

§ 77.20 Definitions.

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Official tuberculosis test. Any of the following tests for bovine tuberculosis in captive cervids, applied and reported in accordance with this part:

(1) The single cervical tuberculin (SCT) test.

(2) The comparative cervical tuberculin test (CCT) test.

* * * * *

§ 77.33 [Amended]

3. Section 77.33 would be amended as follows:

a. In paragraph (a) introductory text, by removing the words “in paragraphs (a)(1) and (a)(2)” and adding the words “in paragraph (a)(1)” in their place.

b. By removing and reserving paragraphs (a)(2), (b)(2), (d)(2), and (e)(3).

§ 77.34 [Amended]

4. Section 77.34 would be amended as follows:

a. In paragraph (a)(1), by removing the words “either the CCT test or the BTB test” and adding the words “the CCT test” in their place.

b. By removing paragraph (c).

5. Section 77.35 would be amended as follows:

a. In paragraph (a)(1), by removing the word “three” in the first sentence and adding the word “two” in its place.

b. By revising paragraph (d) to read as set forth below.

§ 77.35 Interstate movement from accredited herds.

* * * * *

(d) *Maintenance of accredited herd status.* To maintain status as an accredited herd, the herd must test negative to an official tuberculosis test within 33–39 months from the anniversary date of the second consecutive test with no evidence of tuberculosis disclosed (that is, the test on which the herd was recognized as accredited or the accrediting test). Each time the herd is tested for reaccreditation, it must be tested 33–39 months from the anniversary date of the accrediting test, not from the last date of reaccreditation (for example, if a herd is accredited on January 1 of a given year, the anniversary date will be January 1 of every third year). Accredited herd status is valid for 36 months (1,095 days) from the anniversary date of the accrediting test. If the herd is tested between 36 and 39 months after the anniversary date, its accredited herd status will be suspended for the interim between the anniversary date and the reaccreditation test. During the suspension period, the herd will be

considered “unclassified” and captive cervids may be moved interstate from the herd only in accordance with the movement requirements for the State or zone in which the herd is located.

§ 77.37 [Amended]

6. In § 77.37, paragraph (a)(2), footnote 3 would be redesignated as footnote 2.

7. In § 77.39, paragraph (a) would be amended as follows:

a. In paragraph (a)(1)(i) introductory text, by removing the words “or the BTB test”.

b. By removing and reserving paragraph (a)(1)(i)(B).

c. In paragraph (a)(1)(ii) introductory text, by removing the words “or the first BTB test”.

d. In paragraph (a)(1)(ii)(A), by removing the word “; or” and adding a period in its place.

e. By removing and reserving paragraph (a)(1)(ii)(B).

f. In paragraph (e) introductory text, by removing the fourth sentence after the paragraph heading and revising the last two sentences of the paragraph to read as set forth below.

§ 77.39 Other interstate movements.

* * * * *

(e) *Herds that have received captive cervids from an affected herd.* * * *

Any exposed captive cervid that responds to the SCT test must be classified as a reactor and must be slaughtered inspected or necropsied. Any exposed captive cervid that tests negative to the SCT test will be considered as part of the affected herd of origin for purposes of testing, quarantine, and the five annual whole herd tests required for affected herds in paragraph (d) of this section.

* * * * *

Done in Washington, DC, this 6th day of January 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–198 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE**Food Safety and Inspection Service****9 CFR Part 392**

[Docket No. 00–019P]

RIN 0583–AC81

Petitions for Rulemaking

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to adopt regulations governing the submission to FSIS of petitions for rulemaking. The Agency is proposing this action to supplement existing non-regulatory guidance on the submission of petitions to FSIS to consider requests to issue, amend, or repeal regulations administered by the Agency. FSIS expects that this proposed rule, if adopted, will help to ensure the filing of well-supported petitions that contain the information necessary to proceed with consideration of the requested rulemaking in a timely manner.

DATES: Comments must be received on or before March 13, 2006.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and, in the “Search for Open Regulations” box, select “Food Safety and Inspection Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column, select the FDMS Docket Number to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the “Advanced Search” function in *Regulations.gov*.

Mail, including floppy disks or CD-ROM’s, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

Electronic mail: fsis.regulationscomments@fsis.usda.gov. All submissions received must include the Agency name and docket number 00–019P.

All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be posted to the Regulations.gov Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Lynn Dickey, Ph.D. Director,
Regulations and Petitions Policy Staff,
Office of Policy, Program, and Employee
Development, Food Safety and
Inspection Service, U.S. Department of
Agriculture; (202) 720-5627.

SUPPLEMENTARY INFORMATION:**Background**

The Administrative Procedure Act (APA) requires that Federal agencies give interested persons the right to petition for the issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)). The administrative regulations of the Office of the Secretary of Agriculture provide that petitions from interested persons for the issuance, amendment, or repeal of a rule may be filed with the official that issued, or is authorized to issue, the rule (7 CFR 1.28). These administrative regulations also require that all such petitions be given prompt consideration, and that petitioners be notified promptly of the disposition made of their petitions (7 CFR 1.28).

On December 2, 1993, FSIS published in the **Federal Register** a notice to provide guidelines on how to submit petitions for rulemaking to FSIS and to inform the public on how FSIS processes and responds to such petitions (58 FR 63570). This notice was issued in response to the Administrative Conference of the United States (ACUS) recommendation No. 86-6, which advised agencies to review their rulemaking petition procedures and practices and to adopt measures to ensure that the right to petition is a meaningful one. See 51 FR 46985, Dec. 30, 1986.

When it published the 1993 notice, FSIS intended to encourage the filing of well-prepared, detailed petitions. Despite the published guidelines, however, petitions are still submitted to FSIS in various forms, often without adequate data and supporting documentation for FSIS to properly evaluate the merits of the requested action. As a result, FSIS program personnel often must expend significant time and resources to obtain the information needed to evaluate a petition, which prevents the Agency from considering and acting upon petitions effectively and efficiently. Therefore, FSIS is proposing to adopt regulations governing the submission of rulemaking petitions to issue, amend, or repeal a regulation administered by the Agency.

The Proposed Rule*General*

FSIS is proposing to amend title 9, subchapter D-Food Safety and Inspection Service Administrative Provisions, to add a new part 392-Petitions for rulemaking. Proposed § 392.1 describes the scope and purpose of part 392 and states that part 392 contains provisions governing the submission to FSIS of petitions for rulemaking. Proposed § 392.1 states that part 392 will apply to all requests to initiate rulemaking, except to the extent that other provisions in the FSIS regulations prescribe procedures for submitting requests to amend a regulation. The proposal contains this exception because the Agency has codified procedures for requests to amend certain provisions of the regulations. For example, a request to amend the regulations to authorize a new Reference Amount or Product Category identified in 9 CFR 317.312(b) and 381.412(b) must be submitted as a labeling application in accordance with the provisions of 9 CFR 317.312(g) and 381.412(g).

Proposed § 392.2 describes the type of request that FSIS considers to be a petition for rulemaking and defines a petition as a written request to issue, amend, or repeal a regulation administered by the Agency. Proposed § 392.2 also provides that a request to issue, amend, or repeal a document that interprets a regulation administered by the Agency may be made by petition. Such documents include FSIS Directives, Notices, and compliance guides.

Required Information

Proposed § 392.3 describes the information that a petition must contain to be considered by FSIS. Proposed § 392.3(a) provides that the petition must include the name, address and telephone number, and e-mail address of the person submitting the petition. Proposed § 392.3(b) provides that a petitioner should specifically state what regulatory action the petitioner is requesting, including the citation and exact wording of any existing regulation affected by the requested action. Proposed § 392.3(c) provides that a petitioner state the factual and legal basis for the action requested in the petition, including all relevant information known to the petitioner, both favorable and unfavorable to the petitioner's position. This statement should identify the problem that the requested action is intended to address and explain why the requested action is necessary to address the problem. This

information is necessary to ensure that the Agency has a full understanding of the action requested.

Supporting Documentation

Proposed § 392.4 pertains to information that should be submitted in support of a rulemaking petition and is intended to provide petitioners with a clear idea of the type of supporting documentation that FSIS considers necessary to evaluate a petition. Although the documentation described in proposed § 392.4 is not required for a petition to be considered by FSIS, inclusion of such documentation will allow the Agency to respond to the petition more effectively and efficiently. It will also help to expedite the rulemaking process should the petition be granted.

Proposed § 392.4(a) provides that information referred to or relied on in support of a petition should be included in full. It also provides that a copy of any source cited in a petition should be submitted with the petition. Including this information in the petition will allow the Agency to verify that the information used to support a petition is valid, and that the source of such information is accurately referenced by the petitioner. Proposed § 392.4(b) provides a list of sources of information that the Agency considers appropriate to use in support of a petition. These sources include, but are not limited to, professional journal articles, official government statistics, official government reports, scientific textbooks, research reports, and industry data.

To promote consistency in the manner in which data are presented, if original research reports are used to support a petition, proposed § 392.4(c) provides that the information should be presented in a form that would be acceptable for publication in a peer reviewed scientific or technical journal. For the same reason, if quantitative data are used to support a petition, proposed § 392.4(d) provides that the presentation of such data should include a complete statistical analysis using conventional statistical methods.

Filing Procedures

Proposed § 392.5 sets out the procedures for filing a rulemaking petition with FSIS. Proposed § 392.5(a) provides that any interested person may file a petition with FSIS. For purposes of this proposal, "interested person" means any individual, partnership, corporation, association, or public or private organization. Proposed § 392.5(b) explains where to submit petitions for rulemaking to FSIS.

Proposed § 392.5(c) describes how FSIS will process petitions once they are submitted to the Agency. Under proposed § 392.5(c), when a petition is received by FSIS, it will be stamped with the date of filing and assigned a petition number. The petition number assigned under proposed § 392.5(c) is for tracking purposes, and FSIS intends for petitioners to refer to this number when they contact the Agency regarding their petitions. Once a petition has been filed with the Agency, under proposed § 392.5(c), FSIS will inform the petitioner in writing and provide the petitioner with the number assigned to the petition along with the Agency contact for the petition.

Proposed § 392.5(d) provides that a petitioner may withdraw a petition at any time. To withdraw a petition, a petitioner should inform FSIS in writing, and the Agency will return the petition, along with any supporting data, to the petitioner. Once a petition is withdrawn, proposed § 392.5(d) permits the petitioner to re-submit the petition at any time.

Public Display

To encourage the submission of information that can be disclosed to the public, proposed § 392.6 provides for public display of rulemaking petitions and any supporting documentation. When it conducts a review of a rulemaking petition, FSIS relies on the information and data submitted in support of, or in opposition to, the petition to determine whether to grant the petition and initiate rulemaking. Under section 553 of the APA (5 U.S.C. 553), if FSIS grants a petition and commences rulemaking, the Agency will publish a notice of proposed rulemaking (NPRM) in the **Federal Register** and give interested persons an opportunity to participate in the rulemaking through the submission of written data, views, or arguments (5 U.S.C. 553(b) and (c)).

To provide meaningful input on the issues associated with an NPRM, the public must be informed of the data and information that provide the basis for initiating the rulemaking. The Agency believes that all interested persons should have access to this information early in the rulemaking process. Therefore, under proposed § 392.6(a), unless material is exempt from public disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552 *et seq.*), or under any other applicable laws or regulations, all rulemaking petitions, along with any supporting documentation filed with a petition, will be available for public inspection in

the FSIS docket room and posted on the FSIS Web site.

The FOIA provides public access to all records under the custody and control of Federal agencies, except those that are protected from release by one or more of the nine exemptions. One of the nine exemptions that prohibits information from being disclosed to the public is Exemption 4, which protects trade secrets and other confidential commercial information (5 U.S.C. 552(b)(4)). If a petitioner submits supporting documentation that contains trade secrets or other confidential commercial information that would be exempt from public disclosure under the FOIA, FSIS is responsible for making the final determination with regard to the disclosure or non-disclosure of such information (E.O. 12600, 52 FR 23781 (June 23, 1987) and 7 CFR 1.11(a)).

Proposed § 392.6(b) provides that if FSIS can not readily determine whether information submitted by a petitioner is privileged or confidential business information, FSIS will request that the petitioner submit a written statement that certifies that the petition does not contain confidential information that should not be put on public display. When it issues the request, FSIS will also specify a date by which the petitioner must respond. If the petitioner fails to provide the certification by the specified date, FSIS will assume that the information is confidential.

To ensure compliance with the FOIA, proposed § 392.6(c) provides that if FSIS determines that information submitted in support of a petition is exempt from public disclosure under the FOIA, or any other applicable laws or regulations, and that such information would provide the basis for granting the petition, FSIS will inform the petitioner in writing. FSIS will provide the petitioner with an opportunity to withdraw the petition or the supporting documentation, or to modify the supporting documentation to permit public disclosure.

Comments

To encourage public participation in the petition process, FSIS intends to permit interested persons to submit comments on rulemaking petitions filed with the Agency. Proposed § 392.7 sets out the procedures for submitting comments on a petition that has been filed with FSIS. Proposed § 392.7(a) provides that any interested person may submit written comments on a petition. The comments may support or oppose a petition in whole or in part. If a person chooses to comment on a petition,

proposed § 392.7(b) provides that the comments be submitted within 60 days of the posting date of the petition, and that the comments identify the number assigned to the petition to which the comments refer.

Proposed § 392.7(c) provides that FSIS will consider all comments that are timely submitted as part of its review of a rulemaking petition. Under proposed § 392.7(d), these comments will become part of the petition file and, like the petition, will be on public display in the FSIS docket room and posted on the FSIS Web site. Those persons that wish to request an alternative action to the action requested by a petition are advised in proposed § 392.7(e) to submit the request as a separate petition, not as a comment on the petition. The Agency is proposing that alternatives be submitted in this way to ensure that it receives the full information necessary to evaluate the suggested alternative action.

Proposed § 392.7(f) provides that if FSIS determines that a comment received on a petition is in fact a request for an alternative action, the Agency will inform the commenter in writing. FSIS will take no further action on the suggested alternative action unless the commenter submits an appropriate petition for rulemaking.

Expedited Review

One of FSIS' food safety goals is to enhance the public health by reducing the risk of foodborne illness associated with the consumption of meat, poultry, and egg products to the greatest extent possible. Therefore, to reflect this goal, proposed § 392.8(a) provides for expedited review of petitions that request actions that are intended to enhance the public health by removing or reducing foodborne pathogens or other potential food safety hazards that might be present in or on meat, poultry, or egg products. For a petition to qualify for expedited review, proposed § 392.8(b) provides that the petitioner must submit scientific information that demonstrates that the requested action will reduce or remove foodborne pathogens or other potential food safety hazards, and how it will do so. Proposed § 392.8(c) explains that if FSIS determines that a petition should receive expedited review, the Agency will review the petition ahead of other pending petitions, but the petition will still be subject to all other provisions that are applicable to rulemaking petitions.

Availability of Guidance on the Internet

In conjunction with this proposed rule, FSIS plans to post information

related to petitions for rulemaking on the FSIS Internet site. Therefore, proposed § 392.9 states that information related to the processing of petitions for rulemaking may be found on the FSIS Web site. If FSIS adopts this proposed rule, the site will include a document that clearly explains the petition filing process, the type of information that is required for FSIS to consider a petition for rulemaking, and the type of information that FSIS recommends be submitted with a petition for rulemaking. FSIS also intends to post all petitions for rulemaking that are submitted to the Agency, and any comments received on the petitions, on its Internet site.

Information Required for Regulatory Analyses and Request for Comments

When considering a petition for rulemaking, in addition to evaluating the technical merits of the requested action, FSIS also weighs a number of factors to determine whether, on balance, granting the petition would be an appropriate use of Agency resources. Some of these factors include: the degree to which the requested action is consistent with Agency priorities; the resources that the Agency would need to conduct the required analyses associated with the requested action; the resources available to the Agency to conduct the required analyses; the amount and quality of information submitted by the petitioner on the impacts of the requested action; and, if the petitioner did not submit data on the impact of the requested action, whether the information is obtainable by the petitioner with reasonable effort.

As part of the regulatory development process, FSIS is required by law, Executive Order, and regulation to conduct certain analyses on the impact of proposed and final agency regulations. To comply with these requirements, FSIS must often commit a significant amount of time and resources to conduct the prescribed analyses. Following is a list of U.S. statutes and Executive orders that most often affect rulemakings conducted by FSIS.

- *The Regulatory Flexibility Act* (5 U.S.C. 601 *et seq.*) requires that Federal agencies consider the effect of proposed rule changes on small businesses, non-profit organizations, and government jurisdictions.

- *Executive Order 12866—Regulatory Planning and Review* requires, among other things, that agencies (1) assess costs and benefits of regulatory alternatives and select those that maximize net benefits, (2) issue a regulation only when benefits justify the

costs, and (3) submit rules to the Office of Management and Budget (OMB) for review when OMB designates the rules as “significant.”

- *The Paperwork Reduction Act* (44 U.S.C. *et seq.*) prohibits Federal agencies from conducting or sponsoring the collection of information from regulated parties without first obtaining the approval of OMB.

- *Public Law 103-354, Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994* requires that FSIS publish an analysis of the risks addressed by a proposed regulation if the regulation is likely to have an annual impact on the economy of the United States of \$100 million dollars or more (in 1994 dollars), and its primary purpose is to regulate issues of human health, human safety, or the environment.

Once a petition is granted, the subsequent rulemaking often requires that FSIS expend resources to conduct the impact analyses described above. Thus, when FSIS evaluates a petition for rulemaking, it does more than analyze the technical merits of the requested regulatory action. The Agency also determines whether it is willing to commit resources to the development of the resulting rulemaking and the required impact analyses. When making this determination the Agency considers, among other things, whether the requested action is consistent with Agency priorities, and whether the Agency has available resources for regulatory development in the event the petition is granted. The Agency may be able to more efficiently consider a petition if, in addition to the requested regulatory action, the petitioner includes data that FSIS could use to conduct the required regulatory impact analyses.

FSIS is not proposing to require that petitions for rulemaking include data needed to complete the analyses described above. However, the Agency encourages the submission of these types of data for two reasons. First, the Agency will assess the appropriateness of granting a petition based, in part, on whether ultimately the rulemaking will not fail under any one of the impact analyses. Therefore, FSIS would like to have as much information as possible available as part of the petition review. Second, the Agency’s resources for both petition review and regulatory development are limited, and significant information is often readily available to petitioners, *i.e.*, the information is either in the petitioner’s possession or is more readily obtainable by the petitioner than by the Agency. Including information on the impact of a requested action in

a rulemaking petition would facilitate review of rulemaking petitions and regulatory development in the event a petition is granted.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. It has been determined to be not significant for purposes of E.O. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule will benefit both prospective petitioners and FSIS by facilitating the review and evaluation of rulemaking petitions filed with the Agency. This proposal establishes procedures for the submission of rulemaking petitions. It specifies what should be included in a rulemaking petition and describes the type and quality of data that should be submitted in support of a petition. If this proposal is issued as a final rule, it will provide clear guidance to persons who would like to petition FSIS to issue, amend, or repeal a regulation administered by the Agency.

This proposed action will benefit persons interested in filing a rulemaking petition with FSIS by providing information on how to prepare and submit a petition to best ensure prompt consideration by the Agency. Petitioners will also benefit from this proposed action because it will promote a more timely resolution of their petitions. This proposed action will benefit FSIS by encouraging consistency in the content of the petitions submitted to the Agency and by reducing the number of incomplete petitions filed with the Agency.

Under this proposed rule, persons interested in petitioning FSIS to issue, amend, or repeal a rule will bear the costs associated with preparing a rulemaking petition. These costs will vary depending on the complexity of the requested action and the type of documentation needed to support the petition. However, because the decision to submit a petition for rulemaking is voluntary, persons interested in issuing, amending, or repealing a regulation administered by FSIS will most likely submit a rulemaking petition if the benefits of the requested action outweigh the costs of preparing the petition. By encouraging consistency in the content of rulemaking petitions and the submission of adequate supporting documentation, this proposed rule will reduce the administrative costs to FSIS associated with the review and evaluation of rulemaking petitions, as well as expedite the time it takes for the Agency to review petitions.

In addition to the proposed rule, FSIS considered the option of no rulemaking. Under this option, prospective petitioners would continue to rely on the guidelines for the submission, consideration, and disposition of petitions that FSIS published in the 1993 **Federal Register** notice. FSIS rejected this option because it determined that its procedures for submitting petitions need clarification, and that they should be codified to best ensure adherence.

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The decision to submit a petition for rulemaking is voluntary, and therefore, small entities are not required to comply with the proposed regulations unless they choose to submit a rulemaking petition. Furthermore, although FSIS encourages petitioners to submit data needed to complete the regulatory analyses that would be required should the petition be granted, it is not proposing to require such a submission. As discussed above, if a petitioner does not include data on the potential impact of the requested regulatory action, FSIS will consider whether the information is obtainable with reasonable effort. FSIS is aware that some small entities may not have access to certain data that is readily available to large companies or industry trade associations. FSIS would take this into consideration when evaluating petitions submitted by small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts 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.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that this proposed rule comes to the attention of the public—including minorities, women, and persons with disabilities—FSIS will announce it online through the FSIS Web page located at <http://www.fsis.usda.gov>.

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being

offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at <http://www.regulations.gov>.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a broader and more diverse audience.

In addition, FSIS offers an electronic mail subscription service that provides an automatic and customized notification when popular pages are updated, included **Federal Register** publications and related documents. This service is available at http://www.fsis.usda.gov/news_and_events/email_subscription/ and allows FSIS customers to sign up for subscription options in eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or record keeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB).

Title: Petitions for Rulemaking.

Type of Collection: New.

Abstract: FSIS is proposing to adopt regulations governing the submission to FSIS of petitions for rulemaking. The Agency is proposing this action to supplement existing non-regulatory

guidance on the submission of petitions to FSIS to consider requests to issue, amend, or repeal regulations administered by the Agency. The proposed regulations contain information on how to prepare and submit a petition to FSIS to best ensure prompt consideration by the Agency.

Estimate of burden: FSIS estimates that developing a petition to issue, amend, or repeal a regulation in accordance with this proposed rule will take an average of 40 hours.

Respondents: Manufacturers of meat and poultry products, trade organizations, consumer organizations, or unaffiliated individuals.

Estimated number of respondents: 5.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 200 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 112 Annex, 300 12th St., SW., Washington, DC 20250. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to John O'Connell, see address above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253. Comments are requested by July 19, 2005. To be most effective, comments should be sent to the Office of Management and Budget (OMB) within 30 days of the publication date.

FSIS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 9 CFR Part 392

Administrative practice and procedure, Freedom of Information.

For the reasons discussed in the preamble, FSIS proposes to amend 9 CFR Chapter III as follows:

Subchapter D—Food Safety and Inspection Service Administrative Provisions

Subchapter D would be amended by adding a new Part 392 to read as follows:

PART 392—PETITIONS FOR RULEMAKING

Sec.

- 392.1 Scope and purpose.
- 392.2 Definition of petition.
- 392.3 Required information.
- 392.4 Supporting documentation.
- 392.5 Filing procedures.
- 392.6 Public display.
- 392.7 Comments.
- 392.8 Expedited review.
- 392.9 Availability of additional guidance.

Authority: 5 U.S.C. 553(e), 7 CFR 1.28.

§ 392.1 Scope and purpose.

This part contains provisions governing the submission of petitions for rulemaking to the Food Safety and Inspection Service (FSIS). The provisions in this part apply to all such petitions submitted to FSIS, except to the extent that other parts or sections of this chapter prescribe procedures for submitting a request to amend a particular regulation.

§ 392.2 Definition of petition.

For purposes of this part, a “petition” is a written request to issue, amend, or repeal a regulation administered by FSIS. A request to issue, amend, or repeal a document that interprets a regulation administered by FSIS may also be submitted by petition.

§ 392.3 Required information.

To be considered by FSIS, a petition must contain the following information:

- (a) The name, address, telephone number, and e-mail address, if available, of the person who is submitting the petition;
- (b) A full statement of the action requested by the petitioner, including the exact wording and citation of the existing regulation, if any, and the proposed regulation or amendment requested;
- (c) A full statement of the factual and legal basis on which the petitioner relies for the action requested in the petition, including all relevant information and views on which the petitioner relies, as well as information known to the petitioner that is unfavorable to the

petitioner’s position. The statement should identify the problem that the requested action is intended to address and explain why the requested action is necessary to address the problem.

§ 392.4 Supporting documentation.

(a) Information referred to or relied on in support of a petition should be included in full and should not be incorporated by reference. A copy of any article or other source cited in a petition should be submitted with the petition.

(b) Sources of information that are appropriate to use in support of a petition include, but are not limited to:

- (1) Professional journal articles,
- (2) Research reports,
- (3) Official government statistics,
- (4) Official government reports,
- (5) Industry data, and
- (6) Scientific textbooks.

(c) If an original research report is used to support a petition, the information should be presented in a form that would be acceptable for publication in a peer reviewed scientific or technical journal.

(d) If quantitative data are used to support a petition, the presentation of the data should include a complete statistical analysis using conventional statistical methods.

§ 392.5 Filing procedures.

(a) Any interested person may file a petition with FSIS. For purposes of this part, an “interested person” is any individual, partnership, corporation, association, or public or private organization.

(b) To file a petition with FSIS, a person should submit the petition to the FSIS Docket Clerk, Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700.

(c) Once a petition is submitted in accordance with this part, it will be filed by the FSIS Docket Clerk, stamped with the date of filing, and assigned a petition number. Once a petition has been filed, FSIS will notify the petitioner in writing and provide the petitioner with the number assigned to the petition and the Agency contact for the petition. The petition number should be referenced by the petitioner in all contacts with the Agency regarding the petition.

(d) If a petitioner elects to withdraw a petition submitted in accordance with this part, the petitioner should inform FSIS in writing. Once a petition has been withdrawn, the petitioner may re-submit the petition at any time.

§ 392.6 Public display.

(a) All rulemaking petitions filed with FSIS, along with any documentation submitted in support of a petition, will be available for public inspection in the FSIS docket room and will be posted on the FSIS Web site at <http://www.fsis.usda.gov/>.

(b) If FSIS can not readily determine whether information submitted in support of a petition is privileged or confidential business information, FSIS will request that the petitioner submit a written statement that certifies that the petition does not contain confidential information that should not be put on public display. If the petitioner fails to submit the certification within a time specified by FSIS, the Agency will consider the information to be confidential.

(c) If FSIS determines that a petition, or any documentation submitted in support of a petition, contains information that is exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) or any other applicable laws or regulations, and that the information would provide the basis for granting the petition, FSIS will inform the petitioner in writing. FSIS will provide the petitioner an opportunity to withdraw the petition or supporting documentation, or modify the supporting documentation to permit public disclosure.

§ 392.7 Comments.

(a) Any interested person may submit written comments on a petition filed with FSIS.

(b) Comments on a petition should be submitted by any interested person to FSIS within 60 days of the posting date of the petition and should identify the number assigned to the petition to which the comments refer.

(c) FSIS will consider all timely comments on a petition that are submitted in accordance with this section as part of its review of the petition.

(d) All comments on a petition will become part of the petition file and will be available for public inspection in the FSIS docket room and posted on the FSIS Web site at <http://www.fsis.usda.gov/>.

(e) Any interested person who wishes to suggest an alternative action to the action requested by the petition should submit a separate petition that complies with these regulations and not submit the alternative as a comment on the petition.

(f) If FSIS determines that a comment received on a petition is in fact a request for an alternative action, the Agency will inform the commenter in writing.

The Agency will take no further action on the requested alternative action unless the commenter submits an appropriate petition for rulemaking.

§ 392.8 Expedited review.

(a) A petition will receive expedited review by FSIS if the requested action is intended to enhance the public health by removing or reducing foodborne pathogens or other potential food safety hazards that might be present in or on meat, poultry, or egg products.

(b) For a petition to be considered for expedited review, the petitioner must submit scientific information that demonstrates that the requested action will reduce or remove foodborne pathogens or other potential food safety hazards that are likely to be present in or on meat, poultry, or egg products, and how it will do so.

(c) If FSIS determines that a petition warrants expedited review, FSIS will review the petition ahead of other pending petitions.

§ 392.9 Availability of additional guidance.

Information related to the submission and processing of petitions for rulemaking may be found on the FSIS Web site at <http://www/fsis.usda.gov/>.

Done at Washington, DC, on January 6, 2006.

Barbara J. Masters,
Administrator.

[FR Doc. E6-172 Filed 1-11-06; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

Reporting and Procedures Regulations: Cuban Assets Control Regulations; Economic Sanctions Enforcement Guidelines; Partial Withdrawal

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Partial withdrawal of proposed rule.

SUMMARY: This document withdraws in part the proposed rule published on January 29, 2003, relating to the economic sanctions enforcement guidelines.¹ In addition, in the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department is issuing an interim final

rule—Economic Sanctions Enforcement Procedures for Banking Institutions.

FOR FURTHER INFORMATION CONTACT:
Assistant Director of Records, (202) 622-2500 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Partial Withdrawal of Proposed Rule

The proposed rule (68 FR 4422-4429, January 29, 2003) is withdrawn with respect to “banking institutions,” as that term is defined in the interim final rule (“OFAC Economic Sanctions Enforcement Procedures for Banking Institutions”) amending 31 CFR part 501, appearing in the Rules and Regulations section of this issue of the **Federal Register**.

Approved: December 22, 2005.

Robert W. Werner,

Director, Office of Foreign Assets Control.

Approved: December 23, 2005.

Stuart A. Levey,

Under Secretary of the Treasury, Office of Terrorism and Financial Intelligence.

[FR Doc. 06-277 Filed 1-11-06; 8:45 am]

BILLING CODE 4810-25-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2005-0563, FRL-8020-9]

Approval and Promulgation of Implementation Plans; Wisconsin; Wisconsin Construction Permit Permanency SIP Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Wisconsin State Implementation Plan (SIP) submitted by the State of Wisconsin on December 8, 2005. Wisconsin has submitted for approval into its SIP a statutory provision designed to ensure the permanency of construction permit conditions. EPA is proposing to approve this revision because it is consistent with Federal regulations governing State permit programs. This revision also addresses one of the deficiencies identified in EPA’s Notice of Deficiency (NOD), published in the **Federal Register** on March 4, 2004. (69 FR 10167.)

DATES: Written comments must be received on or before February 13, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2005-0563, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- E-mail: Blakley.Pamela@epa.gov.

- Fax: (312) 886-5824.

- Mail: Pamela Blakley, Chief, Air Permit Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

- Hand Delivery: Pamela Blakley, Chief, Air Permit Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2005-0563. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the [http://](http://www.regulations.gov)

¹ 68 FR 4422-4429 (2003).