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

services. The proposed amendment would set the fee for certain formal complaints at $350.

DATES: Comments on this proposal are due by April 19, 2011; and replies are due by May 19, 2011.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-Filing link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 542 (Sub-No. 18), 395 E Street, SW., Washington, DC 20423–0001.

Copies of paper comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131; paper and electronic copies will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at 202–245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board sets user fees in accordance with the Independent Offices Appropriation Act of 1952 (IOAA). The IOAA directs agencies such as the Board to establish fees for specific services that it provides to identifiable recipients, so that the service provided may be "self-sustaining to the extent possible." 31 U.S.C. 9701(a). The fees must be "fair" and be based on a variety of factors, including (but not limited to) the costs to the agency of each covered service, public policy or interest served, and the value of the service to the entity receiving it. 31 U.S.C. 9701(b). The Board's fees transfer some of the cost of funding the agency from the general taxpayer to the entity receiving the benefit of a particular Board action.[1]

Historically, certain fees have been set at levels below the full cost. For example, fee sub-item 58(i), a petition for declaratory order involving a dispute over an existing rate or practice, and fee sub-item 58(ii), all other petitions for declaratory order, were held at $1,000 and $1,400, respectively, well below full cost to agency, to avoid any possible "chilling effect" [2] that higher fees would have on access by shippers and consumers to the Board's adjudicatory process. *See Regulations Governing Fees for Servs. Performed in Connection With Licensing and Related Servs.,* 1 S.T.B. 179, 199–200 (1996). Filing fees for formal complaints generally have been set based on a percentage of the full cost. *Id.* at 195–99. Since 2008, pursuant to Congressional directive, we have held the fees for all rate complaints at or below $350, the level of filing fees for complaints in district court. Fees for competitive access complaints and complaints seeking establishment of a common carrier rate are also below $350.

Thus, in our current fee structure, we have a large gap between the relatively low fees for most complaints and for petitions for declaratory orders and the $20,600 fee for all other formal complaints, a gap that is not good public policy. Therefore, the Board proposes to lower the fee for sub-item 56(iv) [all other formal complaints except competitive access] from $20,600 to $350. Under this proposal, the fee for sub-items 56(i) [full Stand-Alone Cost rate complaints] and 56(ii) [Simplified-SAC rate complaints] would be set at $350, and the fee for sub-item 56(iii) [Three Benchmark rate complaints], the most likely path to rate relief for small shippers, would remain at $150.

We believe three sound public policy considerations call for the Board to set relatively low fees for filing a complaint. Under the ICC Termination Act of 1995,[3] Congress eliminated authority previously held by the ICC to initiate investigations of alleged illegal or unreasonable rates or practices. As a result, the filing of a complaint by shippers or other entities is the Board's only mechanism for investigating and addressing potential rate violations or other unlawful practices.

Second, it is possible that the relatively high fees for filing formal complaints under item 56(iv)—currently $20,600—may be having a chilling effect on shippers and other entities seeking to bring a complaint to the Board. For example, over the past 10 years, our Rail Consumer and Public Assistance unit has assessed hundreds of informal complaints related to service and demurrage, and although many have been successfully resolved, several that were unresolved did not become the subjects of formal complaints. While we presume that some of these cases were not brought before the Board for reasons unrelated to fees, the proposed fee amendment would minimize any chilling effect of high fees, and encourage outside parties to bring potential regulatory violations before the Board for adjudication.

Finally, the proposed amendment should result in better management of the Board's docket and use of Board resources. Maintaining comparatively low filing fees for petitions for declaratory orders, coupled with the high fee for complaints (other than rate or competitive access complaints) under fee item 56(iv), appears to have led parties to seek broad declarations by the Board rather than asking the Board to resolve individual complaints. In some cases, an individual complaint may have been preferable and the Board's fee structure should not be the deciding factor in a party's decision of what type of case to bring.

While not part of the changes proposed here, we intend, in a future proceeding, to consider revising the fees for declaratory order proceedings to better reflect the cost of these proceedings to the agency. However, to encourage courts to continue to seek our advice, when appropriate, under the doctrine of primary jurisdiction, and so as not to unduly burden parties, we also intend to establish a new, comparatively low fee item for petitions for declaratory order that result from court referrals.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. In drafting a rule an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, 5 U.S.C. 603(a), or certify that the proposed rule will not have a "significant impact on a substantial number of small entities," 5 U.S.C. 605(b). The impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. *White Eagle Coop. Ass'n* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

Though these rules may impact some small entities because they may be subject to a filing fee, the fees proposed above would change only the fee for "all other formal complaints except competitive access complaints," by reducing that fee from $20,600 to $350. Accordingly, pursuant to 5 U.S.C.

[1] The fees established by the Board for specific services offset the Board's appropriated funding, and do not directly add to it.

[2] The Interstate Commerce Commission (ICC) previously defined a "chilling effect" as the level at which the filing fee represents a significant factor in determining whether to bring a complaint. *See Regulations Governing Fees for Servs. Performed in Connection with Licensing and Related Servs.,* 1 I.C.C. 2d 196, 198 (1984).

[3] Public Law 104–88, 109 Stat. 803 (1995).

605(b), the Board certifies that the regulations proposed herein would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. This rulemaking will affect the following subjects:

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information.

Decided: February 14, 2011.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

Code of Federal Regulations

For reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1002 of title 49, chapter X of the Code of Federal Regulations as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and § 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a). Section 1002.1(g)(11) also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

2. In § 1002.2, revise paragraph (f)(56)(iv) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

Type of proceeding	Fee
* * * * * * *	
PART V: Formal Proceedings	
* * * * * * *	
(56) * * *	
(iv) All other formal complaints (except competitive access complaints)	$350
* * * * * * *	

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[FR Doc. 2011–3716 Filed 2–17–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 22

[FWS–R9–MB–2011–N018; 91200–1231–9BPP]

RIN 1018–AX53

Migratory Birds; Draft Eagle Conservation Plan Guidance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability for public comment of draft Eagle Conservation Plan Guidance. The Guidance provides recommendations for agency staff and developers to use an iterative process to avoid and minimize negative effects on eagles and their habitats resulting from the construction, operation and maintenance of land-based, wind energy facilities in the United States.

DATES: We must receive any comments or suggestions by the end of the day on May 19, 2011.

ADDRESSES: We have posted our draft *Eagle Conservation Plan Guidance* at *http://www.fws.gov/windenergy.* You may submit e-mail comments to *windenergy@fws.gov.* Please include "Eagle Conservation Plan Guidance Comments" in the subject line of the message, and your full name and return address in the body of your message. Please note that the e-mail address will be closed when the public comment period closes. Alternatively, you may submit comments or recommendations by mail to: Attention: Eagle Conservation Plan Guidance; Division of Migratory Bird Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Mail Stop 4107; Arlington, VA 22203–1610.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, 703–358–2583.

SUPPLEMENTARY INFORMATION: The Service is charged with implementing statutes including the Bald and Golden Eagle Protection Act (BGEPA), the Migratory Bird Treaty Act, and the Endangered Species Act. BGEPA prohibits all take of eagles unless otherwise authorized by the Service. A goal of BGEPA is to achieve and maintain stable or increasing populations of bald and golden eagles. The draft Eagle Conservation Plan Guidance (draft Guidance) interprets and clarifies the permit requirements in the regulations at 50 Code of Federal Regulations (CFR) 22.26 and 22.27, and does not impose any binding requirements beyond those specified in the regulations. The draft Guidance provides a means of compliance with BGEPA by providing recommendations for:

(1) Conducting early pre-construction assessments to identify important eagle use areas;

(2) Avoiding, minimizing, and/or compensating for potential adverse effects to eagles; and,

(3) Monitoring for impacts to eagles during construction and operation.

The draft Guidance calls for scientifically rigorous surveys, monitoring, risk assessment, and research designs proportionate to the risk to eagles. The draft Guidance describes a process by which wind energy developers can collect and analyze information that could lead to a programmatic permit to authorize unintentional take of eagles at wind energy facilities. The process described here is not required, but project proponents should coordinate closely with the Service concerning alternatives to insure that eagle conservation plans conform with requirements of BGEPA. The Service will initiate a peer review of the draft Guidance during the public comment period.

The development of facilities to generate electricity from wind turbines has increased dramatically in the range