

# Proposed Rules

Federal Register

Vol. 76, No. 64

Monday, April 4, 2011

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

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 301 and 319

[Docket No. APHIS–2010–0127]

RIN 0579–AD34

#### Movement of Hass Avocados From Areas Where Mediterranean Fruit Fly or South American Fruit Fly Exist

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to relieve certain restrictions regarding the movement of fresh Hass variety avocados. Specifically, we are proposing to amend our domestic regulations to provide for the interstate movement of Hass avocados from Mediterranean fruit fly quarantined areas in the United States with a certificate if the fruit is safeguarded after harvest in accordance with specific measures. We are also proposing to amend our foreign quarantine regulations to remove trapping requirements for Mediterranean fruit fly for Hass avocados imported from the State of Michoacan, Mexico, requirements for treatment or origin from an area free of Mediterranean fruit fly for Hass avocados imported from Peru, and requirements for trapping or origin from an area free of South American fruit fly for Hass avocados imported from Peru. These actions are warranted in light of research demonstrating the limited host status of Hass avocados to Mediterranean fruit fly and South American fruit fly. This action would make our domestic and foreign requirements for movement of Hass avocados consistent with each other and would relieve restrictions for Mexican and Peruvian Hass avocado producers. In addition, this action would provide a means for Hass avocados to be moved interstate if the avocados originate from

a Mediterranean fruit fly quarantined area in the United States.

**DATES:** We will consider all comments that we receive on or before May 4, 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-2010-0127> 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–2010–0127, 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–2010–0127.

*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. Tony Román, Import Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

#### SUPPLEMENTARY INFORMATION:

##### Background

The domestic fruit fly regulations, contained in 7 CFR 301.32 through 301.32–10 (referred to below as the domestic regulations), were established to prevent the spread of certain fruit fly species, including *Ceratitis capitata* (Mediterranean fruit fly), into noninfested areas of the United States. The regulations designate soil and many fruits, nuts, vegetables, and berries as regulated articles and impose restrictions on the interstate movement of those regulated articles from regulated areas.

Avocado, *Persea americana* (including the variety Hass), is listed as a regulated article for Mediterranean fruit fly, melon fruit fly (*Bactrocera cucurbitae*), Mexican fruit fly (*Anastrepha ludens*), Oriental fruit fly (*Bactrocera dorsalis*), peach fruit fly (*Anastrepha zonata*), and sapote fruit fly (*Anastrepha serpentina*) in the regulations. Because avocados are listed as regulated articles, they may not be moved interstate from an area quarantined for one of those fruit flies unless the movement is authorized by a certificate or limited permit. In general, avocados may be eligible for a certificate if a bait spray is applied to the production site beginning prior to harvest and continuing through the end of harvest or if a post-harvest irradiation treatment is applied to the fruit. To be eligible for a limited permit, a regulated article must be moved to a specific destination for specialized handling, utilization, or processing or for treatment and meet all other applicable provisions of the regulations. For Hass avocados moving interstate from any Mexican fruit fly or sapote fruit fly quarantined area, the avocados may be moved interstate under certificate if the fruit is safeguarded after harvest in accordance with specific measures set out in § 301.32–4(d). We have determined that Hass avocados are a host for Mexican fruit fly and sapote fruit fly only after harvest; these measures are designed to prevent Hass avocados harvested in a quarantined area from being infested with these fruit flies after harvest. Avocados handled in accordance with these measures are thus allowed to move from the quarantined area without further restriction under the certificate.

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–50, referred to below as the import 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 that are new to or not widely distributed within the United States.

The requirements for importing Hass variety avocados into the United States from Michoacan, Mexico, are described in § 319.56–30. Those requirements include pest surveys and pest risk-reducing practices, treatment, packinghouse procedures, inspection,

and shipping procedures. Although Mediterranean fruit fly is not known to be present in Michoacan, Mexico, the regulations require that trapping be conducted for Mediterranean fruit fly and that any fruit fly finds are reported to the Animal and Plant Health Inspection Service (APHIS).

The regulations in § 319.56–50 allow the importation into the continental United States of Hass avocados from Peru provided that the avocados originate from an area free of Mediterranean fruit fly or that the avocados have been treated for Mediterranean fruit fly in accordance with our phytosanitary treatment regulations in 7 CFR part 305. In addition, the regulations in § 319.56–50 require that the avocados must either originate from an area within Peru that is free of South American fruit fly or an area with low pest prevalence for South American fruit fly and where trapping for South American fruit fly is conducted.

In response to a proposed rule<sup>1</sup> published in the **Federal Register** on January 7, 2009 (74 FR 651–664, Docket No. APHIS–2008–0126), that led to establishment of the Peruvian Hass avocado provisions in § 319.56–50, the national plant protection organization (NPPO) of Peru commented that Hass avocados attached to trees are not hosts for the guava fruit fly (*A. striata*), or the South American fruit fly. In addition, the NPPO commented that there has never been a reported interception of Mediterranean fruit fly in Hass avocados from Peru. In our final rule published in the **Federal Register** and effective on January 4, 2010 (75 FR 1–13), we stated that more research would need to be done in accordance with APHIS's survey and sampling protocol to confirm the commenter's assertion with respect to Mediterranean fruit fly and South American fruit fly; we did, however, acknowledge that guava fruit fly has been demonstrated not to infest Hass avocados. Consequently, we did not finalize our proposed restrictions related to the movement of Hass avocados from areas where the guava fruit fly is present.

In December 2010, the NPPO of Peru, in collaboration with the Peruvian Hass Avocado Growers Association (ProHass), submitted a report<sup>2</sup>

supporting the assertion that Hass avocado is not a viable host for Mediterranean fruit fly or South American fruit fly and requested that we amend § 319.56–50 to relieve the restrictions associated with those fruit flies on the movement of Hass avocados from Peru.

In response to the request by the NPPO of Peru, we prepared a commodity import evaluation document (CIED), titled “Host status of “Hass” avocados to Mediterranean fruit fly *Ceratitidis capitata* (Wiedemann) and the South American fruit fly, *Anastrepha fraterculus* (Wiedemann),” which evaluated the host status of Hass avocados for Mediterranean fruit fly and South American fruit fly. The conclusions of the CIED, which considers recent research and other references on this topic, are consistent with the study by the NPPO of Peru and ProHass, which demonstrated that Hass avocados are conditional non-hosts of Mediterranean fruit fly and South American fruit fly (*i.e.*, not hosts under field conditions). While infestation of Hass avocados within Peru by Mediterranean fruit fly and South American fruit fly were observed during laboratory infestation tests, all deposited eggs were encapsulated by callous tissues and died. The main risk is from avocado fruit that is outside of the normal population, *i.e.*, the wrong cultivar, fruit left to become overripe on the tree, injured or damaged fruit, fruit picked up from the ground, or picked fruit left in the field for days. Copies of the CIED may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (*see ADDRESSES* above for instructions for accessing Regulations.gov).

Based on the findings of the study CIED, we believe that the trapping requirements for Mediterranean fruit fly for Hass avocados imported from the State of Michoacan, Mexico, the treatment requirements and origin restrictions for Mediterranean fruit fly for imported Hass avocados from Peru, and the trapping requirements and origin restrictions for South American fruit fly for imported Hass avocados from Peru are no longer warranted. Therefore, we are proposing to amend § 319.56–30 by removing paragraph (c)(1)(iii), which contains trapping requirements for Mediterranean fruit flies in Michoacan, Mexico. We are also proposing to amend § 319.56–50 by removing paragraph (d), which requires

that Hass avocados from Peru originate from places of production where trapping is conducted for South American fruit fly in Peru or from areas free of that pest; by removing paragraph (e), which requires that Hass avocados from Peru be treated for Mediterranean fruit fly or originate from an area in Peru free of that pest; and by removing paragraphs (j)(1) through (j)(3), which require that the phytosanitary certificate state that the Hass avocados in the consignment meet the requirements in paragraphs (d) and (e). In addition, we are proposing to amend paragraph (g) to remove the fruit cutting requirement for Hass avocados from Peru with respect to Mediterranean fruit fly and South American fruit fly and the requirement for treatment of Hass avocados from Peru for Mediterranean fruit fly. We would retain the fruit cutting requirement for avocado seed moth and the inspection for quarantine pests. We would continue to require that Hass avocados from Mexico and Peru undergo the post-harvest safeguarding and other requirements that currently apply for their importation into the United States and include requiring that fallen fruit be excluded from consignments, that harvested avocados be moved from the orchard to the packinghouse within 3 hours of harvest, and that avocados moving from the orchard to the packinghouse be protected from fruit fly infestations and be accompanied by a field record indicating the location of the avocados' originating orchard.

The findings of the CIED also support providing alternatives to treatment for domestic Hass avocado producers. Although there are currently no areas within the United States that are quarantined due to the presence of Mediterranean fruit fly, in order to make our domestic and foreign requirements for movement of Hass avocados consistent with each other, we are proposing to amend paragraph (d) in § 301.32–4 to provide for the interstate movement of Hass avocados from Mediterranean fruit fly domestic quarantined areas under certificate if the fruit is safeguarded after harvest in accordance with specific phytosanitary measures. Those measures would be the same as those that currently apply to Hass avocados moving interstate from Mexican fruit fly and sapote fruit fly domestic quarantined areas and include requiring that fallen fruit be excluded from consignments, that harvested avocados be moved from the orchard to the packinghouse within 3 hours of harvest, and that avocados moving from the orchard to the packinghouse be

<sup>1</sup> To view the proposed rule, the comments we received, and the final rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0126>.

<sup>2</sup> Plant Health Division Servicio Nacional de Sanidad Agraria (SENASA) Ministry of Agriculture & Technical Department Peruvian Hass Avocado Growers Association (ProHass), *Nonhost Status of Commercial Avocado (Persea americana) “Hass”*

*with respect to Ceratitidis capitata, Anastrepha fraterculus, and Anastrepha striata (Diptera: Tephritidae) in Peru. (December 2010).*

protected from fruit fly infestations and be accompanied by a field record indicating the location of the avocados' originating orchard. We do not have domestic quarantine regulations for South American fruit fly.

#### 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 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. 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).

Entities potentially impacted by this rule include U.S. producers and importers of Hass avocados, most of which are considered small entities. The proposed rule may affect the quantity and/or price of Hass avocados imported from Mexico and Peru. In particular, Hass avocados imported from these countries may become more competitively priced, depending upon the costs of fruit fly quarantine measures relative to the other costs of producing and preparing the fruit for importation by the United States. APHIS does not have information on the extent to which the quantity or price of Hass avocado imports may be affected by the proposed rule. In addition, U.S. producers in areas quarantined for the Mediterranean fruit fly would benefit from the proposed rule by being able to move avocados out of the quarantined area under certificate. There are currently no areas in the United States quarantined because of Mediterranean fruit fly.

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with 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.

#### 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

##### 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

##### 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 parts 301 and 319 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

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

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

##### § 301.32–4 [Amended]

2. In § 301.32–4, paragraph (d) introductory text is amended by removing the word “Mexican” and adding the words “Mediterranean, Mexican,” in its place.

#### PART 319—FOREIGN QUARANTINE NOTICES

3. 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.

##### § 319.56–30 [Amended]

4. Section 319.56–30 is amended by removing paragraph (c)(1)(iii).

5. Section 319.56–50 is amended as follows:

a. By revising paragraphs (b)(1) and (b)(2) to read as set forth below.

b. By removing paragraphs (d) and (e) and redesignating paragraphs (f) through (j) as paragraphs (d) through (h), respectively.

c. By revising newly redesignated paragraph (g) to read as set forth below.

d. In newly redesignated paragraph (h) introductory text, by removing the words “In addition:” and by removing newly redesignated paragraphs (h)(1) through (h)(3).

#### § 319.56–50 Hass avocados from Peru.

\* \* \* \* \*

(b) \* \* \* (1) The NPPO of Peru must visit and inspect registered places of production monthly, starting at least 2 months before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the requirements of paragraphs (c) and (e) of this section and follow pest control guidelines, when necessary, to reduce quarantine pest populations. Any person conducting trapping and pest surveys under paragraph (d) of this section must be trained and supervised by the NPPO of Peru. APHIS may monitor the places of production if necessary.

(2) In addition to conducting fruit inspections at the packinghouses, the NPPO of Peru must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of paragraph (f) of this section.

\* \* \* \* \*

(g) *NPPO of Peru inspection.* Following any post-harvest processing, inspectors from the NPPO of Peru must inspect a biometric sample of fruit from each place of production at a rate to be determined by APHIS. The inspectors must visually inspect for the quarantine pests listed in the introductory text of this section and must cut fruit to inspect for *S. catenifer*. If any quarantine pests are detected in this inspection, the place of production where the infested avocados were grown will immediately be suspended from the export program until an investigation has been conducted by APHIS and the NPPO of Peru and appropriate mitigations have been implemented.

\* \* \* \* \*

Done in Washington, DC, this 29th day of March 2011.

**Kevin Shea,**

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

[FR Doc. 2011–7894 Filed 4–1–11; 8:45 am]

**BILLING CODE 3410–34–P**