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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 42

[Doc. No. AMS–FV–08–0027; FV–05–332]

United States Standards for Condition of Food Containers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the regulations governing the United States (U.S.) Standards for Condition of Food Containers. AMS regularly reviews standards to determine if they meet current industry practices. Based on our most recent review, we believe that the U.S. Standards for Condition of Food Containers needs to be revised. The revisions are necessary in order to provide standards that reflect current industry practices. Revisions to the U.S. Standards for Condition of Food Containers include simplifying Tables I, I–A, II, II–A, III, III–A, and III–B for sampling plans for normal, tightened, and reduced condition of container inspection to reflect the type of sampling plan used (single or double). It also includes updating the Acceptable Quality Levels (AQLs), Tables IV—Metal Containers, V—Glass Containers, VI—Rigid and Semirigid Containers, VII—Flexible Containers (Plastic, Cello, Paper, Textile, *etc.*), and X—Defects of Label, Marking, or Code (currently Table VIII) to incorporate new defects and updating current defects to include defects that would correspond to new packaging technologies such as aseptic packaging, metal cans with easy open lids, and plastic rings that hold several containers together. This revision also proposes adding new defect tables entitled Table VIII—Unitizing (Plastic or other type of casing/unitizing) and Table IX—Interior Can Defects. Finally, removing the Operating Characteristic (OC) curves for on-line sampling and inspection. Other minor non-substantive changes are also proposed.

DATES: Comments must be received on or before January 19, 2010.

ADDRESSES: Interested persons are invited to submit written comments or comments on the Internet. Comments must be sent to Lynne Yedinak, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0247, Washington, DC 20250–0247; Telephone: (202) 720–9939; FAX: (202) 690–1527; or Internet: *http://www.regulations.gov*. The current U.S. Standards for Condition of Food Containers is available through the address cited below or by accessing the Internet at: *http://www.access.gpo.gov/nara/cfr/waisidx_00/7cfr42_00.html*. All comments received will be posed without change, including any personal information provided. All comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Lynne Yedinak at the above address, Telephone: (202) 720–9939, Fax: (202) 690–1527, or e-mail *FQAStaff@ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 Regulatory Flexibility Act

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 26,361 establishments identified in the 1997 Economic Census as belonging to the North American Industry Classification System under the classification of ''food manufacturing'' and any number of these establishments could request their product containers be inspected under the provisions of the U.S. Standards for Condition of Food Containers for a number of AMS Program areas. The vast majority of these establishments would qualify as small businesses under the definition provided by the Small Business Administration.

We have examined the economic implications of this proposed rule on small entities. Under the proposed rule, utilization of the U.S. Standards for Condition of Food Containers is voluntary. Small entities would only incur direct costs when purchasers, of their packaged food products, stipulate in their procurement documents that the food containers should conform to the requirements of the U.S. Standards for Condition of Food Containers. Since the standards were previously amended in May 1983, innovations in packaging technologies have provided an increasingly wide variety of acceptable new food containers. These new food containers are not represented by the current standards. According, we believe that this impact will be minimal because the revisions are necessary in order to provide standards that reflect current industry practices. Finally, the changes concerning removal of OC curves and other non-substantive changes will have no adverse impact on small or large entities.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large establishments. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with the Standards.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 12988

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

The U.S. Standards for Condition of Food Containers (Standards) currently provides sampling procedures and

acceptance criteria for the inspection of stationary lots of filled food containers, which includes skip lot sampling and inspection procedures. It also provides on-line sampling and inspection procedures food containers during production.

Stationary lot sampling is the process of randomly selecting sample units from a lot whose production has been completed. This type of lot is usually stored in a warehouse or in some other storage facility and is offered for inspection.

Skip lot sampling is a special procedure for inspecting stationary lots in which only a fraction of the submitted lots are inspected. Skip lot inspection can only be instituted when a certain number of lots of essentially the same quality have been consecutively accepted. To be acceptable under the examination criteria in the standards, lots may contain only a limited number of defects classified as minor, major, and critical. Acceptance criteria are based on sampling plans for different lot sizes and levels of inspection such as normal, reduced, or tightened. Defect tables classify the severity of the defect.

On-line sampling and inspection is a procedure in which subgroups of sample units or individual containers are selected randomly from pre-designated portions of production. The acceptability of these portions of production is determined by inspecting, at the time of sampling, the subgroups which represent these portions. For this type of sampling, only portions of a lot, rather than a whole lot, may be rejected. This helps to quickly pinpoint trouble spots in a production cycle, enabling the producer to make timely corrections, thus reducing the monetary value and total amount of product destroyed as a result of packaging problems.

These standards were developed for the use of Government agencies when requested to certify that filled primary containers or shipping cases, or both, be certified for condition. The standards are permissive, and they may be used in their entirety, or in part, by private parties as well.

AMS proposes to revise the Standards to include: (1) separating Tables I, I–A, II, II–A, III, III–A, and III–B of sampling plans for normal, tightened, and reduced inspection by the type of sampling plan used (single or double), as well as updating the Acceptable Quality Levels (AQLs); (2) updating Tables IV—Metal Containers, V—Glass Containers, VI—Rigid and Semirigid Containers, VII—Flexible Containers (Plastic, Cello, Paper, Textile, *etc.*), and X—Defects of Label, Marking, or Code (currently Table VIII) to incorporate new defects and revising current defects to reflect the new packaging technologies such as aseptic packaging, metal cans with easy open lids, and plastic rings that hold several containers together; (3) adding new defect tables, Table VIII—Unitizing (Plastic or other type of casing/unitizing) and Table IX—Interior Can Defects; (4) removing the Operating Characteristic (OC) curves; and (5) other minor non-substantive changes to clarify and to determine non-substantive changes.

These revisions to existing tables, addition of new tables, removal of OC curves, and updating language in the container standards would enable the standards to be applicable to most types of food containers and align the standards to reflect current industry practices.

OC Curves found in §§ 42.140, 42.141, 42.142, and 42.143 from Subpart E—Miscellaneous, are proposed to be completely removed. While these curves show the ability of the various sampling plans to distinguish between good and bad lots, it is our experience that the inclusion of these curves are not critical to use of the standards. Furthermore, they are readily available in literature, on the Internet and Standards for sampling plans are also currently available in 7 CFR Part 43.

A sixty-day comment period is provided for all interested persons to comment on this proposal. All written comment received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 42

Food packaging, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 42 is proposed to be amended as follows:

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. § 42.102 is amended by:

a. Removing the terms *Operating Characteristic Curve (OC Curve)* and *Probability of acceptance,* which includes *(a) For stationary lot sampling* and *(b) For On-line Sampling;* and

b. Revising the terms *Administrator, Lot* or *inspection lot, Sample size (n),* and *Stationary lot sampling* to read as follows:

§ 42.102 Definitions, general.

* * * * *

Administrator. The Administrator of the Agricultural Marketing Service (AMS) of the Department or any other officer or employee of the Agency who is delegated, or who may be delegated the authority to act in his stead.

* * * * *

Lot or inspection lot. A collection of filled food containers of the same size, type, and style. The term shall mean ''inspection lot,'' *i.e.,* a collection of units of product from which a sample is to be drawn and inspected to determine conformance with the applicable acceptance criteria. An inspection lot may differ from a collection of units designated as a lot for other purposes (*e.g.,* production lot, shipping lot, *etc.*).

* * * * *

Sample size (n). The number of sample units included in the sample.

* * * * *

Stationary lot sampling. The process of randomly selecting sample units from a lot whose production has been completed. This type of lot is usually stored in a warehouse or in some other storage facility and is offered in its entirety for inspection.

* * * * *

§ 42.106 [Amended]

3. In § 42.106, paragraph (a)(1) the word ''atributed'' is revised to read ''attributed''.

4. Revise § 42.109 to read as follows:

§ 42.109 Sampling plans for normal condition of container inspection, Tables I and I–A.

TABLE I—SINGLE SAMPLING PLANS FOR NORMAL CONDITION OF CONTAINER INSPECTION

Code	Lot size ranges—number of containers in lot	Type of plan	Acceptable quality levels												
				Origin Inspection						Other than origin inspection					
			Sample Size	0.25		1.5		6.5		0.25		2.5		10.0	
				Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CA	6,000 or less	Single	84	0	1	3	4	9	10	0	1	4	5	13	14
CB	6,001–12,000 ...	Single	168	1	2	5	6	16	17	1	2	7	8	23	24
CC	12,001–36,000	Single	315	2	3	8	9	28	29	2	3	13	14	41	42
CD	Over 36,000	Single	500	3	4	12	13	42	43	3	4	18	19	62	63
CE	.....	Single	800	4	5	18	19	64	65	4	5	27	28	95	96

Ac = Acceptance number.
Re = Rejection number.

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5. Revise § 42.110 to read as follows:

§ 42.110 Sampling plans for tightened condition of container inspection; Tables II and II–A.

Table I-A--Double Sampling Plans for Normal Condition of Container Inspection

Code	Lot size ranges -- Number of containers in lot	Type of Plan	Sample Size		Acceptable quality levels											
					Origin Inspection						Other Than Origin Inspection					
					0.25		1.5		6.5		0.25		2.5		10.0	
					Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CA	6,000 or less----------	Double------	1st--------	36	(*)	(*)	0	4	2	7	(*)	(*)	0	4	3	9
			2d---------	60												
			Total-----	96	(*)	(*)	3	4	10	11	(*)	(*)	4	5	15	16
CB	6,001-12,000---------	Double------	1st--------	120	0	2	2	6	10	14	0	2	3	7	14	19
			2d---------	60												
			Total-----	180	1	2	5	6	17	18	1	2	8	9	25	26
CC	12,001-36,000--------	Double------	1st--------	168	0	3	2	7	12	18	0	3	5	10	19	26
			2d---------	180												
			Total-----	348	2	3	9	10	31	32	2	3	14	15	45	46
CD	Over 36,000----------	Double------	1st--------	228	0	3	3	9	15	24	0	3	5	11	23	34
			2d---------	288												
			Total-----	516	3	4	12	13	43	44	3	4	20	29	64	65

(*) = Reject on one or more defects

TABLE II—SINGLE SAMPLING PLANS FOR TIGHTENED CONDITION OF CONTAINER INSPECTION

Code	Lot size ranges—number of containers in lot	Type of plan	Acceptable quality levels												
				Origin inspection						Other than origin inspection					
			Sample size	0.25		1.5		6.5		0.25		2.5		10.0	
				Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CB	6,000 or less	Single	168	0	1	4	5	11	12	0	1	5	6	16	17
CC	6,001–12,000 ...	Single	315	1	2	6	7	19	20	1	2	8	9	28	29
CD	12,001–36,000	Single	500	2	3	9	10	28	29	2	3	12	13	42	43
CE	Over 36,000	Single	800	3	4	13	14	42	43	3	4	18	19	64	65
CF	.....	Single	1,250	4	5	19	20	63	64	4	5	26	27	96	97

6. Revise § 42.111 to read as follow:

§ 42.111 Sampling plans for reduced condition of container inspection, Tables III and III–A; and limit number for reduced inspection, Table III–B.

Table II-A—Double Sampling Plans for Tightened Condition of Container Inspection

Code	Lot size ranges -- Number of containers in lot	Type of Plan	Sample Size		Acceptable quality levels											
					Origin Inspection						Other Than Origin Inspection					
					0.25		1.5		6.5		0.25		2.5		10.0	
					Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CB	6,000 or less--------	Double---	1st--------	120	(*)	(*)	2	5	6	10	(*)	(*)	2	6	10	14
			2d--------	60												
			Total-----	180	(*)	(*)	4	5	12	13	(*)	(*)	5	6	17	18
CC	6,001-12,000-------	Double---	1st--------	168	0	2	1	5	7	13	0	2	2	7	12	18
			2d--------	180												
			Total-----	348	1	2	7	8	21	22	1	2	9	10	31	32
CD	12,001-36,000-----	Double---	1st--------	228	0	3	2	7	8	17	0	3	3	9	15	24
			2d--------	288												
			Total-----	516	2	3	9	10	29	30	2	3	12	13	43	44
CE	Over 36,000--------	Double---	1st--------	456	0	4	5	10	21	28	0	3	8	13	32	41
			2d--------	408												
			Total-----	864	3	4	14	15	44	45	3	4	19	20	69	70

(*) = Reject on one or more defects

TABLE III—SINGLE SAMPLING PLANS FOR REDUCED CONDITION OF CONTAINER INSPECTION

Code	Lot size ranges—number of containers in lot	Type of plan	Acceptable quality levels												
				Origin inspection						Other than origin inspection					
			Sample size	0.25		1.5		6.5		0.25		2.5		10.0	
				Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CAA	6,000 or less	Single	29	1	2	1	2	4	5	1	2	2	3	5	6
CA	6,001–36,000 ...	Single	84	1	2	3	4	9	10	1	2	4	5	13	14
CB	Over 36,000	Single	168	1	2	5	6	16	17	1	2	7	8	23	24
CC	.....	Single	315	2	3	8	9	28	29	2	3	13	14	41	42

Table III-A--Double Sampling Plans for Reduced Condition of Container Inspection

Code	Lot size ranges -- Number of containers in lot	Type of Plan	Sample Size		Acceptable quality levels											
					Origin Inspection						Other Than Origin Inspection					
					0.25		1.5		6.5		0.25		2.5		10.0	
					Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CAA	6,000 or less-------	Double------	1st---------	18	0	2	0	2	1	4	0	2	0	3	2	5
			2d---------	18												
			Total------	36	1	2	1	2	5	6	1	2	2	3	6	7
CA	6,001-36,000------	Double------	1st---------	36	0	2	0	4	2	7	0	2	0	4	3	9
			2d---------	60												
			Total------	96	1	2	3	4	10	11	1	2	4	5	15	16
CB	Over 36,000-------	Double------	1st---------	120	0	2	2	6	10	14	0	3	3	7	14	19
			2d---------	60												
			Total------	180	1	2	5	6	17	18	2	3	8	9	25	26

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TABLE III–B—LIMIT NUMBERS FOR REDUCED INSPECTION

Number of sample units from last 10 lots inspected within 6 months	Acceptable quality level				
	0.25	1.5	2.5	6.5	10.0
320–499	*	1	4	14	24
500–799	*	3	7	25	40
800–1,249	0	7	14	42	68
1,250–1,999	0	13	24	69	110
2,000–3,149	2	22	40	115	181
3,150–4,999	4	38	67	186	293
5,000–7,999	7	63	110	302	472
8,000–12,499	14	105	181	491	765
12,500–19,999	24	169	290	777	1207

* Denotes that the number of sample units from the last 10 inspection lots is not sufficient for reduced inspection for this AQL. In this instance more than 10 inspection lots may be used for the calculations if the inspection lots used are the most recent ones in sequence within the last 6 months, they have all been on normal inspection, and none has been rejected on original inspection.

7. Revise § 42.112 to read as follows:

§ 42.112 Defects of containers: Tables IV, V, VI, VII, VIII, and IX.

TABLE IV—METAL CONTAINERS

Defects	Categories		
	Critical	Major	Minor
Type or size of container or component parts not as specified	None permitted.		
Closure incomplete, not located correctly or not sealed, crimped, or fitted properly	1		
Dirty, stained or smeared container			201
Key opening metal containers (when required):			
(a) Key missing		101	
(b) Key does not fit tab		102	
(c) Tab of opening band insufficient to provide accessibility to key		103	
(d) Improper scoring (band would not be removed in one continuous strip)		104	
Metal pop-top:			
(a) Missing or broken pull tab		105	
(b) Missing or incomplete score line		106	
Flexible pop-top:			
(a) Poor seal (wrinkle, entrapped matter, *etc.*)		107	
(b) Short pull tab			202
(c) Missing pull tab		108	
(d) Torn pull tab			203
Open top with plastic overcap (when required):			
(a) Plastic overcap missing		109	
(b) Plastic overcap warped (making opening or reapplication difficult)		110	
Outside tinplate or coating (when required):			
(a) Missing or incomplete			204
(b) Blistered, flaked, sagged, or wrinkled			205
(c) Scratched or scored			206
(d) Fine cracks			207
Rust (rust stain confined to the top or bottom double seam or rust that can be removed with a soft cloth is not scored a defect):			
(a) Rust stain			208
(b) Pitted rust		111	
Wet cans (excluding refrigerated containers)			209
Dent:			
(a) Materially affecting appearance but not usability			210
(b) Materially affecting usability		112	
Buckle:			
(a) Not involving end seam			211
(b) Extending into the end seam		113	
Collapsed container		114	
Paneled side materially affecting appearance but not usability			212
Solder missing when required		115	
Cable cut exposing seam		116	
Improper side seam		117	
Swell, springer, or flipper (not applicable to gas or pressure packed product nor frozen products)	2		
Leaker or blown container	3		
Frozen products only:			
(a) Bulging ends 3/16″ to 1/4″ beyond lip			213
(b) Bulging ends more than 1/4″ beyond lip		118	
Metal drums: leaking filling seal (bung) swell		119	

TABLE IV—METAL CONTAINERS—Continued

Defects	Categories		
	Critical	Major	Minor
Composite can (fiberboard body with metal lids):			
(a) Torn:			
(1) Materially affecting appearance but not usability			214
(2) Materially affecting usability		120	
(b) Crushed:			
(1) Materially affecting appearance but not usability			215
(2) Materially affecting usability		121	

TABLE V—GLASS CONTAINERS

Defects	Categories		
	Critical	Major	Minor
Type or size of container or component parts not as specified	None permitted.		
Closure not sealed, crimped, or fitted properly	1		
Dirty, stained, or smeared container			201
Chip in glass			202
Stone (unmelted material) in glass			203
Pits in surface of glass			204
Sagging surface			205
Bead (bubble within glass):			
(a) ⅛″ to 1/16″ in diameter			206
(b) Exceeding ⅛″ in diameter		101	
Checked		102	
Thin spot in glass		103	
Blister (structural defect)		104	
Bird swing (glass appendage inside container)	2		
Broken or leaking container	3		
Cap (nonheat processed):			
(a) Cross-threaded			207
(b) Loose but not leaking			208
(c) Pitted rust		105	
Cap (heat processed):			
(a) Cross-threaded or loose	4		
(b) Pitted rust		106	
Sealing tape or cello band (when required):			
(a) Improperly placed			209
(b) Not covering juncture of cap and glass		107	
(c) Ends overlap by less than ½"		108	
(d) Loose or deteriorating		109	
Missing or torn outer safety seal		110	
Inner safety seal—missing, torn, poor seal		111	

TABLE VI—RIGID AND SEMIRIGID CONTAINERS—CORRUGATED OR SOLID FIBERBOARD, CHIPBOARD, WOOD, ETC.

[Excluding glass and metal]

Defects	Categories		
	Critical	Major	Minor
Type or size of container or component parts not as specified	None permitted.		
Component part missing		101	
Closure not sealed, crimped, or fitted properly:			
(a) Primary container	1		
(b) Other than primary container			201
Dirty, stained, or smeared container			202
Wet or damp (excluding ice packs):			
(a) Materially affecting appearance but not usability			203
(b) Materially affecting usability		102	
Moldy area	2		
Crushed or torn area:			
(a) Materially affecting appearance but not usability			204
(b) Materially affecting usability		103	
Separation of lamination (corrugated fiberboard):			
(a) Materially affecting appearance but not usability			205
(b) Materially affecting usability		104	

TABLE VI—RIGID AND SEMIRIGID CONTAINERS—CORRUGATED OR SOLID FIBERBOARD, CHIPBOARD, WOOD, ETC.—Continued

[Excluding glass and metal]

Defects	Categories		
	Critical	Major	Minor
Product sifting or leaking		105	
Nails or staples (when required):			
(a) Not as required, insufficient number or improperly positioned			206
(b) Nails or staples protruding		106	
Glue or adhesive (when required); not holding properly not covering area specified, or not covering sufficient area to hold properly:			
(a) Primary container		107	
(b) Other than primary container			207
Flap:			
(a) Projects beyond edge of container more than ¼-inch			208
(b) Does not meet properly, allowing space of more than ¼-inch			209
Sealing tape or strapping (when required):			
(a) Missing		108	
(b) Improperly placed or applied			210

TABLE VII—FLEXIBLE CONTAINERS (PLASTIC, CELLO, PAPER, TEXTILE, ETC.)

Defects	Categories		
	Critical	Major	Minor
Type or size of container or component parts not as specified	None permitted.		
Closure not sealed, crimped, stitched, or fitted properly:			
(a) Primary container	1		
(b) Other than primary container			201
Dirty, stained, or smeared container			202
Unmelted gels in plastic			203
Torn or cut container or Abrasion (non-leaker):			
(a) Materially affecting appearance but not usability			204
(b) Materially affecting usability		101	
Moldy area	2		
Individual packages sticking together or to shipping case (tear when separated)		102	
Not fully covering product		103	
Wet or damp (excluding ice packs):			
(a) Materially affecting appearance but not usability			205
(b) Materially affecting usability		104	
Over wrap (when required):			
(a) Missing		105	
(b) Loose, not sealed or closed			206
(c) Improperly applied			207
Sealing tape, strapping or adhesives (when required):			
(a) Missing		106	
(b) Improperly placed, applied, torn, or wrinkled			208
Tape over bottom and top closures (when required):			
(a) Not covering stitching		107	
(b) Torn (exposing stitching)		108	
(c) Wrinkled (exposing stitching)		109	
(d) Not adhering to bag:			
1. Exposing stitching		110	
2. Not exposing stitching			209
(e) Improper placement			210
Product sifting or leaking			
(a) Non-heat processed		111	
(b) Heat processed	3		
Fold or wrinkle in seal area (thermo stabilized pouches)			
(a) Extends through all plies across seal area or reduces seal to less than 1/16-inch	4		
(b) Does not extend through all plies and effective seal to is 1/16-inch or greater			211
Incomplete seal (thermo stabilized pouches)	5		
Non-bonding seal (thermo stabilized pouches)	6		
Laminate separation	7		
Flex cracks (cracks in foil layer only)			212
Swollen container	8		
Blister (in seal)			
(a) Intact seal reduced to less than 1/16-inch	9		
(b) Intact seal 1/16-inch or greater			213

TABLE VII—FLEXIBLE CONTAINERS (PLASTIC, CELLO, PAPER, TEXTILE, ETC.)—Continued

Defects	Categories		
	Critical	Major	Minor
Compressed seal (overheated to bubble or expose inner layer) reducing intact seal to less than 1/16-inch	10		
Stringy seal (excessive plastic threads showing at edge of seal area)			214
Contaminated seal (entrapped matter) reducing intact seal to less than 1/16-inch	11		
Seal creep (product in pouch "creeping" into seal).			
(a) Intact seal reduced to less than 1/16-inch	12		
(b) Intact seal 1/16-inch or greater			215
Misaligned or crooked seal reducing intact seal to less than 1/16-inch	13		
Seal formed greater than 1-inch from edge of pouch (unclosed edge flaps)			216
Waffling (embossing on surface from retort racks)			217
Poor or missing tear notch			218
Missing "zip lock" (re-sealable containers)			219
Loss of vacuum (vac pack)		112	
Pre-formed containers:			
(a) Dented or crushed area			220
(b) Deformed container			221
Missing resealable cap		113	
Inner or outer safety seal—missing, torn, poor seal	14		
Air bubble in plastic		114	
Flexible pop-top:			
(a) Poor seal (wrinkle, entrapped matter, *etc.*):			
(1) Intact seal reduced to less than 1/16-inch	15		
(2) Intact seal 1/16-inch or greater			222
(b) Short pull tab (materially affecting usability)			223
(c) Missing pull tab		115	
(d) Torn pull tab (materially affecting usability)			224
Missing component (straw, *etc.*)			225
Two part container (poly lined box or bag in box):			
(a) Outer case torn			226
(b) Poly liner:			
1. Missing	16		
2. Improper closure		116	

TABLE VIII—UNITIZING (PLASTIC OR OTHER TYPE OF CASING/UNITIZING)

Defects	Categories	
	Major	Minor
Not specified method	101	
Missing tray (when required)	102	
Missing shrink wrap (when required)	103	
Loose or improperly applied wrap		201
Torn or mutilated		202
Off-center wrap (does not overlap both ends)		203

TABLE IX—INTERIOR CAN DEFECTS

Defects	Categories	
	Major	Minor
De-tinning	101	201
Black spots		202
Enamel missing (when required)	102	
Enamel breakdown	103	203
Enamel cracked	104	204

8. Section 42.113 is revised to read as follows:

§ 42.113 Defects of label, marking, or code: Table X.

TABLE X—LABEL, MARKING, OR CODE

Defects	Categories	
	Major	Minor
Not specified method	101	
Missing (when required)	102	
Loose or improperly applied		201
Torn or mutilated		202
Torn or scratched, obliterating any markings on the label	103	
Text illegible or incomplete		203
Incorrect	104	
In wrong location		204

Subpart E—[Removed]

9. In part 42, Subpart E—Miscellaneous, consisting of §§ 42.140, 42.141, 42.142, and 42.143, is removed.

Dated: November 9, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–27430 Filed 11–18–09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

8 CFR Parts 103 and 235

[USCBP–2008–0097]

RIN 1651–AA73

Establishment of Global Entry Program

AGENCY: U.S. Customs and Border Protection; DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended, U.S. Customs and Border Protection (CBP) proposes to establish an international trusted traveler program, called Global Entry. This voluntary program would allow CBP to expedite clearance of pre-approved, low-risk air travelers into the United States. CBP has been operating the Global Entry program as a pilot at several airports since June 6, 2008. Based on the successful operation of the pilot, CBP now proposes to establish Global Entry as a permanent voluntary regulatory program.

DATES: Comments must be received on or before January 19, 2010.

ADDRESSES: You may submit comments, identified by docket number USCBP–2008–0097, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Border Security Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20001–4501.

Instructions: All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP–2008–0097. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Fiorella Michelucci, Office of Field Operations, 202–344–1220 or Daniel Tanciar, Office of Field Operations, 202–344–2818.

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background and Purpose

Section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), 118 Stat. 3638, as amended by section 565 of the Consolidated Appropriations Act, 2008, 121 Stat. 1844, codified at 8 U.S.C. 1365b, requires the Secretary of Homeland Security (Secretary) to create a program to expedite the screening and processing of pre-approved, low-risk air travelers into the United States. Under the IRTPA, the Secretary shall ensure that the international trusted traveler program includes as many participants as practicable by establishing a reasonable cost of enrollment, making program enrollment convenient and easily accessible, and providing applicants with clear and consistent eligibility guidelines.

See 8 U.S.C. 1365b(k)(3). The program shall also incorporate available technologies, such as biometrics and e-passports, and security threat assessments.

Section 7208(k) of the IRTPA requires DHS to initiate a rulemaking action to establish the criteria to participate in the program and to set the appropriate fee for such participation. This rule meets that requirement by proposing, among other things, the criteria for participation in this voluntary program and the fee necessary to cover the costs of the program.

A. Existing Trusted Traveler Programs

CBP currently operates several regulatory and non-regulatory international trusted traveler programs. These programs provide expedited travel for pre-screened populations and operate under the Port Passenger Accelerated Service System (PORTPASS), a legacy system of the former Immigration and Naturalization Service, described in 8 CFR 235.7. CBP currently operates three PORTPASS