

# Proposed Rules

Federal Register

Vol. 73, No. 185

Tuesday, September 23, 2008

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 915

[Docket No. AMS-FV-08-0022; FV08-915-1 PR]

#### Avocados Grown in South Florida; Revisions to Grade and Container Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on changes to the grade and container requirements currently prescribed under the marketing order for avocados grown in South Florida (order). The order regulates the handling of avocados grown in South Florida and is administered locally by the Avocado Administrative Committee (Committee). This change would establish a minimum grade of a U.S. No. 2 for shipments within the production area, requiring these shipments to meet the same grade as currently prescribed for shipments leaving the production area. This rule would also make changes to the container and container marking requirements under the order. These changes would provide a grade and pack to meet consumer demand and would improve the identification and traceability of avocado shipments.

**DATES:** Comments must be received by October 8, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public

inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

William G. Pimental, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793 or E-mail: [William.Pimental@usda.gov](mailto:William.Pimental@usda.gov) or [Christian.Nissen@usda.gov](mailto:Christian.Nissen@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the

United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on changes to the grade and container requirements currently prescribed under the order. This rule would establish a minimum grade of a U.S. No. 2 for shipments within the production area, requiring these shipments to meet the same grade as currently prescribed for shipments leaving the production area. This rule would also make changes to the container and container marking requirements established under the order. These changes would provide a grade and pack to meet consumer demand and would improve the identification and traceability of avocado shipments. These changes were unanimously recommended by the Committee during a number of meetings over the past several months.

Section 915.51 of the order provides, in part, the authority to issue regulations establishing specific grade and container requirements for avocados. Section 915.52 of the order provides the authority for the modification, suspension or termination of established regulations. The requisite grade and container requirements are specified under §§ 915.305 and 915.306. These sections specify, in part, the grade, container, and container marking requirements for fresh shipments of avocados grown in South Florida.

Standard containers refer to those containers specifically authorized in § 915.305(a), which can be used for shipments both inside and outside of the production area. Nonstandard containers refer to containers other than those authorized in § 915.305(a), and can only be used when shipping avocados within the production area.

This rule would make several changes to the grade and container provisions established under the order. This rule would establish a minimum grade of a U.S. No. 2 for all avocados sold within the production area. It would also require that all nonstandard containers used for shipments within the production area be one bushel in size and that these containers be marked with the registered handler number or the name and address of the handler.

This rule would also require that all avocados sold be packed in new containers and that the containers be marked with the grade packed.

The first change would establish a minimum grade of a U.S. No. 2 for all avocados sold within the production area. Currently, only avocados handled in standard containers must meet the grade requirement of a U.S. No. 2. Avocados sold within the production area in nonstandard containers are not required to meet a minimum grade. This rule would modify § 915.306 so that all avocados sold to the fresh market in the production area, regardless of what type of container, must meet the minimum grade requirement of a U.S. No. 2.

In 1992, Hurricane Andrew decimated the Florida avocado production area leaving both avocados and containers in short supply. The industry recommended that the grade requirement be suspended for avocados sold within the production area in containers other than the standard containers defined in § 915.305. This change made more fruit available for shipment and allowed handlers to pack fruit in any obtainable container for shipment within the production area.

The industry has since recovered from the devastation caused by the hurricane. Production for the 2007–08 season was approximately 1.1 million bushels of avocados, nearly matching the level of production prior to Hurricane Andrew. However, since the grade change made following the hurricane, avocados shipped within the production area in nonstandard containers have not had to meet any specific grade requirements.

At the time of Hurricane Andrew, avocado shipments to production area markets accounted for around 12 percent of total shipments. Since that time, shipments to the production area have nearly doubled. For the last five seasons, shipments to the production area have accounted for around 23 percent of total shipments, making the production area one of the largest markets for Florida avocados.

In discussing this issue, Committee members stated that the absence of a grade requirement has resulted in poor quality avocados being offered for sale inside the production area. The past few seasons, the Committee office and members of the industry have been receiving an increasing number of negative comments regarding the quality of fruit sold in the production area. These comments indicate there is an increasing demand for higher quality fruit within the production area.

Production area produce buyers and brokers are looking for higher quality fruit to meet the demands of production

area consumers. However, buyers have expressed that without a minimum grade requirement it is difficult to know the quality of the avocados being purchased. The level of quality received varies between good and poor quality. In an effort to address this issue, several handlers have already begun packing to meet a U.S. No. 2 for all their production area shipments. Still, absent a minimum grade requirement, avocados that would not meet a U.S. No. 2 are still making it to production area fresh market channels.

The Committee believes these poor quality avocados have depressed prices for better quality avocados and resulted in lower overall returns to producers. Poor quality fruit normally returns the lowest price when compared to quality fruit. Because there is no minimum grade requirement for nonstandard containers, buyers are often unsure of the level of quality they are purchasing. This tends to drive the price offered towards the lowest level for all avocados. Further, when a consumer purchases a poor piece of fruit, it can affect repurchases, reducing demand. Reduced demand also has a negative effect on price.

The Committee believes eliminating lower grade avocados from the marketplace would address consumer demand, and would help ensure the industry is providing all their customers with a quality product. This would encourage repeat purchases, which would help increase returns to producers and handlers. The Committee agreed this change would strengthen market conditions for shipments within the production area. Therefore, the Committee recommended establishing a minimum grade of a U.S. No. 2 for all avocados sold to markets within the production area.

This rule would also make changes to the container marking requirements established under the order. Currently, the only container marking requirement for nonstandard containers is that the containers be marked with a Federal State Inspection Service (FSIS) lot stamp number, which is applied to an adhesive tape seal affixed to the container. While the lot stamp indicates the date the product was inspected, it does not provide any information that would identify the handler. Some handlers pay to have the adhesive tape seal preprinted with their registered handler number, and this number can be used to identify the handler. However, this is not the case for all handlers.

The Committee is concerned that the use of containers with no identifying markings poses problems with the

positive identification and traceability of avocados. Such containers are almost impossible to trace back to the original handler. In cases such as marketing order compliance, it is important to be able to identify the source of avocados which are found to be in violation of order requirements. Committee members agreed that the ability to positively identify product and trace its origin is a necessity in today's marketplace. Proper handler identification on a container is an important part of this traceability.

In discussing this issue, the Committee agreed that an adhesive tape seal that is pre-printed with the registered handler number is sufficient to indicate the identity of the handler and to provide trace back. In cases where the tape seal is not printed with a registered handler number, the Committee concurred that the name and address of the handler should appear on the container. The Committee believes requiring all containers handled within the production area to be marked with a registered handler number or the name and address of the handler would improve the identification and traceability of Florida avocados.

The Committee also recommended that all nonstandard containers be marked with the grade packed. Currently, only standard containers are required to be marked with the grade and only from the first Monday after July 15 until the first Monday after January 1. In its discussion of this change, the Committee agreed that for nonstandard containers the grade should be marked in letters at least 3 inches in height, rather than match the 1-inch requirement for standard containers. Nonstandard containers tend to be oversized, and as such, Committee members believe the grade markings need to be in larger letters, which would be more in scale with the larger containers. Also, in the production area, avocados are often displayed in the container in which they were packed. Having recommended that all avocados packed be required to meet a U.S. No. 2 to address the concerns of their customers, Committee members thought it was important that the grade be clearly displayed on the container.

Further, the Committee also agreed it was important to have the grade marked on all containers throughout the season. Therefore, the Committee recommended that the language in the rules and regulations stating that the grade only needs to appear on standard containers from the first Monday after July 15 until the first Monday after January 1 be removed, and that the grade packed be required to appear on all standard and

nonstandard containers for the entire shipping season.

This rule would also make two changes to the container requirements specified under § 915.305. Currently, there are no specific container requirements for weight and dimension for nonstandard containers, except that handlers are prohibited from using 20 bushel plastic field bins to ship avocados to markets inside the production area. As such, many different containers have been used for shipments within the production area. However, the vast majority of nonstandard containers used in the production area are new one bushel containers or used one bushel containers that were previously packed with bananas.

The use of used banana boxes for shipping avocados within the production area increased dramatically following Hurricane Andrew, when containers were in short supply. Now, with many of the avocados sold in the production area displayed in the container in which they were packed, the Committee is concerned that the practice of packing in used containers has had a negative effect on the sale of production area avocados. These containers often have marks and stains from their previous use, and can be in poor condition. The Committee is concerned that the condition of the boxes is affecting the perception of the avocados packed inside.

With production area shipments accounting for 23 percent of total shipments, the Committee believes it is important to provide production area markets with a quality pack. The Committee believes requiring avocados to be packed in new containers would be more sanitary, would improve the appearance of the overall pack, and could increase sales. Consequently, the Committee recommended that all containers used to pack avocados be required to be new.

The other container change the Committee recommended was that all nonstandard containers be required to be one bushel containers. Most nonstandard containers in use are used banana boxes or new containers with dimensions similar to banana boxes. These containers hold approximately one bushel of avocados, which the industry has found to be a useful size for shipments within the production area. Rather than permitting the use of any size container within the production area, the Committee believes requiring the use of a one bushel container would provide some additional uniformity to the pack.

With many handlers already utilizing the one bushel container for production area shipments, this sized container is readily available throughout the production area. Also, because all containers to be used would be required to be new, and handlers would be purchasing containers, the Committee believes this is a good time to establish requirements for nonstandard containers. Requiring all nonstandard containers to be one bushel would provide for a uniform pack that is attractive to the consumer. Therefore, the Committee recommended that one bushel containers be used for all shipments within the production area.

These changes to the grade and container requirements would improve the overall quality and pack, which would meet the demands of production area customers. Responding to market preferences is expected to benefit producers and handlers of Florida avocados. Further, requiring container marking requirements would improve the identification and traceability of production area avocados. Consequently, the Committee recommended the above changes to the rules and regulations under the order.

This rule would also make a minor correction to § 915.306 (a)(1). This change would remove language which only pertains to the period November 2, 1992, through March 31, 1993. This language is obsolete, and as such is no longer necessary.

Section 8e of the Act provides that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This rule would not change the minimum grade of a U.S. No. 2 established for avocados shipped outside the production area or the maturity requirements established under the order. This rule would just require all avocados shipped within the production area to meet the same minimum grade of a U.S. No. 2, and would change the container requirements under the domestic handling regulation. Consequently, no corresponding changes to the import regulations would be required.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (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 actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 35 handlers of Florida avocados subject to regulation under the order and approximately 300 producers of avocados in the production area. Small agricultural service firms, which include avocado handlers, are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$6,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

According to Committee data, the average price for Florida avocados during the 2007–08 season was around \$12.00 per 55-pound bushel container, and total shipments were near 1.1 million 55-pound bushels. Using the average price and shipment information provided by the Committee, the majority of avocado handlers could be considered small businesses under SBA's definition. In addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than \$750,000. Consequently, the majority of avocado handlers and producers may be classified as small entities.

This proposal would revise the grade and container requirements currently prescribed under the order. This rule would establish a minimum grade of a U.S. No. 2 for shipments within the production area, requiring these shipments to meet the same grade as currently prescribed for shipments leaving the production area. It would also require that all nonstandard containers used for shipments within the production area one bushel in size and that these containers be marked with the registered handler number or the name and address of the handler. This rule would also require that all avocados sold be packed in new containers and that the containers be marked with the grade packed. These changes would provide a grade and pack to meet consumer demand, which would increase producer returns. This rule would also improve the identification and traceability of production area avocados. This rule would revise §§ 915.305 and 915.306, which specify the requisite grade and container requirements. Authority for

these actions is provided in §§ 915.51 and 915.52 of the order. These changes were unanimously recommended by the Committee during a number of meetings over the past several months.

This rule could result in some additional costs. These potential costs would stem primarily from the application of the minimum grade to nonstandard containers, the new container marking requirements, and the requirement that all containers packed be new containers.

The grade requirement for nonstandard containers could result in the loss of some sales, as handlers would no longer be able to sell fruit not meeting a U.S. No. 2 inside the production area. However, these losses are expected to be minimal. Several handlers have already started packing their nonstandard containers to meet a U.S. No. 2 in response to consumer demand. Further, the volume of fruit failing to meet a U.S. No. 2 represents only a small percentage of production area shipments. The Committee estimates lower grade avocados account for only around 6 percent of production area shipments. Last year, the industry shipped nearly 264,000 55-pound containers to production area markets. Using these numbers, lower grade avocados accounted for only 15,840 of the containers shipped to the production area last year, or 1 percent of total industry shipments. Consequently, this rule is not expected to appreciably impact the total number of shipments.

Further, the grade change is not expected to result in perceptibly higher inspection costs. Currently, all avocados shipped in the production area must meet maturity requirements regardless of the container in which they are packed. Consequently, all avocados are already inspected, so any increase in inspection costs would be minimal.

The costs associated with the recommended changes in marking requirements are also expected to be nominal. Larger operations use automated stamping, and already print necessary information on standard containers. A small reconfiguration would allow them to meet this requirement. Some operations order their containers preprinted with the needed information. As this rule would require the use of new containers, handlers would be purchasing containers. The added cost of the additional marking requirements for preprinted containers should be minor. Smaller operations stamp the containers by hand. These operations would be able to meet the new requirements with

a one-time purchase of a grade stamp and a name and address stamp.

This rule could also result in a slight increase in cost for handlers that were using used containers. However, Committee members stated that plain, one bushel containers are readily available on the market at reasonable prices. Also, dealers collect and sell the used containers, so used containers are not cost free. Further, the available quantities of used containers are not sufficient to handle all production area shipments, so many new nonstandard containers are already being purchased. Consequently, the cost associated with this change should also be minimal.

While this rule could result in some additional costs, the proposed changes are expected to have a positive effect in the marketplace. The production area is an important market for the industry, accounting for nearly 23 percent of shipments for the last five seasons. The availability of poor quality avocados has had a price depressing effect on the market. Without change, there could be a continued erosion of market confidence and producer returns.

Requiring nonstandard containers to meet the minimum grade of a U.S. No. 2 would address consumer demand and help protect the production area market from the price depressing effects of poor quality avocados. In addition, requiring all production area avocados to be packed in new containers clearly marked with the grade packed would also improve the overall avocado pack sold in the production area. These new requirements would allow handlers to respond to market preferences which is expected to benefit producers and handlers of Florida avocados. Consumers would also benefit as a result of the higher quality pack available in the marketplace. This rule would also provide improved traceability and identification of Florida avocados. Consequently, the benefits of this rule would outweigh the potential costs associated with these changes. The costs and benefits of this rule are not expected to be disproportionately different for small or large entities.

The Committee discussed alternatives to these proposed changes. One alternative considered was to not make any changes to the rules and regulations. However, the Committee agreed making these changes would make the industry more responsive to consumer demand. It would also provide for better identification and traceability of production area avocados. Therefore, this alternative was rejected. The Committee also considered the alternative of requiring the grade to be stamped on nonstandard containers in

letters and numbers at least 1 inch in height as is required for standard containers. However, with nonstandard containers being larger in size and with production area avocados sold in the container, the Committee determined that the grade should be clearly visible, and that 1 inch was not large enough. Therefore, this alternative was also rejected.

This proposed rule would revise the grade and container requirements currently prescribed under the avocado marketing order. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. In addition, the Committee's meetings were widely publicized throughout the avocado industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the August 8, 2007, September 9, 2007, January 9, 2008, and February 13, 2008, meetings were public meetings and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible since handlers began shipping avocados from the 2008–09 crop starting in June.

The Committee unanimously recommended these changes at various public meetings and interested parties had an opportunity to provide input. Also, Florida avocado producers and handlers are aware of these changes. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 915

Avocados, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

#### PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Two new paragraphs (d) and (e) are added to § 915.305 to read as follows:

##### § 915.305 Florida Avocado Container Regulation 5.

\* \* \* \* \*

(d) Avocados handled for the fresh market in containers other than those authorized under § 915.305(a) and shipped to destinations within the production area must be packed in 1-bushel containers.

(e) All containers in which the avocados are packed must be new, and clean in appearance, without marks, stains, or other evidence of previous use.

2. In § 915.306, paragraphs (a)(1), (a)(6) and (a)(7) are revised to read as follows:

##### § 915.306 Florida avocado grade, pack, and container marking regulation.

(a) \* \* \*

(1) Such avocados grade at least U.S. No. 2, except that avocados handled to destinations within the production area may be placed in containers with avocados of dissimilar varietal characteristics.

\* \* \* \* \*

(6) Such avocados when handled in containers authorized under § 915.305, except for those to export destinations, are marked once with the grade of fruit in letters and numbers at least 1 inch in height on the top or one side of the container, not to include the bottom.

(7) Such avocados when handled in containers other than those authorized under § 915.305(a) for shipment to destinations within the production area are marked once with the grade of fruit in letters and numbers at least 3 inches in height on the top or one side of the container, not to include the bottom.

Each such container is also to be marked at least once with either the registered handler number assigned to the handler at the time of certification as a registered handler or with the name and address of the handler.

\* \* \* \* \*

Dated: September 17, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–22147 Filed 9–22–08; 8:45 am]

**BILLING CODE 3410–02–P**

#### NUCLEAR REGULATORY COMMISSION

##### 10 CFR Part 50

[Docket No. PRM–50–83; NRC–2007–0012]

##### David Lochbaum on Behalf of the Project on Government Oversight and the Union of Concerned Scientists

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; denial.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Mr. David Lochbaum on behalf of the Project on Government Oversight (POGO) and the Union of Concerned Scientists (UCS) on February 23, 2007. The petitioner requested that the NRC amend its regulations governing domestic licensing of production and utilization facilities to require periodic demonstrations by applicable local, State, and Federal entities to ensure that nuclear power plants can be adequately protected against radiological sabotage by adversaries with capabilities that exceed those posed by the design basis threat (DBT).

**DATES:** The docket for the petition for rulemaking PRM–50–83 is closed on September 23, 2008.

**ADDRESSES:** You can access publicly available documents related to this petition for rulemaking using the following methods:

*Federal e-Rulemaking Portal:* Further NRC action on the issues raised by this petition will be accessible at the Federal e-rulemaking portal, <http://www.regulations.gov>, by searching on rulemaking docket ID: NRC–2007–0012. The NRC also tracks all rulemaking actions in the “NRC Regulatory Agenda: Semiannual Report (NUREG–0936).”

*NRC’s Public Document Room (PDR):* The public may examine, and have copied for a fee, publicly available documents at the NRC’s PDR, Public File Area O–1 F21, One White Flint

North, 11555 Rockville Pike, Rockville, Maryland.

*NRC’s Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC’s Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC’s public documents. If you do not have access to ADAMS or if there are any problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–800–387–4209 or 301–415–4737, or by e-mail to [PDR.resource@nrc.gov](mailto:PDR.resource@nrc.gov).

##### FOR FURTHER INFORMATION CONTACT:

Harry S. Tovmassian, Office of Nuclear Reactor Regulation, NRC, Washington, DC 20555–0001, telephone 301–415–3092, e-mail

[Harry.Tovmassian@nrc.gov](mailto:Harry.Tovmassian@nrc.gov).

##### SUPPLEMENTARY INFORMATION:

##### The Petition

On February 23, 2007, the NRC received a petition for rulemaking from Mr. David Lochbaum on behalf of POGO and UCS (PRM–50–83). The petitioner requested that the NRC amend its regulations in Title 10 of the *Code of Federal Regulations*, Part 50, “Domestic Licensing of Production and Utilization Facilities” (10 CFR Part 50), to add an appendix (or comparable regulation), similar to existing Appendix E to 10 CFR Part 50, “Emergency Planning and Preparedness for Production and Utilization Facilities,” which would require periodic demonstrations by local, State, and Federal entities to ensure that nuclear power plants can be adequately protected against radiological sabotage by adversaries with capabilities that exceed those in the DBT. In the *Federal Register* of March 29, 2007 (72 FR 14713), the NRC published a notice of receipt of the petition for rulemaking and requested public comment.

In support of the request for this proposed amendment to the NRC’s regulations, the petitioner cites the recent DBT final rule (72 FR 12705; March 19, 2007) which states that the DBT rule reflects the Commission’s determination of the most likely composite set of adversary features against which a private security force should reasonably be required to defend. The petitioner states that the final DBT rule requires plant owners to demonstrate periodically that they can meet their responsibilities to adequately protect nuclear power plants from sabotage threats up to and including the