

this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

### National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of plants of the genera *Aechmea*, *Cryptanthus*, *Guzmania*, *Hohenbergia*, *Neoregelia*, *Tillandsia* and *Vriesea*, of the family Bromeliaceae, from Belgium, Denmark, and the Netherlands, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

### Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

#### § 319.37–6 [Amended]

2. In § 319.37–6, footnote 8 is redesignated as footnote 7

#### § 319.37–7 [Amended]

3. In § 319.37–7, footnote 9 is redesignated as footnote 8.

#### § 319.37–13 [Amended]

4. In § 319.37–13, footnote 11 is redesignated as footnote 12.

5. In § 319.37–8, paragraph (e) introductory text, the list is amended as follows:

a. By redesignating footnote 10 as footnote 9.

b. By adding a new entry, in alphabetical order, to read as set forth below.

c. By revising footnote 11 to read as set forth below.

#### § 319.37–8 Growing media.

\* \* \* \* \*

(e) \* \* \*

Bromeliad plants of the genera *Aechmea*, *Cryptanthus*, *Guzmania*, *Hohenbergia*, *Neoregelia*, *Tillandsia*, and *Vriesea* from Belgium, Denmark, and the Netherlands<sup>10</sup>

\* \* \* \* \*

*Nidularium*<sup>11</sup>

\* \* \* \* \*

Done in Washington, DC, this 9th day of March 2011.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–5965 Filed 3–14–11; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2010–0020]

RIN 0579–AD33

### Importation of Tomatoes With Stems From the Republic of Korea Into the United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the fruits and vegetables regulations to allow, under certain conditions, the importation into the United States of commercial consignments of tomatoes with stems from the Republic of Korea. The conditions for the importation of tomatoes with stems from the Republic of Korea include requirements for pest exclusion at the production site, fruit fly

<sup>10</sup> See footnote 9.

<sup>11</sup> See footnote 9.

trapping inside and outside the production site, and pest-excluding packinghouse procedures. The tomatoes would also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the Republic of Korea with an additional declaration confirming that the tomatoes had been produced in accordance with the proposed requirements. This action would allow for the importation of tomatoes with stems from the Republic of Korea while continuing to provide protection against the introduction of injurious plant pests into the United States.

**DATES:** We will consider all comments that we receive on or before May 16, 2011.

**ADDRESSES:** You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0020> to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send one copy of your comment to Docket No. APHIS–2010–0020, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0020.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Phillip B. Grove, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734–6280.

#### SUPPLEMENTARY INFORMATION:

#### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into

the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

The national plant protection organization (NPPO) of the Republic of Korea (South Korea) has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh tomatoes with stems (*Solanum lycopersicum* L.) (synonym: *Lycopersicon esculentum* P. Mill.) to be imported into the United States. As part of our evaluation of South Korea's request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room).

The PRA, titled "Importation of Fresh Tomato Fruit with Stems (*Solanum lycopersicum* L.) (Synonym: *Lycopersicon esculentum* P. Mill.) from the Republic of Korea into the United States" (July 2010), evaluates the risks associated with the importation of fresh tomatoes with stems into the United States from South Korea.

The PRA and supporting documents identified eight pests of quarantine significance present in South Korea that could be introduced into the United States through the importation of fresh tomatoes with stems. These include one fruit fly (*Bactrocera depressa*); four moths (*Helicoverpa armigera*, *Helicoverpa assulta*, *Mamestra brassicae*, and *Ostrinia furnacalis*); two thrips (*Scirtothrips dorsalis* and *Thrips palmi*); and a pathogen (*Ralstonia solanacearum* race 3 biovar 2).

Although *R. solanacearum* race 3 biovar 2 was evaluated in the PRA as a pest of quarantine significance, we believe there is a low likelihood of the pathogen becoming introduced into the United States through the importation of fresh tomatoes with stems from South Korea. Currently, APHIS permits the importation of tomatoes and peppers for consumption from countries where *R. solanacearum* race 3 biovar 2 is known to occur. To date, no known introductions of *R. solanacearum* race 3 biovar 2 have occurred as a result of these importations. This supports the conclusion that even if *R. solanacearum* race 3 biovar 2 entered with fruit, there is a low likelihood of establishment. Therefore, we are proposing to allow the entry of fresh tomatoes with stems from South Korea into the United States subject to a port of entry inspection for *R. solanacearum* race 3 biovar 2.

APHIS has determined that measures beyond standard port-of-arrival inspections are required to mitigate the risks posed by the plant pests other than *R. solanacearum* race 3 biovar 2. Therefore, we are proposing to allow the importation of fresh tomatoes with stems from South Korea into the United States only if the tomatoes are produced under a systems approach. The systems approach would require that the tomatoes be grown in registered pest-exclusionary structures, would require trapping and monitoring inside and outside the pest-exclusionary structures for *B. depressa*, and would require packinghouse procedures designed to exclude the quarantine pests. Consignments of tomatoes with stems from South Korea would also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the tomatoes were grown in approved pest-exclusionary structures and were inspected and found free from quarantine pests of concern to the United States.

#### Registered Pest-Exclusionary Structures

The tomatoes would have to be grown in pest-exclusionary structures that are registered with the NPPO of South Korea. The NPPO of South Korea and APHIS would have to jointly approve the pest-exclusionary structures. The pest-exclusionary structures would have to be equipped with double self-closing doors to prevent inadvertent introduction of pests into the pest-exclusionary structures. In addition, any vents or openings in the pest-exclusionary structures (other than the double self-closing doors) would have to be covered with screening 1.6 mm or smaller in order to prevent the entry of pests into the pest-exclusionary structure. The 1.6 mm maximum screening size is adequate to exclude most insect pests of quarantine significance named earlier in this docket. Although the thrips species are small enough to pass through the screening, they are at least partially discouraged by the physical barrier of the 1.6 mm mesh and the resultant reduced velocity of wind currents upon which they are borne. In addition, because thrips are external feeders, they would most likely be detected during inspection of the tomato fruit before shipment.

We would require that the pest-exclusionary structures be inspected monthly throughout the growing season (the months of March through November) by the NPPO of South Korea or its approved designee to ensure that phytosanitary and trapping procedures

are employed to exclude plant pests and to verify that the screening is intact.

#### Trapping

Trapping for *B. depressa* would be required both inside and outside the pest-exclusionary structures. Trapping would have to begin at least 2 months prior to the start of harvest and continue for the duration of the harvest. Both inside and outside traps would have to be serviced once per week.

APHIS-approved traps, with an APHIS-approved protein bait, would have to be placed inside the pest-exclusionary structures at a density of at least two traps per pest-exclusionary structure as well as within a 500-meter-wide buffer area around the registered pest-exclusionary structure at a density of one trap per 10 hectares. During the growing season at least one trap would have to be in the buffer area near each pest-exclusionary structure.

If a single *B. depressa* is found in a trap inside a pest-exclusionary structure, the NPPO of South Korea would have to immediately prohibit that pest-exclusionary structure from exporting tomatoes to the United States and notify APHIS of the action. The prohibition would remain in effect until the NPPO of South Korea and APHIS agree that the risk has been mitigated. If three *B. depressa* are found inside the buffer zone within 2 kilometers of each other within a 30-day period, the NPPO of South Korea would have to immediately prohibit all registered pest-exclusionary structures within 2 kilometers of the finds from exporting tomatoes to the United States and notify APHIS of the action. The prohibition would remain in effect until the NPPO of South Korea and APHIS agree that the risk has been mitigated.

The manager of the pest-exclusionary structure would have to maintain records of trap placement, trap servicing, and fruit fly captures for at least 1 year and must report on the trapping program and provide copies of trapping records to the NPPO of South Korea each month. These trapping records would have to be made available to APHIS for review upon request.

#### Packinghouse Procedures

The tomatoes would have to be packed within 24 hours of harvest in a pest-exclusionary packinghouse. While packing the tomatoes for export to the United States, the packinghouse would only be allowed to accept tomatoes from registered pest-exclusionary structures. A random sample of fruit per lot, as determined by the NPPO of South Korea and agreed to by APHIS, would have to

be inspected for external pests and the fruit cut to reveal internal pests. Each sample would have to be of a size sufficient to detect pest infestations. Inspection of cut fruit is effective at detecting fruit flies, such as *B. depressa*. Any damaged, diseased, or infested fruit would have to be removed and separated from the commodity destined for export to the United States. The tomatoes would have to be safeguarded by an insect-proof mesh, screen, or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing.

The tomatoes would have to be packed for shipment to the United States in insect-proof cartons or containers, or covered with insect-proof screen or plastic tarpaulin. These safeguards would have to remain intact until the arrival of the tomatoes in the United States or the consignment would not be allowed to enter the United States.

#### Commercial Consignments

Only commercial consignments of tomatoes with stems from South Korea would be allowed to be imported into the United States. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packing, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

#### Phytosanitary Certificate

To certify that the tomatoes have been produced in accordance with the mitigations described in this document, we would require that each consignment of tomatoes be accompanied by a phytosanitary certificate of inspection issued by the NPPO of South Korea bearing an additional declaration that reads “Tomatoes in this consignment were grown in pest-exclusionary structures in accordance with 7 CFR 319.56–51 and were inspected and found free of *Bactrocera depressa*, *Helicoverpa armigera*, *Helicoverpa assulta*,

*Mamestra brassicae*, *Ostrinia furnacalis*, *Scirtothrips dorsalis*, and *Thrips palmi*.”

These proposed provisions governing the importation of fresh tomatoes with stems from South Korea would be added to the regulations as a new § 319.56–51.

#### Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (*see ADDRESSES* above for instructions for accessing Regulations.gov).

South Korea expects to export one 40-foot shipping container of fresh tomatoes with stems per year to the United States. A shipping container can hold about 25 metric tons (MT) of tomatoes with stems. In 2009, the United States produced 1.47 million MT of tomatoes, U.S. imports reached 1.19 million MT, and U.S. exports were 0.17 million MT. Thus, the total U.S. supply of tomatoes for this period was approximately 2.49 million MT (production plus imports minus exports). This quantity greatly dwarfs the relatively small amount that is expected to be imported from South Korea. Therefore, while the majority of domestic tomato farms are small, the impact of the proposed tomato imports from South Korea would be negligible.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

This proposed rule would allow fresh tomatoes with stems to be imported into the United States from South Korea. If this proposed rule is adopted, State and local laws and regulations regarding fresh tomatoes with stems imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is

adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### 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 recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2010–0020. Please send a copy of your comments to: (1) Docket No. APHIS–2010–0020, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the fruits and vegetables regulations to allow, under certain conditions, the importation into the United States of commercial shipments of tomatoes with stems from the Republic of Korea. The conditions for the importation of tomatoes with stems from the Republic of Korea include requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse procedures. The tomatoes would also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the Republic of Korea with an additional declaration confirming that the tomatoes had been produced in accordance with the proposed requirements. This action would allow for the importation of tomatoes with stems from the Republic of Korea while continuing to provide protection against the introduction of injurious plant pests into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency’s

functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 2 hours per response.

*Respondents:* Foreign officials.

*Estimated annual number of respondents:* 2.

*Estimated annual number of responses per respondent:* 1.5.

*Estimated annual number of responses:* 3.

*Estimated total annual burden on respondents:* 6 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56-51 is added to read as follows:

#### § 319.56-51 Tomatoes with stems from the Republic of Korea.

Fresh tomatoes with stems (*Solanum lycopersicum* L.) (Synonym: *Lycopersicon esculentum* P. Mill.) may be imported into the United States from the Republic of Korea only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Bactrocera depressa*, *Heliocoverpa armigera*, *Heliocoverpa assulta*, *Mamestra brassicae*, *Ostrinia furnacalis*, *Scirtothrips dorsalis*, and *Thrips palmi*.

(a) *Registered pest-exclusionary structures.* The tomatoes must be grown in pest-exclusionary structures that are registered with the national plant protection organization (NPPO) of the Republic of Korea and approved by the NPPO of the Republic of Korea and APHIS.

(1) The pest-exclusionary structures must be equipped with double self-closing doors.

(2) Any vents or openings in the pest-exclusionary structures (other than the double self-closing doors) must be covered with 1.6 mm or smaller screening in order to prevent the entry of pests into the pest-exclusionary structures.

(3) The pest-exclusionary structures must be inspected monthly throughout the growing season (March through November) by the NPPO of the Republic of Korea or its approved designee to ensure that phytosanitary procedures are employed to exclude plant pests and diseases and to verify that the screening is intact.

(b) *Trapping for Bactrocera depressa.* Trapping for *B. depressa* is required both inside and outside the pest-exclusionary structures. Trapping must begin at least 2 months prior to the start of harvest and continue until the end of harvest.

(1) *Inside the pest-exclusionary structures.* APHIS-approved traps with an APHIS-approved protein bait must be placed inside the pest-exclusionary structures at a density of at least two traps per pest-exclusionary structure. The traps must be serviced at least once per week. If a single *B. depressa* is captured in a trap inside a pest-exclusionary structure, the NPPO of the Republic of Korea will immediately prohibit that pest-exclusionary structure from exporting tomatoes to the United States and notify APHIS of the action.

The prohibition will remain in effect until the NPPO of the Republic of Korea and APHIS agree that the risk has been mitigated.

(2) *Outside the pest-exclusionary structures.* APHIS-approved traps with an approved protein bait must be placed in a 500-meter-wide buffer area around the registered pest-exclusionary structure at a density of one trap per 10 hectares. During the months of March through November, at least one trap must be placed in the buffer area near each pest-exclusionary structure. The traps must be serviced at least once per week. If three *B. depressa* are found inside the buffer zone within 2 kilometers of each other within a 30-day period, the NPPO of the Republic of Korea will immediately prohibit all registered pest-exclusionary structures within 2 kilometers of the finds from exporting tomatoes to the United States and notify APHIS of the action. The prohibition will remain in effect until the NPPO of the Republic of Korea and APHIS agree that the risk has been mitigated.

(3) Records of trap placement, trap servicing, and fruit fly captures for each pest-exclusionary structure must be kept for at least 1 year and trapping records provided to the NPPO of the Republic of Korea each month. The NPPO of the Republic of Korea must make the records available to APHIS for review upon request.

(c) *Packinghouse procedures.* The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. During the time the packinghouse is in use for exporting tomatoes to the United States, the packinghouse may only accept tomatoes from registered pest-exclusionary structures. A random sample of fruit per lot, as determined by the NPPO of the Republic of Korea and agreed to by APHIS, must be inspected for external pests and the fruit must be cut to reveal internal pests. Each sample must be of sufficient size in order to detect pest infestations. Any damaged, diseased, or infested fruit should be removed and separated from the commodity destined for export. The tomatoes must be safeguarded by an insect-proof mesh, screen, or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing. The tomatoes must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until the arrival of the tomatoes in the United States or the consignment will not be allowed to enter the United States.

(d) *Commercial consignments.* Tomatoes with stems from the Republic of Korea may be imported in commercial consignments only.

(e) *Phytosanitary certificate.* Each consignment of tomatoes must be accompanied by a phytosanitary certificate of inspection issued by the NPPO of the Republic of Korea bearing the following additional declaration: "Tomatoes in this consignment were grown in pest-exclusionary structures in accordance with 7 CFR 319.56–51 and were inspected and found free from *Bactrocera depressa*, *Heliocoverpa armigera*, *Heliocoverpa assulta*, *Mamestra brassicae*, *Ostrinia furnacalis*, *Scirtothrips dorsalis*, and *Thrips palmi*."

Done in Washington, DC, this 9th day of March 2011.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–5963 Filed 3–14–11; 8:45 am]

**BILLING CODE 3410–34–P**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 202

[Regulation B; Docket No. R–1408]

RIN No. 7100–AD67

### Equal Credit Opportunity

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Section 701 of the Equal Credit Opportunity Act (ECOA) requires a creditor to notify a credit applicant when it has taken adverse action against the applicant. The ECOA adverse action requirements are implemented in the Board's Regulation B. Section 615(a) of the Fair Credit Reporting Act (FCRA) also requires a person to provide a notice when the person takes an adverse action against a consumer based in whole or in part on information in a consumer report. Certain model notices in Regulation B include the content required by both the ECOA and the FCRA adverse action provisions, so that creditors can use the model notices to comply with the adverse action requirements of both statutes. The Board proposes to amend these model notices in Regulation B to include the disclosure of credit scores and information relating to credit scores if a credit score is used in taking adverse action. These proposed amendments reflect the new content requirements in section 615(a) of the FCRA that were added by section 1100F of the Dodd-

Frank Wall Street Reform and Consumer Protection Act.

**DATES:** Comments must be received on or before April 14, 2011. Comments on the Paperwork Reduction Act analysis set forth in Section III.A. of this **Federal Register** notice must be received on or before May 16, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. R–1408, by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments on the <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

#### FOR FURTHER INFORMATION CONTACT:

*Board:* Mandie K. Aubrey, Senior Attorney, or Catherine Henderson, Attorney, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of a Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, or age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under

the Consumer Credit Protection Act. The Board's Regulation B (12 CFR part 202) implements the ECOA.

Section 701(d) of the ECOA generally requires a creditor to notify a credit applicant against whom it has taken an adverse action. Under section 701(d)(6) of the ECOA, an adverse action generally means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested.

Section 615(a) of the FCRA also requires a person to provide an adverse action notice when the person takes an adverse action based in whole or in part on information in a consumer report. The definition of adverse action in section 603(k) of the FCRA incorporates, for purposes of credit transactions, the definition of adverse action under ECOA. The adverse action provisions in both the ECOA and the FCRA require certain disclosures to be given to consumers.

The ECOA adverse action provisions are implemented in Regulation B. There are no implementing regulations for the adverse action requirements of section 615(a) of the FCRA. However, as explained in comment 202.9(b)(2)–9 of Regulation B, certain model notices in Regulation B include the content required by both the ECOA and the FCRA, so that persons can use the model notices to comply with the adverse action requirements of both statutes.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was signed into law. Public Law 111–203, 124 Stat. 1376. Section 1100F of the Dodd-Frank Act amends section 615(a) of the FCRA to require creditors to disclose on FCRA adverse action notices a credit score used in taking any adverse action and information relating to that score. The effective date of these amendments is July 21, 2011.<sup>1</sup>

The Board is proposing to amend those model adverse action notices in Regulation B which incorporate the content requirements of section 615(a) of the FCRA to reflect the new content requirements added by section 1100F of the Dodd-Frank Act. These revisions to the model notices will help facilitate uniform compliance when section 1100F of the Dodd-Frank Act becomes effective. Thus, pursuant to its authority

<sup>1</sup> Section 1100H of the Dodd-Frank Act provides that the amendments in Subtitle H of Title X, which includes Section 1100F, become effective on the "designated transfer date." The Secretary of the Treasury set the designated transfer date as July 21, 2011. 75 FR 57252 (Sept. 20, 2010).