and the need for harvest restrictions on these populations. The Service proposed to not open the season on cackling Canada geese, insofar as practical considering management objectives for other subspecies of Canada geese, and to further restrict the harvest of the Pacific Flyway Population white-fronted geese throughout their range in the United States. Decisions were deferred regarding dusky Canada geese and Pacific brant pending additional information and recommendations from the Pacific Flyway Council. By letter of April 19, 1984, the Pacific Flyway Council, at the request of the Alaska Department of Fish and Game, recommended that frameworks for migratory bird seasons in Alaska remain unchanged, except that the State would impose restrictions to: (1) Eliminate the harvest of cackling Canada geese, insofar as practical, and (2) in conjunction with the other States, reduce by 50% the harvests of both the Pacific Flyway Population white-fronted geese and Pacific brant.

By telegram of June 20, 1984, the Alaska Department of Fish and Game additionally recommended that the limits on emperor geese be reduced from 6 in the daily bag and 12 in possession to 4 and 8, respectively. The State noted that an anticipated influx of oil and gas exploration workers into a primary sport-harvest area for emperors could further impact the declining population.

Response. The Service concurs with the recommendations of the Pacific Flyway Council to retain present frameworks for migratory bird hunting seasons in Alaska, except limits on emperor geese with be reduced. Alaska has previously exercised its prerogative to be more restrictive than frameworks permit, and those more restrictive regulations will be published in the **Federal Register.**

The Service concurs with the recommendations of the Alaska Department of Fish and Game regarding the reduced limits on emperor geese. This framework change does not impact other States within the Pacific Flyway because emperor geese are found mainly within Alaska and to a lesser degree in the U.S.S.R. The Service notes that surveys of emperor geese suggest nearly a 50% decrease in numbers over the past 20 years and that emperors comprise an increasingly greater percentage of the goose harvests by subsistence hunters on the Yukon-Kuskokwim Delta.

The Puerto Rico Department of Natural Resources (DNR), by letter dated June 15, 1984, requested that the hunting season be closed to the harvest of coots, i.e., American coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*), during 1984–85. The DNR indicated that Caribbean coots cannot be distinguished from American coots in field hunting situations and no more than 200 Caribbean coots may remain in Puerto Rico.

Response. The Service concurs with the recommendation and the requested provision is included in the following framework.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these documents are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act." and ". . . by taking such action necessary to insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered and threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

The Service initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On July 5, 1984, Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Examples of such consideration include closures of designated areas in Puerto Rico for the Puerto Rican plain pigeon (*Columba inornata wetmorei*) and the Puerto Rican parrot (*Amazona vittata*), and in Alaska for the Aleutian Canada goose (*Branta canadensis leucopareia*).

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** datd March 23, 1984 (at 49 FR 11124) the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Memorandum of Law

In the **Federal Register** dated March 23, 1984 (at 49 FR 11125) the Service stated that it planned to publish its Memorandum of Law for the 1984–85 migratory bird hunting regulations with its first final rulemaking.

Memorandum of Law. Section 4 of Executive Order 12291 requires that certain determinations be made before any final major rule may be approved. Section 4(a) specifies that the regulation must be clearly within the authority of law and consistent with congressional intent, and that a memorandum of law be provided to support that determination. Also, the agency must state that the factual conclusions upon which the law is based have substantial support in the agency record and that

full attention has been given to public comments in general, and to comments of persons directly affected by the rule in particular.

The development of the annual migratory bird hunting regulations is provided for under Section 3 of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–711). Such regulations have been promulgated annually since 1918. They appear in 50 CFR Part 20, Subpart K. Congressional support for the development of these rules and ancillary activities involved in their development are reflected in the U.S. Fish and Wildlife Service's budget. Among these activities are biological surveys, hunter activity and harvest surveys, research investigations, law enforcement, and adminstrative costs associated with the development and publication of the proposed and final rules. Many other Service activities, such as the acquisition and management of habitats for migratory birds, indirectly assist in maintaining the migratory bird resource at levels which allow reasonable sport hunting harvest.

In developing its annual hunting rules for 1984–85, the Service has published three proposed rules for public comment and conducted one public hearing to facilitate public input into the rulemaking process. Five additional proposed and final rulemakings, and another public hearing, are included in the remaining schedule for establishing the annual hunting regulations for 1984–85. Dozens of public comments summarized and responded to in **Federal Register** listed in the preamble of this document describe the Service's consideration of the impacts of its proposed rules on the public. Many of these comments originated from affected State conservation agencies, while others were submitted by the affected public. In general, the comments strongly supported the Service's initial or supplementary regulatory proposals. Comments which do not support proposed Service action have been adequately addressed. Additional public comments are invited and will be addressed in subsequent **Federal Register** documents. The complete administrative record, including copies of public comments, is available for inspection at the Office of Migratory Bird Management.

Consequently, the Department has determined that it has fulfilled requirements of Section 4 of Executive Order 12291 and the Migratory Bird Treaty Act in developing the 1984–85 migratory bird hunting regulations which are adequately supported by the Service's records.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed rulemaking was published March 23, 1984, the Service established what it believed was the longest period possible for public comment. In doing this, the Service recognized that at the period's close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the governments of Alaska, Puerto Rico, and the Virgin Islands would have insufficient time to select their season dates, shooting hours, and limits; to communicate those selections to the Service; and finally establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and special closures, from which officials of the Alaska Department of Fish and Game, Puerto Rico Department of Natural Resources, and the Virgin Islands Department of Conservation and Cultural Affairs may select open season dates. Upon receipt of season selections from Alaska, Puerto Rico and Virgin Islands officials, the Service will publish in the **Federal Register** final rulemaking amending 50 CFR 20.101 and 20.102 to reflect seasons, limits, and shooting hours for these areas for the 1984–85 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act and these frameworks will, therefore, take effect immediately upon publication.

Authorship

The primary author of this proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1984–1985

Outside Dates: Between September 1, 1984, and January 26, 1985, Alaska may select seasons on waterfowl, snipe and cranes, subject to the following limitations:

Shooting hours: One-half hour before sunrise to sunset daily.

Hunting Seasons

Ducks, geese and brant—107 consecutive days in the Pribilof and Aleutian Islands, except Unimak Island; 107 days in the Kodiak (State game management unit 8) area and the season may be split without penalty; 107 consecutive days in the remainder of Alaska, including Unimak Island. Exception: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be white-fronted or Canada geese, singly or in the aggregate of these species. In addition to the basic limit, there is a daily bag limit of 4 and a possession limit of 8 Emperor geese.

Brant—A daily bag limit of 4 and a possession limit of 8.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 2 and a possession limit of 4.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1984–85

Shooting hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1984, and January 15, 1985, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Puerto Rican plain pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is known to be present in the above locale in small numbers and which is presently listed as an endangered species under the Endangered Species Act of 1973.

Ducks, Coots, Gallinules and Snipe

Outside Dates: Between November 5, 1984, and February 28, 1985, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common gallinules, and common snipe. The season may be split into two segments.

Daily Bag and Possession Limits

Ducks—Not to exceed 4 daily or 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Coots—There is no open season on coots, i.e. common coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*).

Common gallinules—Not to exceed 6 daily and 12 in possession, except that the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Closed Areas: No open season for ducks, gallinules, and snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1984–85

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1984, and January 15, 1985, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Ground dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red necked pigeon, scaled pigeon.

Ducks

Outside Dates: Between December 1, 1984, and January 31, 1985, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (Oxyura dominica).

Dated: June 28, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-19115 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 49, No. 140
Thursday, July 19, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 77P-0146]

Label Designation of Ingredients in Cheese and Cheese Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the food regulations for label designation of ingredients in cheese and cheese products to permit (1) microbial cultures to be declared as "cheese cultures" and (2) enzymes of animal, plant, or microbial origin to be declared as "enzymes." FDA is proposing these changes in order to simplify and standardize nomenclature for cultures and enzymes which appear in ingredient lists on cheese and cheese products. FDA is also responding to two requests for advisory opinions on whether enzymes used in the production of cheese and cheese products are processing aids within the provisions of § 101.100(a)(3)(ii)(*ec*) (21 CFR 101.100(a)(3)(ii)(*c*)) and thereby exempt from ingredient listing requirements.

DATE: Written comments by September 17, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0175.

SUPPLEMENTARY INFORMATION: FDA has received two requests for advisory opinions on whether enzymes used in the production of cheese and cheese products are processing aids within the provisions of § 101.100(a) (3)(ii) (*c*). These provisions define processing aids as substances that are added to a food for their technical or functional effect in the processing, but are present in the finished food at insignificant levels and do not have any technical of functional effect in that food. Such processing aids are exempt from ingredient listing requirements.

One request for advisory opinion was contained in a petition from the National Cheese Institute, Inc. (NCI) (Docket No. 77P-0146), concerning standardization of nomenclature for cultures and enzymes used in the production of cheese and emulsifiers used in the production of processed cheese, cheese food, cheese spread, and related food. The NCI petition maintained that all enzymes used in cheese making could be considered processing aids because:

(1) Enzymes added to milk are basically protein,

(2) The amounts used do not, in and of themselves, significantly alter the composition of resulting cheese, and

(3) An insignificant fraction of the added active enzymes is present in the finished cheese and even this fraction becomes inactive.

The Milk Industry Foundation (MIF) submitted a similar request for an advisory opinion (Docket No. 78A-0089). However, the MIF request was more specific in that it addressed only those enzymes used in the manufacture of cottage cheese dry curd. MIF stated that these enzymes function during the process of milk coagulation by improving the texture of the curd, increasing the ability of each curd cube to maintain the desired shape and form, enhancing whey expulsion during cooking of the curd, and permitting the curd to be cut at a slightly higher pH, thus resulting in a sweeter, or less acidic curd. Although these enzymes significantly improve cottage cheese dry curd processing, they are completely inactivated during cooking and have no residual effect on the finished dry curd. MIF advised:

> A typical milk coagulant usage level by the cottage cheese industry is the addition of 0.3 fl. oz. of an active coagulant such as rennet per 1000 gallons of skim milk—i.e., and initial level of rennet or other milk coagulant of approximately 2 ppm. During the "setting" step of curd formation approximately 70% of the active coagulant becomes resident in the whey fraction, and the coagulant remaining in the curd at this point in the manufacturing procedure is approximately 30% of the original amount added. Subsequent to setting the milk, curd cutting, cooking, multiple curd washings and draining steps effectively result in near complete removal of the coagulant.

FDA has been persuaded that when rennet and other milk-clotting enzymes are used in the manufacture of cottage cheese dry curd, the enzymes serve a technical or functional effect in the manufacture of the curd, but serve no such effect in the finished cottage cheese dry curd. In view of the fact that the MIF data indicate that these enzymes are present in the finished cottage cheese dry curd at insignificant levels, the agency advises that they are processing aids in this situation. As a result, these enzymes are not required to be included in ingredient lists for cottage cheese dry curd or for products produced therefrom (e.g., cottage cheese and lowfat cottage cheese).

Although enzymes are processing aids for the manufacture of cottage cheese dry curd, they are not processing aids for the manufacture of all cheeses. In some cheeses (e.g., cheddar, swiss, etc.), enzymes remain active in the finished cheese functioning as an integral part of its physical attributes by enhancing body, flavor, and aroma. Because such functional effects are contrary to provisions of § 101.100(a)(3)(ii)(*c*) pertaining to the finished food, FDA advises that, as a general rule, enzymes used in the manufacture of cheese are not processing aids. Of course, firms may request the agency's opinion on whether specific enzymes are processing aids in specific cases. All requests should substantiate that FDA could appropriately classify such enzymes as processing aids. Data should be submitted to show that the enzymes serve a technical of functional effect in the manufacture of the cheese, but not in the finished cheese. The data should establish that the enzymes have been inactivated when the cheese is in a finished condition. The data should also establish that the enzymes are present in the finished cheese at insignificant levels.

The NCI petition requested that § 101.4(b) be amended by adding a new subparagraph to permit all safe and suitable enzymes of animal, plant, or microbial origin used in the production of cheese to be declared as "enzymes" provided FDA does not consider these enzymes to be processing aids within

the meaning of § 101.100(a)(3)(ii). The petitioner stated:

> The enzymes used in the making of cheese are extracted from animal stomachs or derived from the controlled fermentation of certain molds and bacteria. These enzyme sources may be blended (and usually are) in such manner to produce desired cheese characteristics. The cheese industry consists of several hundred cheese factories making cheese for less than a hundred packagers of cheese. It would be impractical for the individual packer to have on hand all label variations which may at one time or another describe the enzyme or combination of enzymes used by the hundreds of cheesemakers in making the many different cheese varieties from milk with inherent seasonal variations.

FDA believes that the petitioner presented reasonable grounds for permitting enzymes used in the production of cheese to be declared in the list of ingredients as "enzymes." The agency recognizes that when cheese manufacturers are forced to maintain numerous label stocks, the cost of such maintenance can be considerable and such cost is passed on to consumers. This cost cannot be justified in view of the agency's belief that information of specific enzyme names is not significant to consumers. Since 1973, some cheese standards have permitted enzymes to be declared by the word "enzymes" and the agency has included such permission in subsequent revisions of other cheese standards. For example, in the September 19, 1978 **Federal Register** (43 FR 42135), FDA proposed certain revisions for nine cheese standards of identity. Each of the proposed revisions would have permitted enzymes to be declared by the word "enzymes." FDA did not receive any comments concerning this term on the proposed revisions, and this permission was retained in the final rule which was published in the January 21, 1983 **Federal Register** (48 FR 2736). Also, in the January 21, 1983 **Federal Register** (48 FR 2779), FDA proposed revisions in nine additional cheese standards. The same enzyme provisions were included in these proposed revisions. Consequently, FDA is proposing to add new paragraph (b)(22) to § 101.4 to permit all safe and suitable enzymes used in the production of cheese to be declared in the list of ingredients as "enzymes."

If proposed paragraph (b)(22) is published as a final rule, all safe and suitable enzymes of animal, plant, or microbial origin which are used in the production of cheese and cheese products may be declared by the word "enzymes." As a result, it would no longer be necessary for cheese standards to specifically address the generic term "enzymes" for purposes of label declaration. Standards already addressing this term will not be affected if paragraph (b)(22) is promulgated as a final rule. However, the specific provisions addressing label declaration of enzymes would then be a repetition of paragraph (b)(22). Because such duplication should not create any significant problems, FDA has no plans for immediate revision of appropriate cheese standards if this regulation is promulgated as a final rule. The duplication could more efficiently be removed by amending the standards when they are being revised for other more significant reasons. Of course, proposed revisions of cheese standards containing enyzme labeling provisions will not be affected by this proposal as it is possible that the enzyme provisions in proposed paragraph (b)(22) will not necessarily be promulgated as a final rule.

The NCI petition also requested that § 101.4(b)(5) be revised to read:

> Microbial cultures may be declared as "cheese cultures" or by the word "cultured" followed by the name of the substrate, e.g., "made from cultured milk."

At the present time, § 101.4(b)(5) already permits bacterial cultures to be declared by the word "cultured," followed by the name of the substrate (e.g., "made from cultured skim milk or cultured buttermilk"). However, there are no provisions for terms such as "cheese cultures." NCI asserted that such a term would be easily understood and pointed out that some cheese standards already permit cheese cultures to be declared in this manner.

FDA agrees that the term "cheese cultures" is easy to understand and acknowledge that since 1973 some cheese standards have permited bacterial cultures to be declared by this term. FDA is not aware of any consumer dissatisfaction with the term "cheese cultures" in these cases. The agency does not believe that consumer problems will be created if all cheeses are permitted to use this term. FDA pointed out, however, that NCI requested that this term apply to microbial cultures, not bacterial cultures. The term microbial cultures, which is broader than the term bacterial cultures, includes molds as well as bacteria. FDA agrees that the term microbial, rather than bacterial, is more appropriate for cheese cultures because cheese cultures often include mold as well as bacteria.

Accordingly, FDA proposes to permit microbial cheese cultures to be declared as "cheese cultures." The agency proposes to permit this declaration by adding new paragraph (b)(21) to § 101.4 rather than by revising § 101.4(b)(5) because paragraph (b)(5) applies to all foods and pertains only to bacterial cultures. NCI has not substantiated that all foods need an exemption for microbial cultures.

In addition, NCI requested that § 101.4(b) be amended by adding a new paragraph to permit all emulsifying agents which are the sodium salts of phosphoric acids to be declared in the ingredient statement as "sodium phosphate." The petitioner asserted that these salts hydrolyze to the phosphate monomer upon addition to the cheese mixture in the cooker and that it is impractical to maintain an inventory of labels with all of the combinations of permitted sodium phosphate emulsifiers. The petitioner contended that the proposed amendment would furnish the consumer with information relative to the nature of the emulsifier used and permit the processor to make a more uniform product.

FDA disagrees that emulsifying agents which are the sodium salts of phosphoric acids should be declared as "sodium phosphate" and declines to propose such an amendment. Although FDA is aware that in some cases complete hydrolyzation of these salts may occur, the agency is also aware that the extent of hydrolyzation varies with the types of salt and the manufacturing conditions. Often these processes are quite complex and only partial hydrolysis takes place during manufacture of the processed cheese. Consequently, the consumer may purchase processed cheese containing the sodium salts of phosphoric acids in their unhydrolyzed form. Also, one of the emulsifying agents listed in the petition contains aluminum as well as sodium and phosphate.

FDA advises that, pending the issuance of a final regulation ruling on this proposal, the agency will not initiate regulatory action against any food product on the basis of improper ingredient declaration of enzymes, provided such ingredient declarations are in accordance with this proposal.

FDA proposes that the effective date of any final regulation that may be based on this proposal be the date of publication of the final regulation in the **Federal Register**. Because the regulation would relieve a requirement by providing for alternative labeling, good cause exists to make it effective on the date of publication.

In accordance with Executive Order 12291, FDA has analyzed the economic effects of this proposal, and the agency has determined that the final rule if

promulgated, will not be a major rule as defined by that Order. The basis for this determination is that, for cheese and cheese products, this proposed rule provides alternative nomenclature for declaration of microbial cultures and enzymes in ingredient lists without imposition of additional labeling requirements. Manufacturers should therefore not be required to change existing labels, and they may be provided with greater flexibility on listing mandatory information on new labels. No increase in manufacturers' labeling costs is therefore expected.

In accordance with the Regulatory Flexibility Act, FDA has considered the effect that this proposal would have on small entities, including small businesses and has determined that the effect of this proposal is to exempt cheese and cheese products containing microbial cultures and enzymes from certain labeling requirements, thus potentially reducing labeling costs. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

The agency has determined pursuant to 21 CFR 25.24(d)(13) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 101

Food labeling, Misbranding, Nutrition labeling, Warning statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 403, 701(a), 52 Stat. 1047–1048 as amended, 1055 (21 U.S.C. 343, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 101 be amended in § 101.4 by adding new paragraphs (b)(21) and (b)(22) to read as follows:

PART 101—FOOD LABELING

§ 101.4 Food; designation of ingredients.

* * * * *

(b) * * *

(21) Microbial cultures used in the production of cheese and cheese products may be declared as "cheese cultures."

(22) All safe and suitable enzymes of animal, plant, or microbial origin which are used in the production of cheese and cheese products, may be declared by the word "enzymes."

* * * * *

Interested persons may, on or before September 17, 1984 submit to the Docket Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 29, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-19061 Filed 7-18-84; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 177

San Carlos Indian Irrigation Project, Arizona; Revision of Power Rates

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs proposes to revise two of the three rate schedules which establish the charges for electric power and energy provided by the San Carlos Indian Irrigation Project. An analysis of the financial condition of the Power Division Indicates that a rate adjustment is *required* to assure sound management and operation of the power system.

DATE: Comments must be received on or before September 17, 1984.

ADDRESS: Written comments should be directed to the Phoenix Area Office, Bureau of Indian Affairs, P.O. Box 7007, Phoenix, AZ 85001.

FOR FURTHER INFORMATION CONTACT: Ralph Esquerra, Acting Project Engineer, San Carlos Indian Irrigation Project, P.O. Box 250, Coolidge, AZ 85228. Telephone (602) 723–5439.

SUPPLEMENTARY INFORMATION: The projected operating revenues for fiscal year 1984 are $12,153,438 and the projected operating expenses are $12,915,870; this leaves a deficit of $762,432. To eliminate this deficit and to *provide* for increased costs of labor, materials and equipment, the Project power rates must be appropriately adjusted to generate the required additional revenues.

A study performed by the Project indicates that revenues derived from the sale of energy under the existing rate schedules are not sufficient to cover the cost of service provided to the power customers; therefore; it is proposed that the existing; *Residential* (single and three-phase service to residences and small, non-commercial users) and *General* (single and three-phase service for all purposes except residences and small, non-commercial users) rate schedules be adjusted to more accurately reflect the cost of providing service. If effected, power bills for service under the Residential and General rate schedules will increase overall by an amount of 12.4%.

This notice is published in exercise of rulemaking authority delegated to the Deputy Assistant Secretary—Indian Affairs (Operations) by the Secretary of the Interior in 209 DM 8 and redelegated to Area Directors in 10 BIAM 3.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule.

The principal author of this document is Ralph Esquerra, San Carlos Irrigation Project, P.O. Box 250, Coolidge, AZ (602) 723–5439.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The Following proposed rate schedules were developed, based on San Carlos Irrigation Project's existing rate schedules, as of January 1984. The final proposed rate schedules will be based on existing Project rate schedules in effect on the approval date of this increase.

List of Subjects in 25 CFR Part 177

Electric power, Indians—lands, Irrigation.

PART 177—[AMENDED]

It is proposed to amend Part 177, Subchapter H, Chapter 1 of Title 25 of the Code of Federal Regulations as follows:

1. The authority for Part 177 is as follows:

Authority: Sec. 5, 43 Stat. 476, 45 Stat. 210, 211; 5 U.S.C. 301