

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.*

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## 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](mailto: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.*

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## 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