of this section who are employed after exiting an employment service delivery system compared to the total number of those participants who exited. The method of calculation will be established through policy guidance issued by the Department.

(c) The national EER for veterans and eligible persons is the EER achieved by the national State employment service delivery system for those veterans and eligible persons who are participants in all of the State employment service delivery systems for the program year under review. The national EER resulting from this calculation is expressed as a percentage that is rounded to the nearest tenth of a percent.

(d) A State's program year EER is the EER for veterans and eligible persons (as calculated in paragraph (b) of this section) achieved by a single State's employment service delivery system for those veterans and eligible persons who are included in the EER measure for that State's employment service delivery system for the program year under review. The program year EER resulting from this calculation is expressed as a percentage that is rounded to the nearest tenth of a percent.

§ 1001.164 What is the uniform national threshold EER, and how will it be calculated?

(a) The uniform national threshold EER for a program year is equal to 90% of the national EER for veterans and eligible persons (as defined in § 1001.163(c)).

(b) The uniform national threshold EER resulting from this calculation is expressed as a percentage that is rounded to the nearest tenth of a percent.

§ 1001.165 When will the uniform national threshold EER be published?

When practicable, the Veterans' Employment and Training Service (VETS) will publish the uniform national threshold EER for a given program year by the end of December of the calendar year in which that program year ends.

§ 1001.166 How will the uniform national threshold EER be used to evaluate whether a State will be required to submit a corrective action plan (CAP)?

(a) *Comparison.* Each State's program year EER will be compared to the uniform national threshold EER for that program year. State agencies that do not achieve a program year EER that equals or exceeds the national threshold EER (90% of the national EER) for the year under review will be subject to a review by VETS to determine whether the program year EER is deficient.

(b) *Review.* For each State whose program year EER is subject to review to determine deficiency, the review will consider the degree of difference between the State's program year EER and the uniform national threshold EER for that program year, as well as the annual unemployment data for the State as compiled by the Bureau of Labor Statistics.

(1) The review also may consider other relevant measures of prevailing economic conditions and regional economic conditions, as well as other measures of the performance of workforce programs and/or any information the State may submit.

(2) The review will include consultation with VETS field staff about findings from their on-site reviews and desk audits of State agency implementation of policies and procedures for services to veterans, and also may include consultation with staff affiliated with other agencies of the Department, as appropriate.

(c) *Requirement of a CAP.* A State whose program year EER is determined to be deficient will be required to submit a CAP to improve the State's performance in assisting veterans to meet their employment needs as a condition of receiving its next-due JVSG.

(1) Any State whose program year EER has been determined to be deficient will be notified by March 31 of the year following the calendar year in which the program year under review ended.

(2) For any State that is required to submit a CAP, VETS will provide technical assistance (TA) regarding the development of the CAP. The CAP must be submitted to the Grant Officer's Technical Representative by June 30 of the year following the calendar year in which the program year under review ended.

(3) VETS will review the CAP submitted by the State and determine whether to approve it or to provide additional TA to the State.

(i) If VETS approves the CAP, the State must expeditiously implement it.

(ii) If VETS does not approve the CAP, it will take such steps as are necessary to implement corrective actions to improve the State's EER for veterans and eligible persons.

(4) If a State fails to cooperate with the actions imposed by the Department under paragraph (c)(3)(ii) of this section, the Assistant Secretary for Veterans' Employment and Training may take any actions available to remedy non-compliance under 20 CFR 1001.130(a) (referring to the compliance measures discussed in 20 CFR part 658, subpart H).

§ 1001.167 In addition to the procedures specified in these regulations, will the Department be conducting any other monitoring of compliance regarding services to veterans?

Yes. VETS will continue to monitor compliance with the regulations related to veterans' priority of service at 20 CFR 1010.240(b) jointly with the Employment and Training Administration. If a State's program year EER is determined to be deficient for a given program year, that deficiency would constitute information to be considered in monitoring priority of service, since failure to fully implement priority of service could be one of the contributors to a deficient program year EER.

[FR Doc. 2011–3536 Filed 2–17–11; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2000–P–0102, FDA–2000–P–0133, and FDA–2006–P–0033]

Health Claim; Phytosterols and Risk of Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Extension of enforcement discretion.

SUMMARY: The Food and Drug Administration (FDA) is extending the period of time that it intends to exercise enforcement discretion, concerning the use of the health claim for phytosterols and risk of coronary heart disease (CHD), in a manner that is consistent with FDA's February 14, 2003, letter of enforcement discretion to Cargill Health and Food Technologies. In the proposed rule for this health claim that published on December 8, 2010 (75 FR 76526), the Agency provided a period of 75 days from the date of publication of the proposed rule during which FDA intended to exercise its enforcement discretion for the use of such claim consistent with the 2003 letter. FDA is extending this period during which the Agency intends to exercise enforcement discretion to February 21, 2012.

DATES: Submit either electronic or written comments by April 19, 2011.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written

comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Blakeley Fitzpatrick, Center for Food Safety and Applied Nutrition (HFS–830), 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2176.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 8, 2000 (65 FR 54686), FDA issued an interim final rule (IFR) authorizing a health claim for plant sterol/stanol esters and CHD. Among other requirements, the Agency established in the IFR that spreads and dressings for salads must contain at least 0.65 grams (g) of plant sterol esters per reference amount customarily consumed (RACC) to be eligible to bear the health claim and that spreads, dressings for salad, snack bars, and dietary supplements in soft gel form must contain at least 1.7 g of plant stanol esters per RACC to be eligible to bear the health claim.

The Agency received a letter, dated January 6, 2003, from Cargill Health and Food Technologies requesting that FDA issue a letter stating its intention not to enforce certain requirements in the IFR (Ref. 1). The letter cited new scientific evidence and comments submitted to FDA in the plant sterol/stanol esters health claim rulemaking in support of extending the authorized health claim to all forms and sources of phytosterols, and product forms that may effectively reduce blood cholesterol levels. In response to the letter submitted by Cargill and other comments received to the IFR, the Agency issued a letter of enforcement discretion on February 14, 2003 (the 2003 letter). In such letter, the Agency explained that it would consider exercising enforcement discretion, pending publication of the final rule, with respect to certain requirements of the health claim. Specifically, the Agency stated it would consider such discretion with regard to the use of the claim in the labeling of a phytosterol-containing food, including foods other than those specified in § 101.83(c)(2)(iii)(A) (21 CFR 101.83(c)(2)(iii)(A)), if: (1) The food contains at least 400 milligrams (mg) per RACC of phytosterols; (2) mixtures of phytosterol substances (*i.e.,* mixtures of sterols and stanols) contain at least 80 percent beta-sitosterol, campesterol, stigmasterol, sitostanol, and campestanol (combined weight); (3) the food meets the requirements of § 101.83(c)(2)(iii)(B) through (c)(2)(iii)(D); (4) products containing phytosterols, including mixtures of sterols and stanols in free forms, use a collective term in lieu of the terms required by § 101.83(c)(2)(i)(D) in the health claim to describe the substance (*e.g.,* "plant sterols" or "phytosterol"); (5) the claim specifies that the daily dietary intake of phytosterols that may reduce the risk of CHD is 800 mg or more per day, expressed as the weight of free phytosterol; (6) vegetable oils for home use that exceed the total fat disqualifying level can bear the health claim along with a disclosure statement that complies with 21 CFR 101.13; and (7) the use of the claim otherwise complies with § 101.83. Thus, the 2003 letter described intended enforcement discretion with respect to (1) different forms and mixtures of phytosterols in a wider variety of products and (2) the use of the claim on foods containing lower levels of phytosterols than set forth in the IFR.

In the **Federal Register** of December 8, 2010 (75 FR 76526), the Agency issued a proposed rule that, if finalized, would amend § 101.83. The proposed rule, in part, responds to a petition received on May 5, 2006, and it also includes the evaluation of new scientific data that was not available when the IFR was published.

The Agency stated in the proposed rule for the phytosterols and risk of CHD health claim that, pending issuance of a final rule, FDA intends to consider the exercise of its enforcement discretion on a case-by-case basis when a health claim regarding phytosterols and CHD is made in a manner that is consistent with the proposed rule (75 FR 76526 at 76546).

The proposed rule also states that, beginning 75 days after the date of publication of the proposed rule (February 21, 2011), FDA does not intend to exercise its enforcement discretion based on the 2003 letter. Therefore, starting on February 21, 2011, all products bearing the health claim must be in compliance with § 101.83, or if the health claim is made in a manner that is consistent with the proposed rule, the Agency may exercise enforcement discretion.

In the proposed rule, the Agency proposed to make several changes to the requirements for the nature of the food eligible to bear the claim that differ from the requirements in current § 101.83 and from the basis for enforcement discretion in the 2003 letter. Among other changes, FDA proposed to increase the amount of phytosterols that must be present in the food product from 0.4 to 0.5 g of phytosterols per RACC and to only allow the use of the claim in dietary supplements containing the esterified form of phytosterols.

Since publication of the proposed rule, the Agency has received requests from industry to extend the 75-day period from the date of publication of the proposed rule for the exercise of FDA enforcement discretion based on the 2003 letter.[1] In particular, many of the comments stated that 75 days was not enough time for industry to come into compliance with § 101.83 or to make the claim consistent with the proposed requirements in the proposed rule. FDA understands almost all dietary supplement products in the marketplace contain the free form of phytosterols, specifically in solid tablet dosage forms. One reason that the free form is used more frequently in the production of dietary supplements is because it has less bulk, and therefore, manufacturers can produce smaller pills that are easier for consumers to swallow. Based on the totality of publicly available scientific evidence for the cholesterol-lowering effects of nonesterified phytosterols in dietary supplements at the time that the proposed rule was published, the Agency determined that the evidence was inconsistent and tentatively concluded that the scientific evidence for the relationship between dietary supplements containing nonesterified phytosterols and CHD did not meet the significant scientific agreement standard. The Agency, therefore, proposed to amend § 101.83(c)(2)(iii)(B) to make the use of the health claim available only to phytosterol ester-containing dietary supplements that meet all of the specific requirements in § 101.83. Therefore, based on the

[1] The agency received two letters from trade associations representing dietary supplement manufacturers and distributors. One was submitted by the Council for Responsible Nutrition on December 22, 2010, seeking an extension of the Agency's enforcement discretion based on the 2003 letter and one was submitted by the Consumer Healthcare Products Association on January 31, 2011, requesting that FDA permit manufacturers of dietary supplement products with claims regarding free phytosterols and heart disease that were marketed prior to December 8, 2010 (the date of issuance of the proposed rule), to continue marketing of such products until a final rule is published. In addition, the Agency received two petitions for an administrative stay of action, one from Cargill, Inc., dated January 7, 2011 ("Cargill petition"), and another from Pharmachem Laboratories, Inc., dated January 28, 2011 ("Pharmachem petition") (Docket Nos. FDA–2000–P–0102, FDA–2000–P–0133, and FDA–2006–P–0033). The Agency is currently considering these petitions. This document does not represent a decision on the petitions, in whole or in part. We note that Cargill, Inc., and Pharmchem Laboratories, Inc., both requested in their petitions that FDA stay rescission of enforcement discretion under the 2003 letter pending issuance of the final rule. FDA's decision set forth in this document to extend consideration of enforcement discretion based on the 2003 letter until February 21, 2012, is consistent with Cargill and Pharmachem's requests except for the duration of the Agency's enforcement discretion.

Agency's determination in the proposed rule, dietary supplements containing the free form of phytosterols would have to be relabeled or reformulated by February 21, 2011. The comments that the Agency received from industry stated that 75 days is not enough time to reformulate or relabel dietary supplements containing free phytosterols and requested that FDA consider extending its enforcement discretion for the use of the health claim in a consistent manner with the 2003 letter.

The Agency also understands that there are many conventional foods currently available in the marketplace that contain phytosterols at a level of 0.4 g free phytosterol equivalents per RACC. These foods contain phytosterol ingredients that have not been the subject of a generally recognized as safe (GRAS) notification letter to which the Agency had no further questions at a level greater than 0.4 g free sterol equivalents per RACC. A level of 0.4 g free sterol equivalents per RACC is less than the new proposed requirement of 0.5 g of phytosterols per RACC, based on the nonesterified weight of phytosterols. Products with 0.4 g free sterol equivalents per RACC would also have to be reformulated or relabeled beginning on February 21, 2011.

Based on these concerns about reformulation and relabeling during a 75-day period, FDA considers it appropriate to extend the period of time that it intends to exercise enforcement discretion based on the 2003 letter. FDA intends to exercise enforcement discretion until February 21, 2012, with regard to the use of a claim about reduced risk of CHD in the labeling of a phytosterol-containing food, including foods other than those specified in § 101.83(c)(2)(iii)(A), based on the factors set forth in the 2003 letter for the use of such claim in the labeling of food. Information submitted by industry and trade associations about the amount of time necessary to reformulate, relabel, and to submit a GRAS notification in addition to the Agency's experience with the economic impact of labeling and reformulation changes on industry have served as the basis for the Agency's extension of the period during which it intends to exercise enforcement discretion to February 21, 2012, based on the 2003 letter. This document does not change how FDA intends to consider exercising its enforcement discretion when claims are made consistent with the proposed requirements in the proposed rule. Rather, this document only relates to FDA's enforcement discretion based on the 2003 letter, and FDA will determine what, if any, further action is necessary, pending its review of the Cargill and Pharmachem petitions. Food bearing the health claim would be required to comply with any revised requirements established in the final rule when the final rule becomes effective.

References

1. Center for Food Safety and Applied Nutrition, Food and Drug Administration. Letter of Enforcement Discretion from FDA to Cargill Health & Food Technologies. Docket No. FDA–2000–P–0102, document ID DRAFT–0059 (formerly 2000P–1275/LET3) and Docket No. FDA–2000–P–0133, document ID DRAFT–0127 (formerly 2000P–1276/LET4). February 14, 2003.

Dated: February 14, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–3678 Filed 2–17–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 212, and 252

Defense Federal Acquisition Regulation Supplement; Reporting of Government-Furnished Property (DFARS Case 2009–D043)

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise and expand reporting requirements for Government-furnished property to include items uniquely and non-uniquely identified, and to clarify policy for contractor access to Government supply sources.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 8, 2011, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D043, using any of the following methods:

Regulations.gov: http://www.regulations.gov.

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2009–D043" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2009–D043." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2009–D043" on your attached document.

E-mail: dfars@osd.mil. Include DFARS Case 2009–D043 in the subject line of the message.

Fax: 703–602–0350.

Mail: Defense Acquisition Regulations System, Attn: Ms. Clare Zebrowski, OUSD (AT&L) DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Clare Zebrowski, Telephone 703–602–0289; facsimile 703–602–0350. Please cite DFARS Case 2009–D043.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published a proposed rule in the **Federal Register** on December 22, 2010 (75 FR 80426), with a request for comment by February 22, 2011. DoD is extending the comment period for 45 days to provide additional time for interested parties to review the proposed DFARS changes. DoD is planning a public meeting and detailed information on the meeting will be published in the **Federal Register** at a later date.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2011–3727 Filed 2–17–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[EP 542 (Sub-No. 18)]

Regulations Governing Fees for Services

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board proposes to amend the regulations governing user fees for