

# 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 1205

[Doc. # AMS-CN-09-0032; CN-08-003]

#### **Cotton Research and Promotion Program: Designation of Cotton-Producing States; Secretary's Decision and Referendum Order on Proposed Amendments to the Cotton Research and Promotion Order**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This is the Secretary's decision concerning amendments to the Cotton Research and Promotion Order (Cotton Order) and provides Upland cotton producers and importers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments would implement section 14202 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) that amended the Cotton Research and Promotion Act (Cotton Act.) The 2008 Farm Bill provided that Kansas, Virginia, and Florida be separate states in the definition of "cotton-producing state" effective beginning with the 2008 crop of cotton. It has been determined that amendments need to be expedited and therefore a recommended decision is omitted.

**DATES:** For the purpose of determining producer voter eligibility, the representative production period is the period January 1, 2008, through December 31, 2008. For the purpose of determining importer voter eligibility, the 12-month period during which qualifying imports of cotton must have been made is January 1, 2008, through December 31, 2008.

The referendum will be held during the period October 13, 2009, through November 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** Shethir M. Riva, Chief, Research and

Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2637-S, Washington, DC 20250-0224, telephone (202) 720-6603, facsimile (202) 690-1718, or email at [Shethir.Riva@ams.usda.gov](mailto:Shethir.Riva@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on November 24, 2008, and published in the December 1, 2008, issue of the **Federal Register** (73 FR 72747).

This administrative 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.

#### **Preliminary Statement**

The proposed amendments were formulated based on the record of the public hearing held in Washington, DC, on December 5, 2008. The hearing was held to consider and receive evidence from Upland cotton producers, importers, and other interested parties on the proposed amendments to the Cotton Order (7 CFR part 1205). The hearing was held pursuant to the provisions of the Cotton Act (7 U.S.C. 2101-2118), and the applicable rules of practice and procedure governing research and promotion programs (7 CFR part 1200). The proposed amendments in this decision would: (1) Amend the Cotton Order to incorporate the States of Kansas, Virginia, and Florida into the definition of "cotton-producing state" as separate states, (2) amend the definition of "cotton-producing region" to list Kansas, Virginia, and Florida as separate states, and (3) make any such changes as may be necessary to the Cotton Order if any of the proposed amendments as adopted, so that all of the Cotton Order's provisions conform to the effectuated amendments. AMS believes that conditions exist that warrant the omission of a recommended decision in this rulemaking proceeding under 7 CFR 1200.13(d) of the Rules of Practice and Procedure with respect to the proposed amendments.

The amendments are proposed by AMS to amend the Cotton Order and to implement section 14202 of the 2008 Farm Bill that amended the Cotton Act. In addition, AMS proposed to amend the definition of cotton-producing region for consistency with the changes

to the definition of cotton-producing state. AMS also proposed to make such changes as may be necessary to the Cotton Order to conform to any amendment that may result from the hearing. No conforming changes were determined to be necessary by AMS.

Three witnesses testified at the hearing, and all were in favor of the amendments. One witness represented AMS, one witness represented the Virginia Cotton Growers Association and the National Council, and lastly, one witness represented the Cotton Board.

At the conclusion of the hearing, the Administrative Law Judge set January 14, 2009, as the date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing on the proposed amendments. The Hearing Clerk received six briefs during the briefing period. Briefs were received from the offices of Congressman Allen Boyd, Jr., Florida; Congressman Bob Goodlatte, Virginia; and, Senator Pat Roberts, Kansas. Comments also were received from the Kansas Cotton Association, the Florida Farm Bureau; and, Southern Cotton Growers, Inc. Each of these briefs expressed full support of the prompt implementation of the amendments proposed by AMS. All discussions in briefs pertaining to the amendments proposed in this decision were considered. Two briefs, one from the office of Senator Bill Nelson, Florida; and one from the United States Association of Importers of Textiles and Apparel, were received after the January 14, date and therefore were untimely. Accordingly, they were not considered in this decision.

#### **Proposals in This Decision**

AMS proposed these amendments to the Cotton Order for the purpose of implementing changes to the Cotton Act as mandated by section 14202 of the 2008 Farm Bill. Section 14202 modified the Cotton Act by adding States of Kansas, Virginia, and Florida to the definition of "cotton-producing state" as separate states effective beginning with the 2008 crop of cotton. A crop year is synonymous with marketing year and 7 CFR 1205.320 of the Cotton Order defines "marketing year" as a consecutive 12-month period ending July 31.

AMS proposed to amend section 1205.314 of the Cotton Order to incorporate the States of Kansas, Virginia, and Florida into the definition of cotton-producing state and amend section 1205.319 to reflect the incorporation of the above three states in the definition of cotton-producing region.

#### Material Issues

The material issues in this decision presented on the record of the hearing are as follows:

1. Whether to amend section 1205.314 to read as follows: Cotton-producing State means each of the following States and combination of States: Alabama; Arizona; Arkansas; California-Nevada; Florida; Georgia; Kansas; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina; Oklahoma; South Carolina; Tennessee-Kentucky; Texas; and Virginia.

2. Whether to amend section 1205.319 to read as follows: "Cotton-producing region" means each of the following groups of cotton-producing States: (a) Southeast Region: Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia; (b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky; (c) Southwest Region: Kansas, Oklahoma and Texas; (d) Western Region: Arizona, California-Nevada, and New Mexico.

3. Whether to expedite the decision on all of the proposals by omitting the recommended decision and proceeding directly to the Secretary's decision and referendum order.

#### Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing.

#### Material Issue Number 1

Section 1205.314 should be amended to provide that the States of Kansas, Virginia, and Florida be separate states in the definition of "Cotton-Producing State." Section 1205.314 should read as follows: "Cotton-producing State" means each of the following States and combination of States: Alabama; Arizona; Arkansas; California-Nevada; Florida; Georgia; Kansas; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina; Oklahoma; South Carolina; Tennessee-Kentucky; Texas; and Virginia.

Section 1205.314 of the Cotton Order currently defines Cotton-Producing State as, "Cotton-producing State means each of the following States and combination of States: Alabama-Florida; Arizona; Arkansas; California-Nevada;

Georgia; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina-Virginia; Oklahoma; South Carolina; Tennessee-Kentucky; Texas." Currently, Kansas is not included in this definition, Virginia is combined as a region with North Carolina, and Florida is combined as a region with Alabama. AMS is proposing to amend the definition so that Kansas is added and Florida and Virginia are separated from their current partner states.

The witness representing AMS testified that the major effect of these changes is that any cotton producer organization, in any cotton-producing state, including the respective States of Kansas, Virginia, and Florida, may request certification from the Secretary pursuant to section 1205.341 of the Order to participate in nominating members and alternate members to represent such State on the Cotton Board pursuant to section 1205.324. The witness also testified that the change would also allow the States of Kansas, Virginia, and Florida, pursuant to section 1205.322(b)(1), to have at least one member, and one additional member for each 1 million bales or major fraction (more than half) thereof of cotton produced in the state and marketed above 1 million bales during the period specified in the regulations for determining board membership. Further, the AMS witness stated that in determining whether any cotton-producing state is entitled to be represented by more than one member of the Cotton Board, as provided in section 1205.322, average annual production of Upland cotton in terms of 480-pound net weight bales for the five most recent marketing years will be used as the criteria for determination of such additional members.

The AMS witness cited the U.S. Department of Agriculture's National Agricultural Statistics Service's report entitled *Cotton Ginnings 2007 Summary* (Exhibit 6), which published the total bales produced and ginned (or marketed) by State. In the 2007 marketing year, according to this publication, Florida produced 105,900 Upland cotton 480-pound bales and would be entitled to one member and one alternate. Kansas produced 53,500 Upland cotton 480-pound bales and would be entitled to one member and one alternate. Virginia produced 98,050 480-pound bales and would be entitled to one member and one alternate.

We also note that the *Cotton Ginnings 2007 Summary* shows the bales ginned for: Alabama—409,900 bales and North Carolina—61,600 bales. This demonstrates that those states have significant production of cotton, and

having their own Cotton Board seats would not be inappropriate.

The AMS witness stated that if the proposed changes are adopted, a total of three additional members and three alternates would be added to the Cotton Board. The witness said the 2008 Cotton Board was composed of 37 members and 37 alternate members, which are 22 producer and 15 importer members and their respective alternates, and one consumer advisor. Excluding the proposed amendment to the Cotton Order, the 2009 Cotton Board, already calculated, would be 38 members and 38 alternates, which would be 23 producers and 15 importer members and respective alternates. The AMS witness indicated that if current cotton production and cotton imports remain consistent with their 5-year averages, and there are no changes, then just three additional producer members will be added based on the cotton gin for those three states. The total Board membership would be 26 producers and 15 importer members and respective alternates, and one consumer advisor.

The witness appearing on behalf of the Virginia Cotton Growers Association and the National Cotton Council (VCGA/NCC witness) strongly supported the proposed amendments. The witness testified that the amendments to the Cotton Order, which would ultimately provide Kansas, Virginia and Florida individual representation on the Cotton Board, will enhance the Board's ability to carry out its mission. Further, the witness indicated that these states have, and will continue to contribute funds to the Cotton Research and Promotion Program. By providing the three states with individual representation on the Board, the witness stated that it will strengthen their support, enhance communication from these production areas, and better enable the Cotton Board to represent the interests of all cotton-producing areas in the United States. Moreover, the witness said that there is no other national research and promotion program for Upland cotton like the one carried out under the Cotton Act. The new representation on the Board will not overlap or contradict any ongoing promotional activities in any region of the Cotton Belt.

The VCGA/NCC witness stated that the addition of individual representation for Kansas, Virginia and Florida reflects the shift in Upland cotton production over the years. For example the witness said successful completion of the Boll Weevil Eradication Program has led to the resurgence and expansion of cotton in the Southeast, including Virginia and

Florida. In addition, improved transportation, storage and handling, some as a direct result of research conducted under the Cotton Act, has led to Upland cotton production in Kansas. According to the witness, in Virginia and Florida, the total economic activity generated by cotton production and processing exceeds \$100 million annually in each state. In Kansas, acreage expanded rapidly, until recently, when prices from competing crops reversed the trend. The witness stated that the three states continue to plant more than 300,000 acres of cotton, employ over 3,000 people, and produce annual cotton crops valued at \$100 million annually in each state at the farm gate.

The witness commented that the Cotton Research and Promotion Program funded through producer and importer contributions has been highly successful. Broader representation will facilitate even stronger support and enhance participation by producers. In addition, the witness urged the Secretary to take the necessary action to amend the Cotton Order, as this action will assure that nearly a thousand producers, who account for nearly 5 percent of annual production, will, for the first time, have direct representation and input into the program which they are helping finance. The witness concluded by saying that allowing these states direct representation, the Cotton Board will be better able to carry out its mission and the purpose of the statute, to increase the demand for cotton and cotton products, will be fulfilled.

The witness representing the Cotton Board testified in support of the proposed amendments. The witness indicated that the Cotton Board is ready to comply with the 2008 Farm Bill and any changes to the Cotton Act and Cotton Order that governs the Cotton Research and Promotion Program. In addition, the witness indicated that the Board is prepared to include the states and their representatives into the Cotton Board's system of governance. The witness emphasized that the Cotton Board is organized to administratively support and finance USDA's efforts to amend the Cotton Order and implement the proposed amendments. The witness testified that the Cotton Board believes that providing Kansas, Virginia, and Florida individual representation on the Board would enhance the Board's ability to carry out its mission and fiduciary responsibility, namely, to provide financing for and oversight of the Program. The witness added that producers in these States have and will continue to contribute funds to the Program. By providing them individual

representation on the Cotton Board, the witness believes it will strengthen their support, enhance communication from these production areas, and better enable the Cotton Board to represent the interests of all cotton-producing areas in the United States. The Cotton Board witness reiterated the statements made by the VCGA/NCC that the Research and Promotion Program has been highly successful, and that broader representation will facilitate even stronger support and enhanced participation by producers. Moreover, the Cotton Board witness affirmed the VCGA/NCC witness' statement that nearly 1,000 producers, who account for nearly 5 percent of annual production, will, for the first time have direct representation and input into the program which they are helping to finance if the amendments were implemented.

Record evidence supports amending section 1205.314 of the Order to incorporate the States of Kansas, Virginia, and Florida into the definition of "cotton-producing State" as separate States as provided in the 2008 Farm Bill.

#### Material Issue Number 2

Section 1205.319 should be amended to read as follows:

"Cotton-production region" means each of the following groups of cotton-producing States: (a) Southeast Region: Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia; (b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky; (c) Southwest Region: Kansas, Oklahoma and Texas; (d) Western Region: Arizona, California-Nevada, and New Mexico.

The AMS witness testified that AMS is proposing to amend the definition of cotton-producing region in section 1205.319 of the Cotton Order to make it consistent with the change to the definition of cotton-producing state.

"Cotton-producing region" is currently defined as each of the following groups of cotton-producing states: (a) Southeast Region: Alabama-Florida, Georgia, North Carolina-Virginia, and South Carolina; (b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky; (c) Southwest Region: Oklahoma and Texas; (d) Western Region: Arizona, California-Nevada, and New Mexico."

Accordingly, record evidence supports amending section 1205.319 of the Order to amend the definition of "cotton-producing region" to list Kansas, Virginia, and Florida as separate states. This change should make the

section consistent with changes made to the definition of "cotton-producing state" in section 1205.314 of the Order.

#### Material Issue Number 3

The AMS witness testified that conditions exist that warrant the omission of a recommended decision in this rulemaking proceeding under 7 CFR 1200.13(d) of the Rules of Practice and Procedure with respect to the proposed amendments. The 2008 Farm Bill provides that this change be made during the 2008 crop of cotton. Omission of the recommended decision would allow the rulemaking to conform to this timeline as closely as possible. Accordingly, in accordance with section 1200.13(d) of the rules of practice and procedure, it is hereby found and determined on the basis of the record that due and timely execution of the Secretary's functions imperatively and unavoidably requires omission of the recommended decision.

#### Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], AMS has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities. There are currently approximately 18,000 producers, and approximately 16,000 importers that are subject to the Cotton Order. In 13 CFR part 121, the Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (importers) as those having annual receipts of no more than \$7.0 million. The majority of these producers and importers are small businesses under the criteria established by the SBA.

The Cotton Research and Promotion Act of 1966 provides authority to establish the Cotton Board to administer the Cotton Research and Promotion Program. In 2009, the Board is composed of 38 members and 38 alternate members (23 producer and 15 importer members and alternate members) and one consumer advisor. The Board is responsible for carrying out an effective and continuous program of research and promotion in order to strengthen the competitive position of Upland cotton by expanding domestic and foreign markets for cotton, improving fiber quality, and lowering the costs of production. The Program, including U.S. Department of Agriculture administrative costs, is

financed through producer and importer assessments levied on each bale or bale equivalent of cotton at a rate of \$1 per bale with a supplemental (currently 5/10ths of one percent) assessment not to exceed 1 percent of the value of lint of each bale. There are approximately 18,000 producers, and approximately 16,000 importers that are subject to the Order. In 2008, the Board collected \$64.2 million in assessments (\$36.2 million from producers and \$28 million from importers).

Interested persons were invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses. The amendments proposed herein would not result in any additional regulatory requirements being imposed on cotton producers and importers. The proposed amendments to the Cotton Order merely reflect the statutory changes needed to implement the 2008 Farm Bill provisions that provided that Kansas, Virginia, and Florida be separate states in the definition of "cotton-producing state."

There are no new information collection reports as a result of the proposed amendments. Information collection requirements and recordkeeping provisions contained in 7 CFR part 1205 have been previously approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 0581-0093 under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

#### Civil Justice Reform

The amendments herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Cotton Act, any person subject to an order may file with the Secretary of Agriculture a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Cotton Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of

business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

#### Rulings on Briefs of Interested Persons

Briefs, and the evidence in the record were considered in making the findings and conclusions set forth in this decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this decision, the requests to make such findings or to reach such conclusions are denied.

Annexed hereto and made a part hereof is the document entitled "Order Amending the Cotton Research and Promotion Order." This document has been decided upon the detailed and appropriate means of effectuating the foregoing findings and conclusions.

*It is hereby ordered*, that this entire decision be published in the **Federal Register**.

#### Referendum Order

Pursuant to the applicable provisions of the Cotton Research and Promotion Act (7 U.S.C. 2101-2118) it is hereby directed that a referendum be conducted among the cotton producers and importers who have been engaged in the production of Upland cotton in the United States or who were engaged in the importation of Upland cotton or cotton-containing products to determine whether such producers or importers favor the amendments of the said annexed Cotton Research and Promotion Order.

The procedure applicable to the referendum shall be the procedure for the conduct of referenda in connection with the Cotton Research and Promotion order (7 CFR part 1205.200) as published in this issue of the **Federal Register**. The referendum period shall be from October 13, 2009, through November 10, 2009, provided that ballots cast prior to October 13, 2009, shall not be invalidated for that reason. For the purpose of determining producer voter eligibility, the representative period is the period January 1, 2008 through December 31, 2008. Producers engaged in the production of the 2008 crop during that period are eligible to vote in the referendum. For the purpose of determining importer voter eligibility, the 12-month period during which qualifying imports of cotton must have been made is January 1, 2008, through December 31, 2008, and imported such products having a value of cotton in excess of the de minimis value per line

item entry would also be eligible to vote.

The agent of the Secretary to conduct such referendum is hereby designated to be Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2637-S, Washington, DC 20250-0224, telephone (202) 720-6603, facsimile (202) 690-1718, or e-mail at [Shethir.Riva@ams.usda.gov](mailto:Shethir.Riva@ams.usda.gov).

Single copies of the complete text of the proposed amendments to the Cotton Research and Promotion Order may be obtained from any Farm Service Agency county office in cotton-producing counties or from the Agricultural Marketing Service, Cotton and Tobacco Programs, Washington, DC 20250.

It is hereby ordered, That all of this decision, referendum order, and annexed and Cotton Research and Promotion Order be published in the **Federal Register**.

#### List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

Dated: September 28, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

#### Order Amending the Order Regulating the Cotton Research and Promotion Program

##### *Findings and Determinations*

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the Order; and all of said previous findings and determinations are hereby ratified and affirmed.

Pursuant to the provisions of the Cotton Research and Promotion Act (Cotton Act) (7 U.S.C. 2101-2118), and the applicable rules of practice and procedure effective thereunder (7 CFR part 1200), a public hearing was held in Washington, DC on December 5, 2008, on the proposed amendments to the Cotton Research and Promotion Order (7 CFR part 1205). Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The Cotton Order, as amended, as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) All cotton produced and handled in the United States is in the current of interstate or foreign commerce or

directly burdens, obstructs, or affects interstate or foreign commerce in cotton and cotton products.

The provisions of the amended Order are set forth in full herein.

#### List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1205 is proposed to be amended as follows:

#### PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation 7 CFR part 1205 continues to read as follows:

**Authority:** 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

2. Revise § 1205.314 to read as follows:

##### § 1205.314 Cotton-producing State.

*Cotton-producing State* means each of the following States and combination of States: Alabama; Arizona; Arkansas; California-Nevada; Florida; Georgia; Kansas; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina; Oklahoma; South Carolina; Tennessee-Kentucky; Texas; Virginia.

3. Revise § 1205.319 to read as follows:

##### § 1205.319 Cotton-producing region.

*Cotton-producing region* means each of the following groups of cotton-producing States:

(a) Southeast Region: Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia;

(b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky;

(c) Southwest Region: Kansas, Oklahoma and Texas;

(d) Western Region: Arizona, California-Nevada, and New Mexico.

[FR Doc. E9–23778 Filed 10–2–09; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2009–0824; Airspace Docket No. 09–AAL–11]

RIN 2120–AA66

#### Proposed Revision of Colored Federal Airways; Alaska

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to revise two Colored Federal Airways, Green 16 (G–16) and Blue 26 (B–26), in Alaska. The FAA is proposing this action in preparation of the eventual decommissioning of the Barter Island (BTI) Non-directional Beacon (NDB) at the Village of Kaktovik, Alaska.

**DATES:** Comments must be received on or before November 19, 2009.

**ADDRESSES:** Send comments on the proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2009–0824 and Airspace Docket No. 09–AAL–11, at the beginning of your comments. You may also submit comments on the Internet at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA–2009–0824 and Airspace Docket No. 09–AAL–11) and be submitted in triplicate to the Docket Management Facility (*see ADDRESSES* section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. FAA–2009–0824 and Airspace Docket No. 09–AAL–11.” The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for

comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA’s Web page at [http://www.faa.gov/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see ADDRESSES* section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

Persons interested in being placed on a mailing list for future NPRM’s should contact the FAA’s Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

#### The Proposal

The FAA is proposing an amendment to the Title 14, Code of Federal Regulations (14 CFR part 71), that would revise two Colored Federal Airways, G–16 and B–26 by removing the segment to the BTI NDB from each airway description. In a separate action, one Area Navigation (RNAV) route T–228 was revised, and T–73 was established to continue IFR service to Village of Kaktovik, Alaska. The BTI NDB decommissioning proposal was publicly circulated in notice number 06–AAL–49NR. After reviewing public comment, the FAA decided that keeping the NDB was not feasible and that it should be decommissioned.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1)