List of Subjects in 12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

1. The authority citation for part 9 continues to read as follows:

Authority: 12 U.S.C. 24(Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

2. A new § 9.101 is added to read as follows:

§ 9.101 Acting as investment adviser for a fee.

(a) *In general.* As used in the definition of ''fiduciary capacity'' at § 9.2(e), *investment adviser* generally means a national bank that provides advice or recommendations concerning the purchase or sale of specific securities, such as a national bank engaged in portfolio advisory and management activities (including acting as investment adviser to a mutual fund). The qualifying phrase ''if the bank receives a fee for its investment advice'' excludes those activities in which the investment advice is merely incidental to other services.

(b) *Specific activities*—(1) *Full-service brokerage.* Engaging in full-service brokerage may entail providing investment advice for a fee, depending upon the commission structure and specific facts. In making this determination, the OCC will consider full-service brokerage to involve investment advice for a fee if a non-bank broker engaged in that activity is considered an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*).

(2) *Activities not involving investment advice for a fee.* The following activities generally do not entail providing investment advice for a fee:

(i) Financial advice and counseling, including strategic planning of a financial nature, merger and acquisition advisory services, advisory and structuring services related to project finance transactions, and providing market economic information to customers in general;

(ii) Client-directed investment activities where the fee does not depend on the provision of investment advice;

(iii) Investment advice incidental to acting as a municipal securities dealer;

(iv) Real estate asset management;

(v) Real estate consulting;

(vi) Advice concerning bridge loans;

(vii) Services for homeowners' associations;

(viii) Tax planning and structuring advice; and

(ix) Investment advice authorized by the OCC under 12 U.S.C. 24(Seventh) as an incidental power necessary to carry on the business of banking.

Dated: July 2, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–17792 Filed 7–8–97; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–69–AD]

RIN 2120–AA64

Airworthiness Directives; Turbo-Propeller Powered General Dynamics (Convair) Model 240, 340, and 440 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to various turbo-propeller powered General Dynamics (Convair) Model 240, 340, and 440 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by August 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–69–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank Hoerman, Aerospace Engineer, Flight Test Branch, ANM–160L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 527–5371; fax (562) 625–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–69–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–69–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop

engines. (For the purposes of this proposal, Beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved Airplane Flight Manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since turbo-propeller powered General Dynamics (Convair) Model 240, 340, and 440 series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other turbo-propeller powered General Dynamics (Convair) Model 240, 340, and 440 series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 178 General Dynamics (Convair) Model 240, 340, and 440 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,680, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Dynamics (Convair): Docket 97-NM–69-AD.

Applicability: All turbo-propeller powered Model 240, 340, and 440 series airplanes, including those models commonly referred to as Model 580, 600, and 640 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations

Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–17848 Filed 7–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 97P–0206]

Food Labeling: Health Claims; Dietary Sugar Alcohols and Dental Caries

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulation that authorized a health claim on sugar alcohols and dental caries to include the sugar alcohol erythritol. FDA is proposing this action in response to a petition filed by the Cerestar Holding B.V., Mitsubishi Chemical Corp., and Nikken Chemicals Co. The agency has tentatively concluded that, based on the totality of publicly available scientific evidence presented in the petition, erythritol does not promote dental caries. Therefore, FDA is proposing to amend the sugar alcohol and dental caries health claim to include erythritol.

DATES: Written comments by September 22, 1997. The agency is proposing that any final rule that may issue based upon this proposal become effective upon its publication in the **Federal Register**.

ADDRESSES: 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: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5483.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 23, 1996 (61 FR 43433), the agency adopted a final rule to authorize the use, on food labels and in food labeling, of health claims on the association between sugar alcohols and dental caries (hereinafter referred to as the sugar alcohol final rule) (§ 101.80 (21 CFR 101.80)). FDA adopted this regulation in response to a petition filed under section 403(r)(3)(B)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(3)(B)(i)). Section 403(r)(3)(B)(i) of the act states that the Secretary of Health and Human Services (and, by delegation, FDA) shall issue regulations authorizing health claims only if he or she determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence (see also § 101.14(c) (21 CFR 101.14(c))).

The sugar alcohol final rule sets out the circumstances in which a sugar alcohol is eligible to be the subject of a health claim (§ 101.80(c)(2)(ii)). Section 101.80(c)(2)(ii)(A) states that the food must meet the requirement for a sugar free food defined in 21 CFR 101.60(c)(1)(i). Section 101.80(c)(2)(ii)(B) lists the sugar alcohols that are eligible to bear the claim, xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, hydrogenated starch hydrolysates, hydrogenated glucose syrups, or a combination of these. Section 101.80(c)(2)(ii)(C) states that:

> [W]hen fermentable carbohydrates are present in the sugar alcohol-containing food, the food shall not lower plaque pH below 5.7 by bacterial fermentation either during consumption, or up to 30 minutes after consumption as measured by the indwelling plaque pH test found in ''Identification of Low Caries Risk Dietary Components,'' * * * which is incorporated by reference * * *.

In the sugar alcohol final rule, the agency stated that for other sugar alcohols to be included in § 101.80(c)(2)(ii)(B), a petitioner must show how the substance conforms to the requirements of §§ 101.14(b) and 101.80 (61 FR 43433 at 43442). FDA stated:

> For those substances that are to be consumed at other than decreased dietary levels, the petitioner must demonstrate to FDA's satisfaction that the substance is safe and lawful under the applicable food safety provisions of the act (§ 101.14(b)(3)(ii)). Likewise, the petitioner would need to provide evidence that the sugar alcohol will not lower plaque pH below 5.7. Therefore, before a claim can be made for a new sugar alcohol, it must be shown to meet the requirements for § 101.80. When this is demonstrated, FDA will take action to add the substance to the list in this regulation, which has been renumbered as § 101.80(c)(2)(ii)(B).

The present rulemaking is in response to a petition to amend § 101.80(c)(2)(ii)(B) to include erythritol as one of the sugar alcohols that is eligible to bear the sugar alcohol and dental caries health claim.

II. Petition for Health Claim on Erythritol and the Nonpromotion of Dental Caries

A. The Petition

On April 4, 1997, the petitioners submitted a petition to FDA requesting that the agency amend § 101.80(c)(2)(ii)(B) to authorize a claim to authorize a noncariogenicity dental health claim for the sugar alcohol erythritol. On May 16, 1997, the agency sent the petitioner a letter stating that it had completed its initial review of the petition, and that the petition would be filed in accordance with section 403(r)(4) of the act (see Docket 97P–0206, Letter 1). The following is a review of the health claim petition and of whether erythritol satisfies the requirements of §§ 101.80(c)(2)(ii) and 101.14(b) and (c) of FDA's regulations.

B. Preliminary Requirements

1. The Substance That Is the Subject of the Petition

Erythritol is a 4-carbon, monosaccharide polyhydric alcohol. It occurs naturally in a wide variety of plants (e.g., watermelons, melons, grapes, and mushrooms) and animals (e.g., humans, dogs, and cows). Erythritol is also a product of the fermentation by yeasts and molds of sugars (Ref. 1, p. 27).

2. The Substance Is Associated With a Disease for Which the U.S. Population Is at Risk

In the preamble to the proposed sugar alcohol and dental caries rule (60 FR 37507 at 37509, July 20, 1995) and in the regulation authorizing the claim on sugar alcohols and dental caries (§ 101.80(a)(3)), FDA established that dental caries is a disease for which the U.S. population is at risk. The agency stated:

> Dental caries is recognized in *The Surgeon General's Report on Nutrition and Health* * * * as a disease or health-related condition for which the United States population is at risk * * *. The overall prevalence of dental caries imposes a substantial burden on Americans. Of the 13 leading health