

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 94-065-1]

#### Importation of Fruits and Vegetables

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to revise the regulations for the importation of fruits and vegetables to update provisions for inspections and other activities at the port of first arrival. We propose to clarify the procedures by which we give notice to an importer that cleaning, disinfection, disposal, or some other action is required for a shipment of fruits and vegetables. We also propose to clarify the responsibility of the owner of imported fruits or vegetables for carrying out actions ordered by an inspector in accordance with the regulations. This proposed action would provide clearer standards for persons who must comply with the regulations, and would aid our enforcement of the regulations.

**DATES:** Consideration will be given only to comments received on or before September 11, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 94-065-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1228. Please state that your comments refer to Docket No. 94-065-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jane Levy or Mr. Frank E. Cooper, Senior Operations Officers, Port Operations, PPQ, APHIS, Suite 4A03, 4700 River Road, Unit 139, Riverdale, MD 20737-1236; (301) 734-8645.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR 319.56 through 319.56-8 (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 injurious insects that are new to or not widely distributed within and throughout the United States.

Section 319.56-6 of the regulations addresses requirements for the inspection and disinfection of imported fruits and vegetables at the port of first arrival. This section provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection, disinfection, or both, at the port of first arrival, as may be required by a U.S. Department of Agriculture (USDA) inspector. The purpose of the inspection or disinfection is to detect and eliminate plant pests. This section also provides that any shipment of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other dangerous plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment, or if the shipment contains leaves, twigs, or other portions of plants.

Section 319.56-6 also prohibits the movement of imported fruits and vegetables from the port of first arrival until the inspector gives notice to the collector of customs that the products have been inspected and found to be free from infestation and from plants or portions of plants used as packing or otherwise. This section also states that the importer is responsible for all charges for storage, cartage, and labor incident to inspection and disinfection, other than the services of the inspector.

We are proposing to revise § 319.56-6 to clarify the activities that occur at the port of first arrival for imported fruits and vegetables, and the roles and responsibilities of the USDA and the importer with regard to these activities. The current language of this section is unclear on some points, and we have

experienced difficulties enforcing some of the requirements because the current language does not specify who is responsible for all of the activities and costs that may be required to clear a shipment for entry into the United States. We believe the changes we propose for this section would provide a clearer, more comprehensive standard for importers who must comply with our requirements, and would provide us with a better basis for enforcing the requirements of the regulations.

Current § 319.56-6(a) states that imported fruits or vegetables "shall be subject, as a condition of entry, to such inspection or disinfection, or both, at the port of first arrival, as shall be required by the inspector \* \* \*." This language does nothing to inform the importer as to when or why an inspector might order disinfection, or who is responsible for conducting it. To provide this information, we propose to add the statement that "If the inspector finds a plant pest or evidence of a plant pest on or in any fruit or vegetable or its container, or finds that the fruit or vegetable may have been associated with other articles infested with plant pests, the owner or agent of the owner of the fruit or vegetable shall clean or treat the fruit or vegetable as required by an inspector \* \* \*."

We also propose to amend § 319.56-6(a) to make it clear that imported fruits and vegetables may be subject to reinspection, cleaning, and treatment at the option of an inspector at any time and place before all applicable requirements of this subpart have been accomplished. The current language only allows inspection and disinfection at the port of first arrival, and reinspection at destination.

Also, the current regulations say nothing about where the inspector will have the opportunity to inspect the imported fruits and vegetables, or how the importer will cooperate in providing the opportunity for inspection. Therefore, we propose to add a new paragraph that requires the owner or agent of the owner to assemble imported fruits and vegetables for inspection at the port of first arrival, or at any other place prescribed by an inspector, at a place and time and in a manner designated by an inspector.

The language in current § 319.56-6(c), which describes when imported fruits and vegetables may be removed from

the port of first arrival, is confusing and misleading. It reads "No crate, box, hamper, or other container of fruits or vegetables, or fruits and vegetables in bulk, shall be removed from the port of first arrival unless and until a written notice is given to the collector of customs by the inspector of the United States Department of Agriculture that the products have been inspected and found to be free from infestation and from plants or portions of plants used as packing or otherwise."

We propose to revise this language to make it consistent with the actual current operating procedures at ports. The proposed revision would state that no person could move any imported fruit or vegetable from the port until an inspector notifies the person that the fruit or vegetable either has been released, or requires reinspection, cleaning, or treatment at that port or at a place other than the port.

This revision would make it clear that the release for movement requirements apply to all imported fruits and vegetables, regardless of whether or how they are packaged. It would also clarify that our inspector, rather than the collector of customs, gives the notice that allows articles to move, to the person moving the articles. While we coordinate our release of materials with customs officials at ports, we do not need to impose a regulatory requirement to do so; the point of the notice requirement in this section is to inform the owners of articles when they can move them as far as USDA is concerned. This change would also remove the requirement that the notice be written. Inspectors at ports currently give notice in person, by telephone, in writing, or by electronic means such as e-mail or entry into an electronic database. We do not find it necessary to require the actual notice to be in written form.

This revision would also clarify the standard we apply in deciding to release a shipment for movement from the port of first arrival. The current language is misleading, because not all shipments we release have been "inspected and found to be free from infestation." Some shipments are released after they are found to be infested and were successfully disinfected, and some shipments are released to be moved to some other location for a required treatment. The current language stating that the products must be free "from plants or portions of plants" is also confusing unless the reader refers back to the definition of "plants or portions of plants" in § 319.56-1. It is easier to understand that the inspector will release articles after determining that they comply with the regulatory

requirements, as we propose in the new language.

The current language allows inspectors to order shipments to be cleaned, disinfected, treated, or refused entry and disposed of, but it does not specify who the inspector must notify when ordering such actions. The current regulations also do not make any person clearly responsible for completing the actions ordered by an inspector. We are proposing to add a new paragraph requiring that an inspector order such actions by filing an emergency action notification (PPQ Form 523) with the owner of the fruit or vegetable or an agent of the owner. We also propose to add language requiring that the person/company named in the PPQ Form 523 must, within the time specified in the PPQ Form 523, destroy the fruits, ship them to a point outside the United States, move them to an authorized site, and/or apply treatments or other safeguards to them as prescribed by an inspector to prevent the introduction of plant pests into the United States. This approach is consistent with current procedures at ports, and would clarify the responsibilities of involved parties and aid enforcement of the regulations.

Finally, current § 319.56-6(d) addresses the responsibility of the importer for charges "incident to inspection and disinfection," but provides little detail on what activities might result in charges. We propose to add a new paragraph to state that the Animal and Plant Health Inspection Service (APHIS) will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty and at the usual places of duty. The owner of imported fruits or vegetables is responsible for all additional costs of inspection, treatment, storage, movement, or destruction ordered by an inspector under the regulations, including any labor, chemicals, packing materials, or other supplies required. APHIS will not be responsible for any costs or charges, other than those identified in this section.

#### **Correction of Citrus Canker Status of Mexico**

In a final rule published in the **Federal Register** and effective on July 23, 1991 (Docket No. 91-022, 56 FR 33703-33704), we removed our "Citrus Canker—Mexico" regulations (7 CFR 319.27 through 319.27-11). This action resulted from our determination that the regulations were no longer needed because citrus canker no longer existed in Mexico. Removing the "Citrus Canker—Mexico" regulations removed restrictions on the importation from

Mexico of citrus fruit and peel.

However, we inadvertently neglected to remove a provision in 7 CFR 319.37-6(e) that restricted importation of citrus seed from Mexico due to citrus canker. To correct this oversight, we now propose to remove Mexico from the list of countries in 7 CFR 319.37-6(e).

#### **Executive Order 12866 and Regulatory Flexibility Act**

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

If adopted, this proposal would clarify procedures for the inspection and release of imported fruits and vegetables at the port of first arrival in the United States. The proposed revision of the regulations would update the regulatory language to conform to procedures currently in use at ports. These changes would provide a clearer standard for importers of fruits and vegetables who must comply with the regulations, and would enhance enforcement of the regulations. The proposed changes would not add any significant new costs for importers of fruits and vegetables or other persons. Importers are already responsible for all costs of treatment, movement, storage, or destruction ordered by an inspector at a port.

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 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### **Executive Order 12778**

This proposed rule would clarify the requirements at the port of first arrival for fruits and vegetables imported into the United States. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables 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

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 would be amended as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

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

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

#### § 319.37–6 [Amended]

2. In § 319.37–6, paragraph (e) would be amended by removing the word “Mexico,”.

3. Section 319.56–6 would be revised to read as follows:

#### § 319.56–6 Inspection and other requirements at the port of first arrival.

(a) *Inspection and treatment.* All imported fruits or vegetables shall be inspected, and shall be subject to such disinfection at the port of first arrival as may be required by an inspector, and shall be subject to reinspection at other locations at the option of an inspector. If an inspector finds a plant pest or evidence of a plant pest on or in any fruit or vegetable or its container, or finds that the fruit or vegetable may have been associated with other articles infested with plant pests, the owner or agent of the owner of the fruit or vegetable shall clean or treat the fruit or vegetable and its container as required by an inspector, and the fruit or vegetable shall also be subject to reinspection, cleaning, and treatment at the option of an inspector at any time and place before all applicable requirements of this subpart have been accomplished.

(b) *Assembly for inspection.* The owner or agent of the owner shall assemble imported fruits and vegetables for inspection at the port of first arrival,

or at any other place prescribed by an inspector, at a place and time and in a manner designated by an inspector.

(c) *Refusal of entry.* If an inspector finds that an imported fruit or vegetable is prohibited or is so infested with a plant pest that, in the judgment of the inspector, it cannot be cleaned or treated, or contains soil or other prohibited contaminants, the entire lot may be refused entry into the United States.

(d) *Release for movement.* No person shall move from the port of first arrival any imported fruit or vegetable unless and until an inspector notifies the person (in person, in writing, by telephone, or through electronic means) that the fruit or vegetable:

(1) Has been released; or

(2) Requires reinspection, cleaning, or treatment of the fruit or vegetable at that port or at a place other than the port of first arrival, or is prohibited and must be exported from the United States.

(e) *Notice to owner of actions ordered by inspector.* If an inspector orders any disinfection, cleaning, treatment, reexportation, or other action with regard to imported fruits or vegetables, the inspector shall file an emergency action notification (PPQ Form 523) with the owner of the fruits or vegetables or an agent of the owner. The owner must, within the time specified in the PPQ Form 523, destroy the fruits and vegetables, ship them to a point outside the United States, move them to an authorized site, and/or apply treatments or other safeguards to the fruits and vegetables as prescribed by an inspector to prevent the introduction of plant pests into the United States.

(f) *Costs and charges.* The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty and at the usual places of duty.<sup>1</sup> The owner of imported fruits or vegetables is responsible for all additional costs of inspection, treatment, movement, storage, or destruction ordered by an inspector under this subpart, including any labor, chemicals, packing materials, or other supplies required. APHIS will not be responsible for any costs or charges, other than those identified in this section.

<sup>1</sup> Provisions relating to costs for other services of an inspector are contained in 7 CFR part 354.

Done in Washington, DC, this 30th day of June 1995.

**Terry L. Medley,**

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

[FR Doc. 95–17019 Filed 7–11–95; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 95–CE–14–AD]

#### Airworthiness Directives; Cessna Aircraft Company 150 and A150 Series and Models 152 and A152 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

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

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to Cessna Aircraft Company (Cessna) 150 and A150 series and Models 152 and A152 airplanes that have a Bush Conversions, Inc., Short Takeoff and Landing (STOL) kit installed in accordance with Supplemental Type Certificate (STC) SA1371SW. The proposed action would require measuring the wing stall fence for maximum height, and installing a smaller fence if the fence exceeds the maximum height of 1.28 inches. An accident of a Cessna Model 152 airplane where the STOL kit adversely affected the airplane's stall characteristics prompted the proposed action. The actions specified by the proposed AD are intended to prevent the airplane from entering a stall condition because of improper wing stall fence height, which could result in loss of control of the airplane.

**DATES:** Comments must be received on or before September 15, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Figure 1 of the proposed AD may be obtained from the Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; and may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558,