

# Proposed Rules

Federal Register

Vol. 76, No. 148

Tuesday, August 2, 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 Part 319

[Docket No. APHIS-2011-0012]

RIN 0579-AD48

#### Importation of Tomatoes From the Economic Community of West African States Into the Continental United States

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the fruits and vegetables regulations to allow the importation of tomatoes from the member States of the Economic Community of West African States (ECOWAS) into the continental United States. As a condition of entry, tomatoes from the ECOWAS would be subject to a systems approach that would include requirements for pest exclusion at the production site, fruit fly trapping and monitoring, and procedures for packing the tomatoes. The tomatoes would also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country with an additional declaration that the tomatoes had been produced in accordance with the proposed requirements. This action would allow for the importation of tomatoes from the ECOWAS into the continental United States while continuing to provide protection against the introduction of quarantine pests.

**DATES:** We will consider all comments that we receive on or before October 3, 2011.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0012-0001>.
- *Postal Mail/Commercial Delivery:*

Send your comment to Docket No. APHIS-2011-0012, Regulatory Analysis

and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0012> or in our reading room, which 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.

**FOR FURTHER INFORMATION CONTACT:** Mr. Phillip Grove, Regulatory Coordinator, PPQ, APHIS, 4700 River Road, Unit 156, Riverdale, MD 20737-1236; (301) 734-6280.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-51, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States. Section 319.56-28 of the regulations contains administrative instructions allowing the importation of tomatoes from various countries where the Mediterranean fruit fly (Medfly, *Ceratitis capitata*) is present.

We currently do not allow the importation of fresh tomatoes from any member of the Economic Community of West African States (ECOWAS). The ECOWAS comprises the following members: Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. The government of Senegal has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh tomatoes (*Solanum lycopersicum*) to be imported from Senegal into the continental United States. Because of the similar pest risks present in the other countries in the ECOWAS, we prepared a regional pest risk assessment (PRA) and a risk management document (RMD) for the importation of tomatoes from any ECOWAS member State.

Copies of the PRA and the RMD 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).

The PRA, titled “Importation of Tomatoes, *Solanum lycopersicum*, from the Economic Community of West African States (ECOWAS) into the Continental United States” (2009), evaluates the risks associated with the importation of tomatoes into the continental United States from the ECOWAS. The PRA identified 10 pests that could be introduced into the United States through the importation of tomatoes. Seven of the pests were determined to pose a high pest risk potential:

*Bactrocera cucurbitae* (melon fruit fly)  
*B. invadens* (Asian fruit fly)  
*Ceratitis capitata* (Medfly)  
*Ceratitis rosa* (natal fruit fly)  
*Helicoverpa armigera* (cotton bollworm)  
*H. assulta* (cape gooseberry budworm)  
*Leucinodes orbonalis* (eggplant fruit borer)

Three of the pests were determined to pose a medium pest risk potential:

*Chrysodeixis chalcites* (golden twin spot moth)  
*Maconellicoccus hirsutus* (pink hibiscus mealybug)  
*Nipaecoccus viridis* (spherical mealybug)

APHIS has determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of tomatoes from the ECOWAS into the continental United States only if they are produced in accordance with a systems approach to mitigate pest risk as outlined below. We are proposing to amend § 319.56-28 by adding a new paragraph (h) to the end of the section that would set out requirements for the importation of fresh tomatoes from the ECOWAS.

#### Proposed Systems Approach

##### Production Site Requirements

Tomatoes from the ECOWAS would have to be grown in approved production sites registered with the national plant protection organization (NPPO) of the exporting country. Initial approval of production sites would be completed jointly by the NPPO of the

exporting country and APHIS. The NPPO of the exporting country would have to visit and inspect the production sites monthly, beginning 2 months before the harvest and continuing through the end of the shipping season. APHIS would be able to monitor the production sites, if necessary. This condition would ensure that the required phytosanitary measures are properly implemented throughout the process of growing and packing tomatoes for export to the United States.

Production sites for tomatoes would also have to be pest-exclusionary structures (PES). The PES would be required to have self-closing double doors, and all openings, including vents, to the outside of the PES would have to be covered by screening with mesh openings of not more than 1.6 mm. Screening with openings of not more than 1.6 mm will prevent introduction of fruit flies, moths, and mealybugs.

In addition, no shade trees could be grown within 10 meters of the entry door of the PES and no other fruit fly host plants could be grown within 50 meters of the entry door of the PES. These requirements would reduce the pest pressure of fruit flies outside the place of production because, during hot, sunny weather, pests congregate in shaded areas for survival.

#### *Mitigation Measures for Fruit Flies*

The NPPO of the exporting country would be required to set and maintain fruit fly traps with an APHIS-approved protein bait inside the PES, beginning 2 months prior to the start of the shipping season and continuing through the end of the harvest. The traps would have to be set at a rate of eight traps per hectare, with a minimum of four traps in each PES, and checked every 7 days. We also propose to require the NPPO of the exporting country to maintain records of trap placement, trap maintenance, and captures of any fruit flies of concern. The trapping records would have to be maintained for 1 year and made available to APHIS upon request.

Capture of a single fruit fly of concern inside a PES would immediately result in cancellation of exports to the United States from that PES. The detection of a fruit fly of concern in a consignment at the port of entry that is traced back to a PES would also result in immediate cancellation of exports to the United States from that PES. In both cases, exports from the PES in question could not resume until APHIS and the NPPO of the exporting country have mutually determined that the risk has been properly mitigated.

#### *Harvesting Requirements*

The stem and calyx of each tomato would have to be removed. Removal of the stem and calyx would eliminate hiding places for small pests, thereby allowing the pests to be detected during the NPPO's inspection.

#### *Packinghouse Requirements*

While being used for packing tomatoes for export to the United States, the packinghouses would only be allowed to accept fruit from registered production sites. This requirement would reduce the risk that quarantine pests are present on or in tomatoes exported to the United States.

In addition, no shade trees could be grown within 10 meters of the entry door of the packinghouses, and no other fruit fly host plants could be grown within 50 meters of the entry door of the packinghouses. As mentioned earlier with regard to production sites, these requirements would reduce the pest pressure of fruit flies outside the packinghouse.

#### *Post-Harvest Procedures*

The tomatoes would have to be safeguarded by an insect-proof screen or plastic tarpaulin while in transit to a packinghouse and while awaiting packing. Tomatoes would have to be packed for shipment to the United States within 24 hours of harvest in insect-proof cartons or containers, or covered with insect-proof mesh or a plastic tarpaulin. These safeguards would have to remain intact until arrival in the United States or the consignment would not be allowed to enter the United States. Containers transported by sea would have to be kept closed if stored within 20 meters of a fruit fly host prior to being loaded onto the vessel. These measures would prevent harvested fruit from being infested by quarantine pests.

#### *Commercial Consignments*

Only commercial consignments of tomatoes would be allowed to be imported. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the

commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control.

#### *Inspection and Phytosanitary Certificate*

Each consignment of tomatoes would have to be inspected by the NPPO of the exporting country and found free of the quarantine pests listed earlier. Each consignment would also have to be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country, providing the additional declaration "These tomatoes were grown in registered production sites in [name of country] and the consignment has been inspected and found free of quarantine pests." This requirement would certify that the provisions of the regulations have been met.

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

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

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

This proposed rule would allow the importation of tomatoes from the member States of the ECOWAS under a systems approach. Entities potentially affected by this proposed rule are U.S. producers of fresh tomatoes (classified under Other Vegetable (except Potato) and Melon Farming, NAICS 111219) and importers of fresh tomatoes. Vegetable-producing establishments are classified as small if their annual receipts are not more than \$750,000. According to the 2007 Census of Agriculture (which has the most recent data on farm sizes), there were 25,809 farms producing tomatoes in the United States. About 68 percent of these farms had less than 1 acre in tomatoes. Overall, 25,128 farms (97.4 percent) had a total of 39,879 acres in tomatoes (about 9 percent of the total planted area) and are considered small, with an average of about 1.6 acres and an average annual income of about \$8,000 in 2007. The remaining 2.6 percent of the farms planted a total of 402,346 acres in tomatoes (91 percent of the planted area). They averaged 591 acres,

with an average annual income of about \$3 million.

The impact of potential tomato imports on U.S. small-entity producers as a result of this rule would be small. The annual decrease in producer welfare per small entity is estimated to be less than \$4 or about 0.05 percent of average annual sales by small entities, when we assume that 1,934 metric tons of tomatoes would be exported to the United States from ECOWAS because of this rule. The dollar decrease in welfare for most small tomato producers would be even smaller, given that the majority planted less than an acre in tomatoes.

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

#### Executive Order 12988

This proposed rule would allow tomatoes to be imported into the United States from the ECOWAS. If this proposed rule is adopted, State and local laws and regulations regarding tomatoes imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2011–0012. Please send a copy of your comments to: (1) Docket No. APHIS–2011–0012, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full

effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the fruits and vegetables regulations to allow the importation of tomatoes from the member States of the ECOWAS into the continental United States. As a condition of entry, tomatoes from the ECOWAS would be subject to a systems approach that would include requirements for pest exclusion at the production site, fruit fly trapping and monitoring, and procedures for packing the tomatoes. The tomatoes would also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country with an additional declaration that the tomatoes had been produced in accordance with the proposed requirements. This action would allow for the importation of tomatoes from the ECOWAS into the continental United States while continuing to provide protection against the introduction of quarantine pests.

The information collection activities would include a phytosanitary certificate with an additional declaration, production site registration, recordkeeping, and inspection of production sites.

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

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

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

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

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

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 3.8 hours per response.

*Respondents:* Foreign officials, importers of tomatoes from ECOWAS.

*Estimated annual number of respondents:* 2.

*Estimated annual number of responses per respondent:* 2.5.

*Estimated annual number of responses:* 5.

*Estimated total annual burden on respondents:* 19 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

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

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

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

#### PART 319—FOREIGN QUARANTINE NOTICES

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

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

2. In § 319.56–28, a new paragraph (h) is added to read as follows:

#### § 319.56–28 Tomatoes from certain countries.

\* \* \* \* \*

(h) *Tomatoes (fruit) (Solanum lycopersicum) from member States of the Economic Community of West African States.* Fresh tomatoes may be imported into the continental United States from member States of the Economic Community of West African States (ECOWAS) only in accordance with this section and other applicable provisions of this subpart. The ECOWAS consists of Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo Republic. These conditions are designed to prevent the introduction of the following quarantine

pests: *Bactrocera cucurbitae*, *B. invadens*, *Ceratitidis capitata*, *Ceratitidis rosa*, *Chrysodeixis chalcites*, *Helicoverpa armigera*, *H. assulta*, *Leucinodes orbonalis*, *Maconellicoccus hirsutus*, and *Nipaecoccus viridis*.

(1) *Production site requirements.* (i) Production sites in which the tomatoes are produced must be registered with the national plant protection organization (NPPO) of the exporting country. Initial approval of production sites must be completed jointly by the NPPO of the exporting country and APHIS.

(ii) The NPPO of the exporting country must visit and inspect the production sites monthly, beginning 2 months before the harvest and continuing through the end of the shipping season. APHIS may monitor the production sites if necessary.

(iii) Production sites must be pest-exclusionary structures (PES). The PES must have self-closing double doors. All openings, including vents, to the outside of the PES must be covered by screening with mesh openings of not more than 1.6 mm.

(iv) No shade trees may be grown within 10 meters of the entry door of the PES, and no other fruit fly host plants may be grown within 50 meters of the entry door of the PES.

(2) *Mitigation measures for fruit flies.* (i) Beginning 2 months prior to the start of the shipping season and continuing through the end of the harvest, the NPPO of the exporting country must set and maintain fruit fly traps with an APHIS-approved protein bait inside each PES at a rate of eight traps per hectare, with a minimum of four traps in each PES, and check the traps every 7 days. The NPPO of the exporting country must maintain records of trap placement, trap maintenance, and captures of any fruit flies of concern. The NPPO must maintain trapping records for 1 year, and make the records available to APHIS upon request.

(ii) Capture of a single fruit fly of concern inside a PES will immediately result in cancellation of exports to the United States from that PES. The detection of a fruit fly of concern in a consignment at the port of entry that is traced back to a PES will also result in immediate cancellation of exports to the United States from that PES. In both cases, exports from the PES in question may not resume until APHIS and the NPPO of the exporting country have mutually determined that the risk has been properly mitigated.

(3) *Harvesting requirements.* The stem and calyx must be removed from the tomato.

(4) *Packinghouse requirements.* (i) While in use for exporting tomatoes to the United States, the packinghouses may only accept fruit from registered production sites.

(ii) No shade trees may be grown within 10 meters of the entry door of the packinghouses, and no other fruit fly host plants may be grown within 50 meters of the entry door of the packinghouses.

(5) *Post-harvest procedures.* (i) The tomatoes must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing.

(ii) Tomatoes must be packed within 24 hours of harvest in insect-proof cartons or containers, or covered with insect-proof mesh or a plastic tarpaulin for transport to the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(iii) If transported by sea, the containers in which the tomatoes are packed must be kept closed if stored within 20 meters of a fruit fly host prior to being loaded on the vessel.

(6) *Commercial consignments.* The tomatoes may be imported in commercial consignments only.

(7) *Phytosanitary certificate.* Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country, providing an additional declaration "These tomatoes were grown in registered production sites in [name of country] and the consignment has been inspected and found free of quarantine pests."

\* \* \* \* \*

Done in Washington, DC, this 27th day of July 2011.

**Kevin Shea,**

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

[FR Doc. 2011-19518 Filed 8-1-11; 8:45 am]

**BILLING CODE 3410-34-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA-2011-0585; Airspace Docket No. 11-AWP-9]**

**Proposed Modification of Class E Airspace; Blythe, CA**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

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

**SUMMARY:** This action proposes to modify Class E airspace at Blythe, CA. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Blythe Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

**DATES:** Comments must be received on or before September 16, 2011.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366-9826. You must identify FAA Docket No. FAA-2011-0585; Airspace Docket No. 11-AWP-9, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203-4537.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2011-0585 and Airspace Docket No. 11-AWP-9) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2011-0585 and Airspace Docket No. 11-AWP-9". The postcard will be date/time stamped and returned to the commenter.