subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, which in some cases may be classified, and reveal investigative interest on the part of DHS or ICE. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation pertaining to an immigration matter, which in some cases may be classified, and prematurely reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal immigration law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement and for the protection of national security, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject of the nature or existence of an investigation, which could cause interference with the investigation, a related inquiry or other law enforcement activities, some of which may be classified.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), (f) (Agency Rules), and (g) (Civil Remedies) because portions of this system are exempt from the individual access provisions of subsection (d).

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with ICE's ability to obtain, serve, and issue subpoenas, warrants and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–24996 Filed 10–22–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2005–0103]

RIN 0579–AB98

Special Need Requests Under the Plant Protection Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our domestic quarantine regulations to establish a process by which a State or political subdivision of a State could request approval to impose prohibitions or restrictions on the movement in interstate commerce of specific articles that are in addition to the prohibitions and restrictions imposed by the Animal and Plant Health Inspection Service. The Plant Protection Act provides that States or political subdivisions of States may make such special need requests, but there are currently no procedures in place for their submission or consideration. This action establishes a process by which States may make a special need request.

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Osama El-Lissy, Director, Emergency Management, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1237; (301) 734–5459.

SUPPLEMENTARY INFORMATION:

Background

The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) gives authority to the Secretary of Agriculture to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States, or the dissemination of a plant pest or noxious weed within the United States. The Secretary has delegated this authority to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Under section 436 of the PPA (7 U.S.C. 7756), no State or political subdivision of a State may regulate the movement in interstate commerce of any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order (1) to control a plant pest or noxious weed; (2) to eradicate a plant pest or noxious weed; or (3) to prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States. The only exceptions to this prohibition are when a State or political subdivision of a State imposes regulations which are consistent with and do not exceed the regulations or orders issued by the Secretary, or when the State or political subdivision of a State demonstrates to the Secretary, and the Secretary finds, that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

On April 4, 2006, we published in the **Federal Register** (71 FR 16711–16716, Docket No. APHIS–2005–0103) a proposal [1] to amend the regulations by adding a new ''Subpart—Special Need Requests'' (7 CFR 301.1 through 301.1–3) in which we set out procedures for the submission and handling of special need requests.

We solicited comments concerning our proposal for 60 days ending June 5, 2006. We received 17 comments by that date. They were from representatives of State agriculture departments, environmental groups, industry organizations, and private citizens. While the majority of these commenters supported the establishment of criteria for the submission of special need requests, all of the commenters expressed some reservations, which are discussed below by topic. We are

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2005-0103.*

making only minor changes in response to those comments.

Several commenters were concerned that the timeframe for APHIS to review and make a decision to grant or deny a special need request would be too long and could potentially hinder rapid response to the introduction or spread of a pest. Several of these commenters proposed their own timelines for each step in the review and decisionmaking process or suggested publishing the receipt of a special need request as an interim rule.

We disagree that the special need request process would hinder timely response to the introduction or spread of pests. The special need request process is intended as a way for States to request authorization to establish additional prohibitions or restrictions for pests that APHIS already currently regulates. There are other processes in place for responding to new pests. In addition, the review and decisionmaking process for special need requests would not be a rulemaking process, as we would not be amending the regulations to reflect our granting of a request. As stated in the proposed rule, upon receipt of a complete special need request, we would publish a notice in the **Federal Register** announcing the availability for review and comment of the request along with all materials submitted in support of the request. Following the comment period, we would publish another notice advising the public of the Administrator's decision to either grant or deny the special need request based upon his or her review and evaluation of the information submitted in support of the request and of any comments received. If a special need request is time sensitive, the State making the request should give APHIS an idea of its urgency so that we may prioritize our review and decisionmaking regarding that request.

One commenter stated that a special need exception should automatically expire after a certain period of time unless a State can successfully demonstrate that there is a continued need for the exemption.

We agree that a special need exception may no longer be necessary after a certain period of time. Therefore, this final rule provides that a special need exception, if granted, would be applicable for 2 years, after which the State or political subdivision of a State must submit a request for renewal of the exemption. If a renewal is submitted, it would need to address the same criteria as the initial request (an updated risk analysis, survey, etc.) and would have to show that a special need still exists. The renewal would have to be submitted no sooner than 6 months and no later than 3 months prior to the end of the 2-year applicability period for the initial exception. Once we have received a request for a renewal, we would follow the same notice and comment process we used for the initial granting of the special need exception. If, by the end of the 2-year applicability period, the State or political subdivision of a State does not submit a renewal, the State or political subdivision of a State's special need exception will lapse and the State or political subdivision of a State will have to reapply for the special need exception.

Several commenters were concerned about the process used in circumstances where there may be insufficient data regarding the pest potential of a specific species or expressed concern regarding the burden on States to answer the criteria for the special need request comprehensively, particularly with respect to the cost of surveys. Several commenters suggested that, similar to the process used by the World Trade Organization (WTO), a State or political subdivision of a State be allowed to adopt temporary restrictions until APHIS has had time to evaluate whether such restrictions are valid.

As stated above, the special need request process is intended as a way for States to request additional prohibitions or restrictions for pests that APHIS already currently regulates. Therefore, we would expect that only in rare instances would there not be sufficient data present about a certain pest. We will take lack of data into account in such instances. With respect to temporary restrictions, the PPA requires that special need exceptions be based on sound scientific data or a thorough risk assessment; therefore we do not believe that special need exceptions should be granted until a full review of the available data has been conducted.

Several commenters requested clarification or definitions of terms used within the rule, such as ''special need,'' ''sound scientific data,'' and ''risk assessment.'' Several commenters also asked for specific criteria regarding the type of data we would accept in consideration of a special need request or whether both ''sound scientific data'' and a ''thorough risk assessment'' are needed to make a special need request. Some commenters suggested that it would be helpful to adopt the definitions and standards used by international organizations such as the WTO, the International Plant Protection Convention (IPPC), or the Food and Agriculture Organization.

These terms are drawn from the text of the Plant Protection Act (''* * * a State demonstrates to the Secretary, and the Secretary finds, that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment''), and we do not consider them to have any specialized meaning beyond their commonly understood meanings. Section 301.1–2 of the regulations clearly outlines the type of information required for consideration of a special need request and provides for the submission of risk analyses or other scientific data in support of a special need request.

Another commenter asked whether States may petition USDA to conduct risk assessments or whether States would be required to conduct their own assessments.

We believe that States would be in a better position to come up with the information required under § 301.1–2 than APHIS, as they would be more aware of the special circumstances that led them to apply for additional measures. However, given that special need requests only apply to pests that APHIS is already currently regulating, we welcome, and will accommodate, requests from States for any information we have gathered on such pests.

Two commenters expressed concern that the proposed rule promotes economic protectionism by allowing States to restrict interstate movement in order to protect a specific crop or commodity.

We disagree that the proposed rule promotes economic protectionism. Our process for deciding to either grant or deny a special need request will be determined exclusively on the basis of the best available science and the need to take the least restrictive action. In addition, the decision to grant or deny a special need request will be based on several specific criteria and each of those criteria will need to be satisfied through the presentation of compelling, science-based evidence. However, we have revised our criteria in order to clarify that we will not grant a special need request based solely on economic factors.

Another commenter suggested that, in the event of the withdrawal of a special need exception, the special need exception be continued through the comment period and up to and until a withdrawal decision by the Administrator.

As stated in § 301.1–3(d), if the Administrator determines that there is the need for the withdrawal of a special need exception before the renewal date of the exception, APHIS will publish a

notice in the **Federal Register** to inform the public of the withdrawal and to make the information supporting the withdrawal available for review and public comment for at least 60 days. A withdrawal of a special need exception will not come into effect until the close of the comment period and evaluation of all comments received, after which APHIS will publish another notice announcing the Administrator's decision to either withdraw or uphold the special need exception.

One commenter was concerned that a special need request involving a potentially weedy plant might be rejected by APHIS on the grounds that the plant is ''present'' in a State or political subdivision of a State, when in fact the plant is present only in nursery or garden settings.

Our policies for determining when a weed is considered to be ''present'' are consistent with IPPC guidelines, specifically International Standards for Phytosanitary Measures No. 8, ''Determination of Pest Status in an Area''. We do not envision circumstances under which we would cite the mere presence of a plant in a nursery or garden setting as grounds for denying a special need request.

One commenter expressed concern that States may not be aware of what they may regulate and when and suggested that we state what States may regulate with respect to species that are and are not subject to a domestic quarantine.

We believe that the PPA adequately describes the powers of States with respect to interstate movement. As noted, States may regulate any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if their regulations are consistent with or do not exceed the regulations or orders issued by APHIS or when there are no Federal regulations in place for any such plant, plant product, biological control organism, noxious weed, article, or means of conveyance.

Several commenters stated that special need requests should not be limited to States, and that political subdivisions of States should be able to make special need requests independently from States.

We believe that political subdivisions of States might not have the resources to submit special need requests on their own and we also do not want to usurp the power of the States. In addition, we wish to clarify that Tribes may make special need requests independent from States as they are considered to be sovereign nations.

One commenter suggested that States that have violated Federal regulations by imposing prohibitions or restrictions on interstate movement that are in addition to current APHIS prohibitions or restrictions should be excluded from making special need requests.

We do not believe that the commenter's suggestion is appropriate. Instances of States acting contrary to the PPA have been very rare. In addition, prohibiting States that have acted contrary to Federal regulations from ever making special need requests may prevent us from granting legitimate special need requests and thus impair our ability to protect American agriculture.

One commenter stated that a special need request should only be made when a State can demonstrate that there is something ''truly so unusual within the State'' and ''that APHIS is incapable of regulating for that risk''. Further, the commenter stated that a special need request should not be used as a way to appeal regulations that a State does not agree with. Two other commenters stated that the granting of a special need request should be rare.

We agree with the commenters that the special need request process is not meant as an appeals process for APHIS regulations. Our granting of a special need request will be based upon the soundness of the scientific evidence provided by the State in support of its request; special need requests may be granted frequently or infrequently depending on that evidence.

Several commenters asked that we outline who it is in APHIS that will be reviewing the special need requests.

Appropriate and knowledgeable reviewers will be selected based on the nature and scope of the request. We employ experts for each pest that we regulate in both the field and at our headquarters who are involved on a daily basis in the running of the regulatory program. We expect that these experts, along with other experts as needed, would be reviewing material submitted in support of special need requests.

One commenter suggested that States should demonstrate that the protection requested in their special need request would not come at the expense of neighboring States or political subdivisions. A second commenter was concerned by this suggestion, stating that a State or political subdivision is inherently unable to provide data or information on behalf of another State or political subdivision.

We agree that States or political subdivisions of States should be mindful of neighboring States when developing their own special need requests. However, we would not require States to provide specific data showing that their special need request would not negatively impact other States or political subdivisions. Such considerations will be taken into account during review of a special need request. States may also collaborate with other States in submitting multi-State special need requests. However, the special need request must include sufficient, detailed information to allow APHIS to evaluate and make a determination to either grant or deny the special need request for each State on an individual basis. In order to explicitly provide for multi-State special need requests, we are adding this information to the introductory text of proposed § 301.1–2(a).

Several commenters questioned whether a special need request would be applicable to a pathway rather than to just individual pests.

As stated in the proposed rule, the PPA gives authority to the Secretary of Agriculture to prohibit or restrict, among other things, the importation, entry, exportation, or movement in interstate commerce of any article or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States, or the dissemination of a plant pest or noxious weed within the United States. We believe that the special need criteria allow for flexibility in what a State considers to be a factor that makes it ''particularly vulnerable'' by allowing States to provide information regarding ''any other special basis for the request for additional restrictions or prohibitions.''

One commenter suggested that proposed § 301.1–2(a)(4) be changed to include contiguous borders with an area infested with a pest as a circumstance that renders a State ''particularly vulnerable.''

We do not believe it is necessary to change proposed § 301.1–2(a)(4) as suggested because States will have the opportunity to include such information in their responses to the criteria in paragraphs (a)(1) and (a)(2) of that section.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has

been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This rule amends our domestic quarantine regulations to establish a process by which a State or political subdivision of a State could request approval to impose prohibitions or restrictions on the movement in interstate commerce of specific articles that are in addition to the prohibitions and restrictions imposed by APHIS. The PPA provides that States or political subdivisions of States may make such special need requests. This action establishes a process by which States may make a special need request.

For this rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic affects of this final rule on small entities, as required under 5 U.S.C. 604. The economic analysis is set forth below.

Expected Benefits

The principal benefit for entities in a special need area would be the pest risk reduction attributable to the action. The risk of entry and establishment of a pest of concern with and without the granting of a special need request would need to be estimated before the benefit of the reduced risk could be determined. However, the risk of a pest of concern entering and becoming established in an area may be difficult to estimate.

Other possible benefits of a special need request would be easier to calculate. Reduced pest risk due to additional restrictions or prohibitions may mean that certain mitigation measures in the special need area would no longer be considered necessary. There may be less need for inspections, special permits, certain pesticide applications, special handling or packaging, or other safeguards practiced or required prior to the granting of the special need request. Costs forgone once the request has been granted would represent benefits of the action.

Agricultural and other entities in a special need area may also benefit from the reduced availability of articles restricted or prohibited because of the special need request. Restricted supplies from sources outside the special need area could create increased market opportunities for suppliers within the area. If quantities normally purchased could not be provided by suppliers within the special need area (or from outside sources that do not present a pest risk), then suppliers likely would benefit from an increase in price.

Expected Costs

Costs would be incurred both in the special need area and in the area placed under additional restrictions or prohibitions. In each case, the size of the impact would depend upon the volume of supply affected by a special need request. As just described, prices in a special need area may increase if the available quantity of an article is reduced because of restrictions or prohibitions. But gains for suppliers within the special need area from price increases would come at the expense of the area's consumers, and overall there would be a net loss in social welfare. Losses may be incurred not only by end-users, but also by intermediary entities. Stores selling the restricted articles (nurseries, landscaping companies, grocery stores) may face declining demand, depending upon the response of consumers to the price increase, and reduced net revenues.

For the area placed under additional restrictions or prohibitions because of a special need request, sales of affected articles may decline if other replacement markets are not found. Even if shipments to the special need area can be maintained, additional costs may be incurred. For example:

- Growers may be required to have inspections conducted more frequently than APHIS would otherwise require (a cost that may be borne by the State or political subdivision).
- Growers (or the State or political subdivision) may be required to pay for special phytosanitary certificates or permits.
- Growers may incur costs related to additional risk mitigations, such as particular pesticide applications or treatments, netting, or special greenhouse equipment.
- Additional inspections or restrictions may result in shipping delays.
- Shipping companies may experience reduced business or may face additional costs related to container or sealing requirements of the special need request.

Expected Net Effects

The overriding benefit for an area granted a special need request would be the reduced risk of pest entry and establishment. Other market-related benefits are likely to be outweighed by costs incurred in the special need area and in the area placed under additional restrictions or prohibitions. Costs, including those associated with additional risk mitigation requirements, may be borne by agricultural entities, the public sector, or, most likely, a combination of the two.

Final Regulatory Flexibility Analysis

Need for and objectives of the rule. Section 436(b) of the Plant Protection Act requires that a State demonstrate to the Secretary that it has a special need for additional restrictions or prohibitions, that the Secretary agree that there is a special need, and that the additional restrictions and prohibitions requested by the State be based on sound scientific data or a thorough risk assessment. This rule establishes specific criteria by which a special need request from a State will be evaluated.

The desirability of specific criteria for evaluating special need requests has become apparent from requests received by the Agency from several States for additional restrictions or prohibitions on the interstate movement of articles that would be more restrictive than those currently imposed, for example, by the Phytophthora ramorum regulations in 7 CFR 301.92 through 301.92–12.

Summary of significant issues raised in public comment in response to the initial regulatory flexibility analysis and any changes made in the proposed rule as a result of such comments. APHIS did not receive any comments regarding the initial regulatory flexibility analysis for the proposed rule.

Small entities that may be affected. Agricultural and other entities would not be affected by this rule, per se, but rather by the special need requests that follow. This rule simply establishes a process by which States may make a special need request and provide the Agency with a specific set of evaluation criteria.

U.S. agricultural businesses are predominantly small entities. At all stages of economic activity—production, transportation, processing, and wholesale and retail sales—agricultural industries are generally composed of a large number of small firms and a small number of large firms (with the latter usually generating the major share of industry revenue). Given this prevailing pattern, any impacts that special need requests may have on agricultural businesses can be expected generally to affect a large if not substantial number of small entities. The number of affected small entities would vary by request, and would depend on the particular circumstances in the affected States or political subdivisions.

Reporting, recordkeeping and other compliance requirements. This rule contains various recordkeeping and reporting requirements. These requirements were described in the proposed rule under the heading

''Paperwork Reduction Act'' and have been approved by the Office of Management and Budget. (See the ''Paperwork Reduction Act'' section below.)

We expect that costs related to preparing a special need request would be borne by the public sector, but it is possible that agricultural industries (and therefore small entities) could incur indirect costs depending on arrangements for generating the required information. Also, the Regulatory Flexibility Act's definition of small entities includes small governmental jurisdictions, that is, ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Thus, it is possible that special need areas could correspond to or include small governmental jurisdictions.

Of greater impact than costs associated with the preparation of a request will be the costs and benefits of complying with the additional restrictions or prohibitions, once a special need request is granted by the Agency. Types of benefits and costs that may result from a special need request are identified at the beginning of this document.

A description of the steps the agency has taken to minimize any significant economic impact on small entities, and reasons for selecting the alternative adopted in the final rule. This rule establishes a set of criteria for APHIS to use in evaluating special need requests submitted by special need areas. In and of itself, this rule does not impact entities, large or small. Alternatives to this rule would be to either leave the regulations unchanged, or to require a different set of criteria than is proposed. Leaving the regulations unchanged would be unsatisfactory for the public and for APHIS. The evaluation process for special need requests is currently not as effective as it might be due to the lack of an explicit set of criteria that States and political subdivisions are required to address in applying for a special need exception. The criteria adopted by this rule will provide, we believe, well-defined, scientifically rigorous basis for the submission and evaluation of special need requests pursuant to the requirements of the PPA.

APHIS considers the criteria to be fully sufficient for evaluation purposes. We reiterate that this final rule, in itself, would not affect small entities, but rather would influence future actions—granting of special need requests—that may affect small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0291.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Part 301 is amended by adding a new ''Subpart—Special Need Requests,'' §§ 301.1 through 301.1–3, to read as follows:

Subpart—Special Need Requests

Sec.
301.1 Purpose and scope.
301.1–1 Definitions.
301.1–2 Criteria for special need requests.
301.1–3 Action on special need requests.

Subpart—Special Need Requests

§ 301.1 Purpose and scope.

(a) Under section 436 of the Plant Protection Act (7 U.S.C. 7756), a State or political subdivision of a State may not impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States. The only exceptions to this are:

(1) If the prohibitions or restrictions issued by the State or political subdivision of a State are consistent with and do not exceed the regulations or orders issued by the Secretary, or

(2) If the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

(b) The regulations in this subpart provide for the submission and consideration of special need requests when a State or a political subdivision of a State seeks to impose prohibitions or restrictions on the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds that are in addition to the prohibitions or restrictions imposed by this part or by a Federal Order.

§ 301.1–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service (APHIS), or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Biological control organism. Any enemy, antagonist, or competitor used to control a plant pest or noxious weed.

Interstate commerce. Trade, traffic, or other commerce

(1) From one State into or through any other State or

(2) Within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Move (moved, movement). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved.

Noxious weed. Any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health or the environment.

Plant pest. Any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or parts thereof or any processed, manufactured, or other products of plants.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

§ 301.1–2 Criteria for special need requests.

(a) A special need request, as described in § 301.1, may be generated by a State or a political subdivision of a State. If the request is generated by a political subdivision of a State, the request must be submitted to APHIS through the State. States may also collaborate with other States to submit multi-State special need requests. However, if submitted, the multi-State special need request must include information in sufficient detail to allow APHIS to analyze the impacts on each State on an individual basis. All special need requests must be signed by the executive official or officials or by a plant protection official or officials of the State(s) making the request and must contain the following:

(1) Data drawn from a scientifically sound detection survey, showing that the biological control organism, noxious weed, or plant pest of concern does not exist in the State or political subdivision or, if already present in the State or political subdivision, the distribution of the biological control organism, noxious weed, or plant pest of concern;

(2) If the biological control organism, noxious weed, or plant pest is not present in the State or political subdivision, a risk analysis or other scientific data showing that the biological control organism, noxious weed, or plant pest could enter the State or political subdivision and become established;

(3) Specific information showing that, if introduced into or allowed to spread within the State or political subdivision, the biological control organism, noxious weed, or plant pest would harm or injure the environment or agricultural resources in the State or political subdivision. The request should contain detailed information, including quantitative estimates, if available, about what harm or injury would result from the introduction or dissemination of the biological control organism, noxious weed, or plant pest in the State or political subdivision;

(4) Specific information showing that the State or political subdivision has characteristics that make it particularly vulnerable to the biological control organism, noxious weed, or plant pest, such as unique plants, diversity of flora, historical concerns, or any other special basis for the request for additional restrictions or prohibitions; and

(5) Information detailing the proposed additional prohibitions or restrictions and scientific data demonstrating that the proposed additional prohibitions or restrictions are necessary and adequate, and that there is no less drastic action that is feasible and that would be adequate, to prevent the introduction or spread of the biological control organism, noxious weed, or plant pest in the State or political subdivision.

(b) All special need requests must be submitted to the Deputy Administrator for Plant Protection and Quarantine, APHIS, USDA, Jamie L. Whitten Federal Building, 14th Street and Independence Avenue, SW., Room 301–E, Washington, DC 20250.

§ 301.1–3 Action on special need requests.

(a) Upon receipt of a complete special need request submitted in accordance with § 301.1–2, APHIS will publish a notice in the **Federal Register** to inform the public of the special need request and to make the request and its supporting information available for review and comment for at least 60 days.

(b) Following the close of the comment period, APHIS will publish another notice announcing the Administrator's decision to either grant or deny the special need request. The Administrator's determination will be based upon the evaluation of the information submitted by the State or political subdivision of a State in support of its request and would take into account any comments received.

(1) If the Administrator grants the special need request, the State or political subdivision of a State will be authorized to impose only the specific prohibitions or restrictions identified in the request and approved by APHIS. APHIS will coordinate with the State, or with the State on behalf of the political subdivision of the State, to ensure that the additional prohibitions or restrictions are in accord with the special need exception granted by the Administrator.

(2) If the Administrator denies the special need request, the State or political subdivision of a State will be notified in writing of the reason for the denial and may submit any additional information the State or political subdivision of a State may have in order to request a reconsideration.

(c) If granted, a special need exception will be applicable for 2 years, at the end of which the State or political subdivision of a State must submit a request for renewal of the exception. A special need renewal request must address the same criteria as the initial request submitted under § 301.1–2 and must show that a special need still exists that warrants the continuation of the special need exception. The renewal must be submitted no sooner than 6 months and no later than 3 months prior to the end of the 2-year applicability period for the initial exception. Once a special need renewal request has been received, APHIS will follow the same notice and comment process outlined in paragraphs (a) and (b) of this section. If, by the end of the 2-year applicability period, the State or political subdivision of a State does not submit a special need renewal request, the State's or political subdivision's special need exception will lapse and the State or political subdivision of a State will have to reapply for the special need exception.

(d) If the Administrator determines that there is a need for the withdrawal of a special need exception before the renewal date of the special need exception, the reasons for the withdrawal would be communicated to the State or to the political subdivision of the State and APHIS will publish a notice in the **Federal Register** to inform the public of the withdrawal of the special need exception and to make the information supporting the withdrawal available for review and comment for at least 60 days. Reasons for withdrawal of approval of a special need exception may include, but are not limited to, the availability of new scientific data or changes in APHIS regulations. Following the close of the comment period, APHIS will publish another notice announcing the Administrator's decision to either withdraw or uphold the special need exception. The Administrator's determination will be

based upon the evaluation of the information submitted in support of the withdrawal and would take into account any comments received.

(Approved by the Office of Management and Budget under control number 0579–0291)

Done in Washington, DC, this 17th day of October 2008.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E8–25291 Filed 10–22–08; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA74

Appliance Labeling Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Final rule; correction.

SUMMARY: The Commission is issuing this Notice to make technical corrections to the Appliance Labeling Rule. The corrections are necessary to ensure that amendatory language published on December 28, 2006 and scheduled to become effective on January 1, 2009 is consistent with other Rule amendments that have been codified since 2006 and are already effective.

DATES: The corrections published in this document will become effective on January 1, 2009.

ADDRESSES: Requests for copies of this document are available from: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

Over the last two years, the Commission has issued amendments to its Appliance Labeling Rule (16 CFR Part 305) in three separate proceedings related to: (1) ceiling fan labels (71 FR 78064 (Dec. 28, 2006)), (2) appliance label designs (72 FR 49948 (Aug. 29, 2007)), and (3) metal halide lamp fixtures (73 FR 39221 (July 9, 2008)). The effective dates of these three sets of amendments differ. The label design amendments became effective on February 29, 2008 while the ceiling fan and metal halide amendments will both become effective on January 1, 2009. Because the publication of the ceiling fan amendments preceded the label design amendments, the amendatory instructions in the ceiling fan **Federal Register** Notice are not consistent with the existing Rule provisions. For example, the label design amendments created new section numbers and whole provisions that were not extant at the time the ceiling fan amendments were published. Therefore, the citations for the ceiling fan amendments are no longer accurate. To harmonize the various amendments, the Commission is consolidating the ceiling fan and metal halide amendments in a format consistent with the Rule's current provisions. The corrections included in this Notice contain no substantive changes to these previously announced Rule amendments.[1]

II. Administrative Procedure Act

The amendments published in this notice involve technical and minor, or conforming changes to the labeling requirements in the Rule. These technical amendments merely ensure that previously announced amendatory instructions are consistent with current Rule provisions. They contain no substantive changes to amendments previously announced by the Commission. Accordingly, the Commission finds for good cause that public comment for these technical, procedural amendments is impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

III. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603-604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments merely change the format and citations for previously announced amendments. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

In a June 13, 1988 notice (53 FR 22106), the Commission stated that the Rule contains disclosure and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.7, the regulation that implements the Paperwork Reduction Act.[2] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget (''OMB'') and assigned OMB Control No. 3084-0068. OMB has reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until May 31, 2011. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR Part 305 as amended at 71 FR 78064, December 28, 2006 and 73 FR 39221, July 9, 2008, as follows:

PART 305—[AMENDED]

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. Section 305.2 is amended as follows:

■ a. Revise paragraphs (l)(21) and (l)(22) and add paragraph (l)(23); and

■ b. Revise paragraph (p).

■ The addition and revisions read as follows:

§ 305.2 Definitions.

* * * * *

(l) * * *

(21) Metal halide lamp fixtures.

(22) Ceiling fans.

(23) Any other type of consumer product that the Department of Energy

[1] In addition to these conforming changes necessary to harmonize the amendments, this Notice contains three non-substantive changes. First, section 305.20 has been changed to clarify that the catalog disclosure requirements in section 305.20(a) do not apply to ceiling fans (instead, section 305.20(f) contains the catalog requirements for ceiling fans). Second, this Notice places the ceiling fan labeling requirements in a new section (305.13 Labeling for ceiling fans). Third, in the sample ceiling fan label in Appendix L, the airflow efficiency number has been corrected to match the airflow and electricity use numbers on that label.

[2] 44 USC 3501-3520.