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GENERAL SERVICES ADMINISTRATION

5 CFR Chapter LVII

41 CFR Part 105-735

RIN 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the General Services Administration

AGENCY: General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration, with the concurrence of the Office of Government Ethics (OGE), is issuing a regulation for GSA employees that supplements the Standards of Ethical Conduct for Employees of the Executive Branch. The supplemental regulation generally, with certain exceptions, prohibits solicited sales to subordinates by GSA employees; prohibits the purchase of property sold by GSA; prohibits the purchase of real estate by certain GSA employees; prohibits the taking and disposal of Government property; requires employees to obtain approval before engaging in certain outside employment; and identifies appropriate officials to whom waste, fraud, abuse and corruption are to be reported. The General Services Administration (GSA) is also removing its old standards of conduct regulations from the Code of Federal Regulations (certain provisions which have not been superseded are being reissued in an internal GSA order) and inserting in their place a cross-reference to the new provisions and to applicable executive branch-wide standards of ethical conduct, as well as to applicable financial disclosure regulations.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Eugenia D. Ellison or Mr. Dan Ross,

General Services Administration, Office of General Counsel, Ethics Law Staff, 18th & F Streets, NW., Room 5135, Washington, DC 20405; telephone: (202) 501-0765, FAX: (202) 501-6347.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics (OGE) published a final rule entitled Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, with additional grace period extensions at 59 FR 4779-4780, 60 FR 6390-6391, 60 FR 66857-66858, and 61 FR 40950-40952. The Standards, codified at 5 CFR part 2635 and made effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch employees.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific regulations supplementing 5 CFR Part 2635 that are necessary to implement their respective ethics programs. With OGE's concurrence, GSA has determined that the following supplemental regulations, being codified in new 5 CFR chapter LVII, consisting of part 6701, are necessary for successful implementation of GSA's ethics program, in light of GSA's unique programs and operations.

II. Analysis of the New Regulations

Section 6701.101 General

Section 6701.101 of the final rule explains that the regulations apply to all GSA employees and supplement the executive branch-wide Standards at 5 CFR part 2635. It also notes that employees are subject to 5 CFR part 2635 and the executive branch financial disclosure regulations at 5 CFR part 2634.

Section 6701.102 Prohibition on Solicited Sales to Subordinates

5 CFR part 2635 prohibits an employee from using public office for private gain, but contains no specific prohibition on sales to subordinate personnel where the sale price is fair and does not result in a gift to the superior. Likewise, any item for which fair market value is paid by the recipient would not be a gift for purposes of the gifts to superiors provisions in subpart

C of the Standards. Under GSA's old standards of conduct regulation at 41 CFR 105-735.202(d)(6), which is simultaneously being removed in this rulemaking document, a prohibition on sales to subordinates was included. Section 6701.102 of this new supplemental regulation is a restatement with minor modifications of that prohibition. It has been GSA's experience that such an additional prohibition is necessary to eliminate coercion, intimidation, or pressure, or the appearance thereof, that employees could be subjected to by official superiors in this regard.

Section 6701.102 generally prohibits GSA employees in supervisory positions from soliciting or making solicited sales to GSA employees who are under their supervision at any level, regardless of whether the solicited sale takes place on or off duty. Section 6701.102 extends the prohibition against commercial solicitation by official superiors that was in 41 CFR 105-735.202(d)(6) to part-time employees and special Government employees who have employees under their supervision, consistent with GSA's determination that hours of work are not a sufficient basis for distinguishing those supervisors from other supervisors for the purpose of furthering the interests served by the prohibition.

The section specifically permits the one-time sale by an official superior to a subordinate of his own personal property or privately owned dwelling. It also permits the off duty sales by an employee during outside employment for a retail establishment or under other circumstances not involving solicited sales.

Section 6701.103 Prohibited Purchases of Property Sold by GSA

Section 6701.103 supplements the prohibition on the use of public office for private gain at 5 CFR 2635.702, and the prohibition on the use of nonpublic information at 5 CFR 2635.703. It prohibits GSA employees from purchasing for themselves or others any personal or real property being sold by GSA. An employee may not purchase such property directly or indirectly. GSA has broad authority to dispose of surplus Government property through public sales. It is therefore important to preserve the public's confidence that these powers will not be misused to

benefit the private interests of a GSA employee. Prohibiting employees from engaging in certain purchases that may appear improper is essential to achieve this objective.

This prohibition is similar to the prohibition in the old GSA standards of conduct at 41 CFR § 105-735.217, which is simultaneously being removed in this rulemaking document. However, the exception in the old rule for items sold by GSA-operated stores is not being preserved because GSA no longer operates such stores. Also, unlike the GSA standards of conduct, the prohibition only applies to the employee, his spouse and minor children, but does not apply to any other members of the employee's household.

This prohibition is not intended to apply to property under the control of and sold by an agency other than GSA. The purchase of assets sold by other agencies would be subject to the regulations of the agency controlling or disposing of the assets, and not subject to GSA's regulations.

Section 6701.103(b) excepts from the prohibition in § 6701.103(a) foreign gifts purchased pursuant to 41 CFR part 101-49. Further, § 6701.103(c) authorizes the Administrator or his designee to grant a written waiver of the prohibition in § 6701.103(a) based upon a determination that the waiver is lawful, and meets the waiver standard established in that subsection. The waiver provision is intended, in appropriate cases, to ease the burden that the supplemental regulation may impose on the private lives of GSA employees, while ensuring that employees do not engage in action that may interfere with the objective and impartial performance of their official duties or raise questions about possible misuse of Government position. The general prohibition and waiver provisions included in § 6701.105 would also apply to all GSA employees.

Section 6701.104 Prohibited Purchases of Real Estate by Certain GSA Employees Involved in the Acquisition or Disposal of Real Estate

Section 6701.104(a) supplements the prohibition on the use of public office for private gain at 5 CFR 2635.702, and the prohibition on the use of nonpublic information at 5 CFR 2635.703. Through its Public Buildings Service, GSA exercises broad authority to acquire and dispose of real estate for the Government. This section generally prohibits GSA employees who personally and substantially participate in or have official responsibility for the acquisition or disposal of real estate or

interests therein from purchasing any real estate or interest therein. It is similar to the prohibition in the GSA standards of conduct at 41 CFR 105-735.218, which is simultaneously being removed in this rulemaking document, dealing with the purchase of real estate. Unlike the GSA standards of conduct, however, § 6701.104(a) does not apply to all GSA employees whose official duties are in any way related to the acquisition or disposal of real estate or interests therein, or to the maintenance or improvement of real estate. Section 6701.104 limits the scope of coverage to employees who participate personally and substantially or have official responsibility over the acquisition or disposal of real estate or interests therein as part of their official duties.

The general restriction in § 6701.104(a) prohibits an employee from purchasing such property directly or indirectly. This provision ensures that employees do not engage in actions that may interfere with the objective and impartial execution of their official duties or raise questions about possible misuse of their official positions. So as not to interfere unduly with employees' private lives, an exception in paragraph (b) of this section provides that the prohibition does not apply to an employee's purchase of a personal residence or other residential property, such as a vacation home.

Section 6701.104(c) authorizes the employee's immediate supervisor to grant a written waiver of the prohibition in § 6701.104(a), based upon a determination that the waiver is lawful and meets the waiver standard established in that subsection. This waiver standard is the same as that established in § 6701.103(c) for the purchase of property sold by GSA. The waiver provision is intended, in appropriate cases, to ease the burden that the supplemental regulation may impose on the private lives of GSA employees, while ensuring that employees do not engage in action that may interfere with the objective and impartial performance of their official duties or raise questions about possible misuse of their Government positions or nonpublic information.

Section 6701.105 Taking or Disposing of Government Property

Section 6701.105 supplements the prohibitions on misuse of position in subpart G of the Standards, by specifically adding a prohibition on the taking or disposing of Government property. It continues the longstanding prohibition in GSA's regulations at 41 CFR 105-735.206, which is

simultaneously being removed in this rulemaking document, that Government property can only be disposed of as authorized. Under § 6701.105, a GSA employee may not, directly or indirectly, take or dispose of, or allow the taking or disposal of, Government property, unless authorized to do so. This provision is necessary for inclusion in GSA's supplemental regulation because of GSA's broad responsibilities regarding the disposal of surplus Government property, and is intended to ensure that GSA employees do not misuse information and resources to which they have access because of their official responsibilities.

Section 6701.106 Prior Approval for Outside Employment

Under 5 CFR 2635.803 an agency that determines it is necessary or desirable for the purpose of administering its ethics program may, by supplemental regulation, require employees to obtain prior written approval before engaging in outside employment. The GSA standards of conduct regulation at 41 CFR 105-735.204 (which is now being repealed), requires prior notification of and administrative concurrence in proposed outside employment, and is in essence a prior approval requirement that has remained in effect under the note following 5 CFR 2635.803, as extended at 59 FR 4779-4780, 60 FR 6390-6391, 60 FR 66857-66858, and 61 FR 40950-40952 (see also appendixes A-C to 5 CFR part 2635). This requirement has been in effect for many years and has served GSA well in ensuring that its employees avoid violations of the standards of conduct and conflict of interest statutes.

Therefore, § 6701.106(a) of this final supplemental rule requires that a GSA employee who wishes to engage in outside employment with a prohibited source must obtain prior written approval from his or her immediate supervisor before engaging in such outside employment. This prior approval requirement applies without regard to whether the employment is to be undertaken with or without compensation. It does not apply, however, to special Government employees. Section 6701.106 will help to ensure that the outside employment activities of GSA employees are not prohibited by statute or Federal regulation, including the executive branch-wide Standards in 5 CFR part 2635, and these supplemental regulations.

Section 6701.106(b) sets forth requirements for information to be provided in the employee's request for prior approval. To ensure that

§ 6701.106 is not itself construed as authority to deny permission to engage in outside employment, paragraph (c) states that approval shall be granted unless a determination is made that the outside employment is expected to involve conduct prohibited by statute or regulations, including 5 CFR part 2635 and these supplemental regulations.

At § 6701.106(d)(1), "employment" is broadly defined to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal and similar organizations, unless such activities involve the provision of professional services or advice and are for compensation other than reimbursement of expenses. Although it is simply a restatement of the definition at 5 CFR 2635.203(d), paragraph (d)(2) of § 6701.106 sets forth for ease of reference the definition of "prohibited source" that is essential to the determination of when prior approval is required by § 6701.106.

Section 6701.107 Reporting Waste, Fraud, Abuse and Corruption

Section 6701.107 assists employees in adhering to the general principle of ethical conduct at 5 CFR 2635.101(b)(11), under which an employee shall disclose waste, fraud, abuse, and corruption to appropriate authorities. It also identifies GSA's Office of the Inspector General as an authority to which it would be appropriate for an employee to disclose waste, fraud, abuse and corruption. This new provision is similar to the old standards of conduct provision at 41 CFR 105-735.216, which is simultaneously being removed in this rulemaking document, but no longer specifies the Assistant Inspector General for Investigations in the Central Office or the appropriate Special Agent in charge in the regions as the only appropriate authorities to whom such matters must be reported.

III. Removal of GSA's Old Standards of Conduct Provisions and Reissuance of Certain Nonsuperseded Provisions in an Internal Order

Because GSA's old standards of conduct have been largely superseded by the new executive branch financial disclosure regulations at 5 CFR part 2634 and the new executive branch-wide Standards at 5 CFR part 2635, as supplemented by the regulations

contained in GSA's new 5 CFR part 6701, GSA is simultaneously removing from the CFR its old standards of conduct, which have been codified at 41 CFR part 105-735, and is replacing those provisions superseded by 5 CFR parts 2634 and 2635 with a section that provides cross-references to those parts and to GSA's new supplemental regulations. Moreover, in accordance with 5 CFR 2635.105(c)(3), GSA is reissuing in an internal GSA Order (ADM 7900.9A) those sections of 41 part 105-735 which are not contained in the Standards or GSA's supplemental regulation, and which GSA has authority, independent of 5 CFR parts 2634 and 2635, to issue. A copy of GSA Order ADM 7900.9A will be given to all GSA employees and is available from GSA's Office of General Counsel.

IV. Matters of Regulatory Procedure *Administrative Procedure Act*

Pursuant to 5 U.S.C. 553 (b) and (d), the GSA finds good cause not to seek public comment on this rule nor to provide for a 30-day delayed effective date. Such comment and delayed effective date are unnecessary because the GSA is essentially restating existing regulations in a different form. Moreover, to complete the transition from GSA's prior ethics rules to the new Government-wide standards of ethical conduct regulations, these rulemaking actions should take place as soon as possible. This final rule will become effective as soon as published in the Federal Register.

E.O. 12866, Regulatory Planning and Review

GSA has determined this proposal is not subject to the Office of Management and Budget review under Executive Order 12866.

Regulatory Flexibility Act

GSA has determined under the Regulatory Flexibility Act (5 U.S.C. 601-611) that this rule will not have significant economic impact on a substantial number of small entities because it affects only GSA employees. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

Paperwork Reduction Act

GSA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Environmental Impact

The publication of this rule will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects

5 CFR Part 6701

Conflict of interests, Ethical standards, Executive branch standards of ethical conduct, Government employees.

41 CFR Part 105-735

Conflict of interests, Ethical standards, Executive branch standards of conduct, Government employees.

Dated: October 25, 1996.

Martha N. Johnson,
Chief of Staff, General Services Administration.

Approved: October 28, 1996.

Stephen D. Potts,
Director, Office of Government Ethics.

For the reasons set forth in the preamble, the General Services Administration, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations, and title 41, chapter 105, of the Code of Federal Regulations, as follows:

TITLE 5—[AMENDED]

1. A new chapter LVII, consisting of part 6701, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER LVII—GENERAL SERVICES ADMINISTRATION

PART 6701—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE GENERAL SERVICES ADMINISTRATION

Sec.

- 6701.101 General.
- 6701.102 Prohibition on solicited sales to subordinates.
- 6701.103 Prohibited purchases of property sold by GSA.
- 6701.104 Prohibited purchases of real estate by certain GSA employees involved in the acquisition or disposal of real estate.
- 6701.105 Taking or disposing of Government property.
- 6701.106 Prior approval for outside employment.
- 6701.107 Reporting waste, fraud, abuse and corruption.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.702, 2635.703, 2635.802, 2635.803.

§ 6701.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the General Services Administration (GSA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) contained in 5 CFR part 2635. In addition to the executive branch-wide Standards in 5 CFR part 2635 and this part, GSA employees are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

§ 6701.102 Prohibition on solicited sales to subordinates.

A GSA employee shall not engage in solicitation of sales, on or off duty, to any GSA employee under his supervision, at any level. This prohibition applies, but is not limited to, solicitation for the sale of insurance, stock, mutual funds, real estate, computer equipment and any other commodities, goods or services except:

- (a) The one-time sale of the employee's personal property or privately owned dwelling; or
- (b) Sales made in the course of outside employment of GSA employees in retail stores and under other circumstances not involving solicitation.

§ 6701.103 Prohibited purchases of property sold by GSA.

(a) *General prohibition.* Except as provided in paragraphs (b) and (c) of this section, no GSA employee, or spouse or minor child of a GSA employee, shall purchase, directly or indirectly Government property, real or personal, being sold by GSA.

(b) *Exception.* The prohibition in paragraph (a) of this section does not apply to the purchase of foreign gifts deposited with the agency pursuant to 5 U.S.C. 7342, that an employee may purchase pursuant to 41 CFR part 101-49.

(c) *Waiver.* An employee may make a purchase otherwise prohibited by paragraph (a) of this section where a written waiver of the prohibition has been given to the employee by the Administrator of GSA or his designee. Such a waiver may be granted only upon a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the property will not raise a question as to whether the employee has used his official position or nonpublic information to obtain an advantageous purchase or create an appearance of loss

of impartiality in the performance of the employee's duties.

§ 6701.104 Prohibited purchases of real estate by certain GSA employees involved in the acquisition or disposal of real estate.

(a) *General prohibition.* Except as provided in paragraphs (b) and (c) of this section, employees who personally and substantially participate in or have official responsibility for the acquisition or disposal of real estate or interests therein, shall not directly or indirectly purchase or participate as an agent or otherwise in the purchase of any real estate or interest therein.

(b) *Exception.* The prohibition in paragraph (a) of this section does not apply to an employee's purchase of real estate for use as his personal or other residential property, such as a vacation home.

(c) *Waiver.* An employee may make a purchase otherwise prohibited by this section where a written waiver of the prohibition has been given to the employee by the employee's immediate supervisor, with the advice of a Deputy Standards of Conduct Counsellor or the Designated Agency Ethics Official. Such a waiver may be granted only if a determination is made that the waiver is not otherwise prohibited by law or regulation, and that in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of such real estate or interest therein will not raise a question as to whether the employee will use his official position or nonpublic information to obtain an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties.

§ 6701.105 Taking or disposing of Government property.

An employee shall not, directly or indirectly, take or dispose of, or allow the taking or disposal of, Government property, unless authorized to do so. For purposes of this section, property remains Government property until disposed of in accordance with applicable rules and regulations.

§ 6701.106 Prior approval for outside employment.

(a) *Approval requirement.* A GSA employee, other than a special Government employee, shall obtain written approval from his immediate supervisor prior to engaging in outside employment with a prohibited source, with or without compensation.

(b) *Form of request for approval.* A request for approval of outside employment shall include, at a minimum, the following:

(1) The employee's name, location and occupational title;

(2) A brief description of the employee's official duties;

(3) The nature of the outside employment, including a full description of the specific duties or services to be performed;

(4) The name and address of the prospective outside employer for which work will be done; and

(5) A statement that the employee currently has no official duties involving a matter that affects the outside employer and will disqualify himself from future participation in matters that could directly affect the outside employer.

(c) *Standard for approval.* Approval shall be granted unless a determination is made that the outside employment is expected to involve conduct prohibited by statute or regulation, including 5 CFR part 2635 and this part.

(d) *Definitions.* For purposes of this section:

(1) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves the provision of professional services or advice for compensation other than reimbursement for actual expenses.

(2) *Prohibited source* has the meaning in 5 CFR 2635.203(d), and includes any person who:

(i) Is seeking official action by GSA;

(ii) Does business or seeks to do business with GSA;

(iii) Conducts activities regulated by GSA;

(iv) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

(v) Is an organization a majority of whose members are described in paragraphs (d)(2)(i) through (iv) of this section.

Note to § 6701.106: An employee may obtain advice from an agency ethics official as to whether a potential employer is a prohibited source.

§ 6701.107 Reporting waste, fraud, abuse and corruption.

GSA employees shall disclose immediately any waste, fraud, abuse, and corruption to appropriate authorities, such as the Office of Inspector General.

TITLE 41—[AMENDED]**CHAPTER 105—GENERAL SERVICES ADMINISTRATION**

2. Part 105-735 of 41 CFR chapter 105 is revised to read as follows:

PART 105-735—STANDARDS OF CONDUCT**§ 105-735.1 Cross-references to employee ethical conduct standards, financial disclosure regulations, and other regulations.**

Employees of the General Services Administration are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, GSA's regulations at 5 CFR part 6701 which supplement the executive branch-wide standards, the regulations on employee responsibilities and conduct at 5 CFR part 735, and the executive branch financial disclosure regulations contained in 5 CFR part 2634, and GSA Order ADM 7900.9A, which can be obtained from the GSA Office of General Counsel.

Authority: 5 U.S.C. 7301.

[FR Doc. 96-27967 Filed 10-31-96; 8:45 am]

BILLING CODE 6820-34-P

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. 95-087-2]

Japanese Beetle; Domestic Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, an interim rule that amended the Japanese beetle quarantine and regulations by adding Minnesota and Wisconsin to the list of quarantined States and by providing greater specificity about what actions must be taken to prevent the spread of Japanese beetle by aircraft from regulated airports. This action was necessary to prevent the spread of Japanese beetle into noninfested areas of the United States. The interim rule also amended the regulations to allow

carriers at regulated airports the option of performing some activities under a compliance agreement with the Animal and Plant Health Inspection Service, rather than in the presence of an inspector.

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-5255.

SUPPLEMENTARY INFORMATION:**Background**

The Japanese beetle feeds on fruits, vegetables, and ornamental plants and is capable of causing damage to over 300 potential hosts. The Japanese beetle quarantine and regulations, contained in 7 CFR 301.48 through 301.48-7 (referred to below as the regulations), quarantine certain States and restrict the interstate movement of aircraft from regulated airports in the quarantined States to prevent the spread of the Japanese beetle to the seven States listed in § 301.48(b) (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington, referred to below as the protected States). Under § 301.48-4 of the regulations, a regulated article may move interstate from a regulated airport to any of the protected States only if certain conditions have been met.

In an interim rule effective June 20, 1996, and published in the Federal Register on June 25, 1996 (61 FR 32636-32641, Docket No. 95-087-1), the Animal and Plant Health Inspection Service (APHIS) amended the regulations to (1) add Minnesota and Wisconsin to the list of States quarantined for Japanese beetle; (2) provide greater specificity about what actions must be taken to ensure aircraft do not spread Japanese beetle from regulated airports; (3) allow carriers at regulated airports the option of performing some activities under a compliance agreement with APHIS, rather than in the presence of an inspector; and (4) amend the definition of "regulated airport" to include portions of airports, as well as entire airports. This action was necessary to help prevent the spread of Japanese beetle into the protected States.

We solicited comments concerning the interim rule for 60 days ending August 26, 1996. We received one comment by that date. The comment received was from a State government. The commenter was generally supportive of the interim rule but included three suggestions pertaining to content changes and one suggestion to delay publication of a final rule. We

have carefully considered the suggestions made in this comment. They are discussed below.

The first suggestion was to leave the determination of what constitutes daylight hours up to local APHIS personnel at the regulated airports. (The interim rule specified that the regulatory provisions apply between the hours of 7:00 a.m. and 8:00 p.m. because Japanese beetles are active during daylight hours only.) The concern expressed was that operational problems could occur when determining airport regulation status along timeline divisions. For example, an aircraft at a regulated airport in the central time zone could require treatment at 7:00 p.m., whereas an aircraft at a nearby airport in the eastern time zone (8:00 p.m.) would not be subject to the same regulatory requirements.

We designed the regulations to prevent adult Japanese beetles from flying into aircraft destined for any of the protected States. Because of the Japanese beetle life cycle, the adult beetles are active in most parts of the United States only in the summer months during daylight hours. More specifically, adult Japanese beetles are generally active only when the air reaches a certain temperature. We believe the period of greatest flight activity occurs between the hours of 10:00 a.m. and 3:00 p.m. during the months of July through mid-September in most parts of the country. Because the hours of 7:00 a.m. to 8:00 p.m. are roughly the hours of daylight in many parts of the United States during the summer months, we established that timeframe as the period of regulatory activity to ensure we would cover any possible Japanese beetle flight activity.

We are not making any change to the regulations based on this comment because we are not aware of any operational problems that have occurred to date as a result of the 7:00 a.m. to 8:00 p.m. timeframe and, furthermore, we believe that having an established timeframe for regulatory activity will make conducting operations at the airports easier—not more difficult.

The second suggestion was to eliminate language concerning how to apply an approved pesticide in an aircraft (i.e., holding the pesticide at a 45-degree angle and aerating for 15 minutes). These instructions pertain to the application of the pesticide d-phenothrin. The concern was that d-phenothrin is not the only pesticide approved for use against Japanese beetle in aircraft and the language in the regulations should allow for use of any approved and effective treatment.