Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

6 CFR Chapter I

8 CFR Chapter I

19 CFR Chapter I

33 CFR Chapter I

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46 CFR Chapters I and III

49 CFR Chapter XII

[Docket No. DHS–2011–0015]

Reducing Regulatory Burden; Retrospective Review Under Executive Order 13563

AGENCY: Office of the General Counsel, DHS.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to Executive Order 13563, "Improving Regulation and Regulatory Review," issued by the President on January 18, 2011, the Department of Homeland Security (Department or DHS) must develop a preliminary plan to facilitate the review of existing DHS significant regulations through the use of retrospective analyses. The preliminary plan will include criteria for identifying existing DHS significant rules that might be modified, streamlined, expanded, or repealed, so as to make DHS's regulatory program more effective or less burdensome in achieving its regulatory objectives. The Department is soliciting views from the public on how best to develop its preliminary plan. The Department is also seeking views from the public on specific existing significant DHS rules that the Department should consider as candidates for modification, streamlining, expansion, or repeal. These efforts will help DHS ensure that its regulations contain necessary, properly tailored, and up-to-date requirements that effectively achieve regulatory objectives without imposing unwarranted costs.

DATES: Written comments and information are requested on or before April 13, 2011. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0015, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Regulatory.Review@dhs.gov.* Include "DHS Retrospective Review" in the subject line of the message.
- *IdeaScale:* IdeaScale is a Web-based platform that allows users to actively share information and expertise in a collaborative manner. IdeaScale allows commenters to submit ideas, discuss and refine others' ideas, and vote on each others' ideas. To submit comments or engage in dialogue via IdeaScale, go to the feedback community link at *http://DHSretrospectivereview.ideascale.com.* In order to participate, you will have to obtain a log-in. You have two options: (1) You may register and obtain a log-in on IdeaScale using a verifiable e-mail address, or (2) You can use the *OpenID* feature, which allows you to log-in on IdeaScale and participate using an existing social media account such as Facebook or Twitter. For further information, see the section titled "DHS's Implementation of Executive Order 13563."
- *Mail:* U.S. Department of Homeland Security, Office of the General Counsel, 245 Murray Lane, Mail Stop 0485, Washington, DC 20528–0485 ATTN: DHS Retrospective Review.

FOR FURTHER INFORMATION CONTACT: Christina E. McDonald, Acting Associate General Counsel for Regulatory Affairs, U.S. Department of Homeland Security, Office of the General Counsel. E-mail: *Regulatory.Review@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Public Participation

Interested persons are invited to comment on this notice by submitting written data, views, or arguments using any of the methods identified in the **ADDRESSES** section.

Instructions: All submissions must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov.*

Comments that include trade secrets information, confidential commercial or financial information, Sensitive Security Information (SSI), Protected Critical Infrastructure Information (PCII) or Chemical-terrorism Vulnerability Information (CVI) should not be submitted to the public docket. Please submit such comments separately from other comments on this notice. Comments containing trade secrets, confidential commercial or financial information, SSI, PCII, or CVI should be appropriately marked as containing such information and submitted by mail to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

B. Executive Order 13563

On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review" (76 FR 3821) to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals and that agencies give careful consideration to the benefits and costs of those regulations. The Executive Order reaffirms and builds upon governing principles of contemporary regulatory review, including Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). To that end, Executive Order 13563 requires, among other things, that:

- Agencies propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; and that agencies tailor regulations to impose the least burden on society, consistent with achieving the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; and that agencies select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety,

and other advantages; distributive impacts; and equity).

- The regulatory process encourages public participation and an open exchange of views, with an opportunity for the public to comment.
- Agencies coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.
- Agencies consider low-cost approaches that reduce burdens and maintain flexibility.
- Regulations be guided by objective scientific evidence.

Additionally, the Executive Order directs agencies to consider how best to promote retrospective analyses of existing rules. Specifically, each agency must develop a preliminary plan "under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

C. DHS's Regulatory Responsibility

DHS's mission is to ensure a homeland that is safe, secure, and resilient against terrorism and other hazards. The Department carries out its mission through the Office of the Secretary and 28 components, including the following seven operational components: U.S. Citizenship and Immigration Services, U.S. Coast Guard, U.S. Customs and Border Protection, Federal Emergency Management Agency, U.S. Immigration and Customs Enforcement, U.S. Secret Service, and Transportation Security Administration.

Our mission gives us five main areas of responsibility: (1) Prevent terrorism and enhance security; (2) secure and manage our borders; (3) enforce and administer our immigration laws; (4) safeguard and secure cyberspace; and (5) ensure resilience to disasters. To further these areas, DHS has responsibility for a broad range of regulations. For example, to secure and manage our borders, DHS regulates people and goods entering and exiting the United States. DHS, to combat terrorism, regulates aviation security, high-risk chemical facilities, and infrastructure protection. DHS also issues regulations to administer immigration and citizenship benefits as well as regulations covering maritime safety and environmental protection. Finally, DHS promulgates a wide range of regulations concerning disaster preparedness, response, and recovery.

D. DHS's Implementation of Executive Order 13563

As a first step in launching its retrospective review under Executive Order 13563, DHS is issuing this notice seeking public comment. To facilitate public dialogue and cross-communication on these matters, in addition to the standard regulatory channels, DHS is also seeking comment through IdeaScale. IdeaScale is a Web-based platform that allows users to actively share information and expertise in a collaborative manner. IdeaScale allows commenters to submit ideas, discuss and refine others' ideas, and vote on each others' ideas. For instructions on how to use IdeaScale, *see* the **ADDRESSES** section above. DHS encourages public commenters to engage in dialogue through IdeaScale.

As a participant of IdeaScale, commenters can engage in dialogue in seven ways: (1) View, search, and explore all content on the site (no log-in required); (2) Submit an original idea to a particular category (log-in required); (3) Submit a comment about an idea (log-in required); (4) Vote on an idea (log-in required); (5) Flag inappropriate ideas and comments, as being either SPAM/Inappropriate or Duplicate (log-in required); (6) Share ideas through a Twitter feed or on your Facebook page (log-in required for IdeaScale, as well as an active Facebook and/or Twitter account); (7) Tag an idea (participants can assign key words or terms to ideas to help describe/categorize the idea, thus allowing the idea to be found again by Web 2.0 browsing or searching).

II. Request for Comment

Pursuant to the Executive Order, DHS is developing a preliminary plan for the periodic review of its existing significant regulations. DHS's goal is to create a systematic method for identifying those significant rules that are obsolete, unnecessary, unjustified, or simply no longer make sense. Although this review will focus on the elimination of significant rules that are no longer warranted, DHS will also consider strengthening, complementing, or modernizing rules where necessary or appropriate—including, as relevant, undertaking new rulemakings. The Department stresses that this review is for existing significant rules; the public should not use this process to submit comments on proposed rules.

Despite best efforts at the time a rule is promulgated, it is generally difficult to be certain of the consequences of a rule, including its costs and benefits, until it has been tested. Because knowledge about the full effects of a rule tends to be widely dispersed in society, members of the public are likely to have useful information and perspectives on the benefits and burdens of existing requirements and how regulatory obligations may be updated, streamlined, revised, or repealed to better achieve regulatory objectives, while minimizing regulatory burdens. Interested parties may also be well-positioned to identify those rules that are most in need of review and, thus, assist the Department in prioritizing and properly tailoring its retrospective review process. In short, engaging the public in an open, transparent process is a crucial first step in DHS's review of its existing significant regulations.

III. List of Questions for Commenters

Below is a list of preliminary questions, the answers to which will assist in informing the Department's efforts to develop a preliminary plan for the retrospective analysis of its existing regulations and to identify those regulations that may benefit from a retrospective analysis. In addressing these questions, commenters should identify, with specificity, the regulation at issue, providing the Code of Federal Regulation (CFR) cite where available. DHS also requests that the commenter provide, in as much detail as possible, an explanation why a regulation should be modified, streamlined, expanded, or repealed, as well as specific suggestions of ways the Department can better achieve its regulatory objectives. DHS encourages interested parties to provide specific data that document the costs, burdens, and benefits of existing requirements. Comments that rehash debates over recently issued rules will be less useful.

Commenters might also address how DHS can best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations and whether there are existing sources of data that DHS can use to evaluate the post-promulgation effects of its regulations over time. Particularly where comments relate to a rule's costs or benefits, comments will be most useful if there are data and experience under the rule available to ascertain the rule's actual impact. For that reason, we encourage the public to emphasize those rules that have been in effect for a sufficient amount of time to warrant a fair evaluation.

The below nonexhaustive list is meant to assist in the formulation of comments and is not intended to restrict the issues that commenters may address:

(1) How can the Department best promote meaningful periodic reviews of its existing significant regulations, and how can it best identify those rules that might be modified, streamlined, expanded, or repealed?

(2) What factors should the agency consider in selecting and prioritizing rules for review?

(3) Are there regulations that simply make no sense or have become unnecessary, ineffective, or ill advised and, if so, what are they? Are there rules that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?

(4) Are there rules that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?

(5) Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(6) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?

(7) Are there regulations that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?

(8) Are there rules that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory requirements?

(9) Are there any of the Department's regulations that are not tailored to impose the least burden on society, consistent with achieving the regulatory objectives?

(10) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department can use to evaluate the post-promulgation effects of regulations over time?

(11) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other DHS regulatory programs?

(12) Are there any regulations that create difficulty because of duplication, overlap, or inconsistency of requirements?

The Department notes that this notice is issued solely for information and program-planning purposes. Responses to this notice do not bind DHS to any further actions related to the response.

Ivan K. Fong,

General Counsel.

[FR Doc. 2011–5829 Filed 3–11–11; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AMS–FV–10–0087; FV10–930–5; AO–370–A9; 11–0093]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Hearing on Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Agreement and Order No. 930 (order), which regulate the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Three amendments are proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. The proposed amendments would change how grower diversion of cherries is accounted for under the order and would affect volume control in years when grower diversions are utilized. In addition, the Agricultural Marketing Service (AMS) proposes to make any such changes as may be necessary to the order or administrative rules and regulations to conform to any amendment that may result from the hearing. These proposed amendments are intended to improve the operation and administration of the order.

DATES: The hearing dates are:

1. April 20, 2011, 9 a.m. to 5 p.m.; and continuing on April 21, 2011, at 9 a.m., if necessary, in Grand Rapids, Michigan.

2. April 26, 2011, 9 a.m. to 5 p.m.; and continuing on April 27, 2011, at 9 a.m., if necessary, in Provo, Utah.

ADDRESSES: The hearing locations are:

1. Grand Rapids—U.S. Bankruptcy Court, One Division Ave., N, 3rd Floor Courtroom A, Grand Rapids, MI 49503.

2. Provo—Utah County Administration Building, 100 E. Center Street, Room L900, Provo, Utah 84606.

FOR FURTHER INFORMATION CONTACT: Parisa Salehi, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave., SW., Stop 0237, Washington, DC 20250, telephone: (202) 720–9918, Fax: (202) 720–8938; or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Parisa.Salehi@usda.gov* or *Kathy.Finn@usda.gov.*

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–6862, Fax: (202) 720–8938, or e-mail: *Antoinette.Carter@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the