

Proposed Rules

Federal Register

Vol. 78, No. 20

Wednesday, January 30, 2013

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-2012-0002]

RIN 0579-AD63

Importation of Avocados From Continental Spain

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 avocados from continental Spain (excluding the Balaeric Islands and Canary Islands) into the United States. As a condition of entry, avocados from Spain would have to be produced in accordance with a systems approach that would include requirements for importation in commercial consignments; registration and monitoring of places of production and packinghouses; grove sanitation; and inspection for quarantine pests by the national plant protection organization of Spain. Consignments of avocados other than the Hass variety would also have to be treated for the Mediterranean fruit fly either prior to moving to the United States or upon arrival prior to release. Consignments would also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the avocados were grown and inspected and found to be free of pests in accordance with the proposed requirements. This action would allow for the importation of avocados from Spain into the 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 April 1, 2013.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0002-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2012-0002, 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-2012-0002> 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) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Jones, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2289.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–57, 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.

The national plant protection organization (NPPO) of Spain has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow avocados from continental Spain to be imported into the United States, including Hawaii and U.S. territories.

As part of our evaluation of Spain’s request, we prepared a pest risk assessment (PRA), titled “Importation of Fresh Avocado, *Persea americana* Miller, from Continental Spain into the United States, Including Hawaii and U.S. Territories” (November 2011). The PRA evaluated the risks associated with the importation of avocados into the United States from Spain. Copies of the PRA 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 identifies one pest of quarantine significance present in continental Spain that could be introduced into the United States through the importation of avocados. That pest is *Ceratitidis capitata* (Wiedemann), the Mediterranean fruit fly (Medfly).

APHIS has determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by this plant pest. To recommend specific measures to mitigate those risks, we prepared a risk management document (RMD). Copies of 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).

Based on the recommendations of the RMD, we are proposing to allow the importation of avocados from continental Spain into the United States only if they are produced in accordance with a systems approach. We would allow importation of untreated Hass avocados based on our finding¹ that Hass avocados on the tree are not a host to Medfly. We would allow importation of other varieties of avocado if they are treated for Medfly. The systems approach we are proposing would require:

- Registration, monitoring, and oversight of places of production;
- Grove sanitation;
- Harvesting requirements for safeguarding and identification of the fruit;
- Packinghouse requirements for safeguarding and identification of the fruit;
- Inspection by the NPPO of Spain for Medfly; and

¹ “Host status of ‘Hass’ avocados to Mediterranean fruit fly, *Ceratitidis capitata* (Wiedemann) and the South American fruit fly, *Anastrepha fraterculus* (Wiedemann).” Commodity Import Evaluation Document. December 2010. United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Regulations, Permits and Manuals, Regulatory Coordination and Compliance, Riverdale, MD. 8pp. Available at <http://www.regulations.gov/#!documentDetail;D=APHIS-2010-0127-0002>.

- Cold treatment for avocado varieties other than Hass.

Additionally, all avocados from Spain would also be required to be accompanied by a phytosanitary certificate issued by the NPPO of Spain. The phytosanitary certificate accompanying Hass variety avocados would have to contain an additional declaration stating that the avocados were grown in an approved place of production and the consignment has been inspected and found free of *C. capitata*. The phytosanitary certificate accompanying non-Hass avocados would have to contain an additional declaration stating that the avocados were grown in an approved place of production and the consignment has been inspected and found free of *C. capitata*, and, if treated prior to export, that the consignment has been treated for *C. capitata* in accordance with 7 CFR part 305.

We are proposing to add the systems approach to the regulations in a new § 319.56–58 governing the importation of avocados from continental Spain into the United States. The mitigation measures in the proposed systems approach are discussed in greater detail below.

Proposed Systems Approach

General Requirements

Paragraph (a) of § 319.56–58 would set out general requirements for the NPPO of Spain and for growers and packers producing avocados for export to the United States.

Paragraph (a)(1) would require the NPPO of Spain to provide a workplan to APHIS that details the activities that the NPPO of Spain will, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.56–58. As described in a notice we published on May 10, 2006, in the **Federal Register** (71 FR 27221–27224, Docket No. APHIS–2005–0085), a bilateral workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities that specifies in detail the phytosanitary measures that will comply with our regulations governing the import or export of a specific commodity. Bilateral workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Bilateral workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing

with those issues. The implementation of a systems approach typically requires a bilateral workplan to be developed.

Paragraph (a)(1) would also state that the NPPO of Spain must establish a trust fund in accordance with § 319.56–6. Section 319.56–6 of the regulations sets forth provisions for establishing trust fund agreements to cover costs incurred by APHIS when APHIS personnel must be physically present in an exporting country or region to facilitate exports. The systems approach may require APHIS personnel to monitor treatments if they are conducted in Spain.

Paragraph (a)(2) would require the avocados to be grown at places of production in continental Spain that are registered with the NPPO of Spain and that meet the requirements for grove sanitation that are discussed later in this document. Places of production would be limited to continental Spain due to additional quarantine pests that may occur in the Canary Islands or Balaeric Islands.

Paragraph (a)(3) would require the avocados to be packed for export to the United States in packinghouses that are registered with the NPPO of Spain and that meet the packinghouse requirements for fruit origin, pest exclusion, cleaning, safeguarding, and identification that are described later in this document.

Paragraph (a)(4) would state that avocados from continental Spain may be imported in commercial consignments only. 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 and is often grown with little or no pest control. 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.

Commercially produced avocados are cleaned as part of the packing process. This practice would help to mitigate the risk associated with external pests that would be dislodged by cleaning. In addition, the industry practice of culling damaged fruit would help to ensure that avocados exported from Spain are free of quarantine pests in general.

Paragraph (a)(5) would require that avocados other than Hass variety from continental Spain must be treated for *C.*

capitata in accordance with 7 CFR part 305. This treatment could occur prior to export to the United States, or upon arrival² prior to release. This requirement would mitigate the greater vulnerability of non-Hass avocados to attack by *C. capitata*. The regulations in part 305 set out standards and schedules for treatments³ required in 7 CFR parts 301, 318, and 319 to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States through the importation or movement of fruits, vegetables, and other articles. Therefore, we are proposing to refer to 7 CFR part 305 for an approved treatment for *C. capitata* for avocados from continental Spain.

Monitoring and Oversight

The systems approach we are proposing includes monitoring and oversight requirements in paragraph (b) of proposed § 319.56–58 to ensure that the required phytosanitary measures are properly implemented throughout the process of growing and packing of avocados for export to the United States.

Paragraph (b)(1) would require the NPPO of Spain to visit and inspect registered places of production monthly, starting at least 2 months before harvest and continuing until the end of harvest, to verify that the growers are complying with the requirements for grove sanitation that are discussed later in this document and follow pest control guidelines, when necessary, to reduce quarantine pest populations.

Under paragraph (b)(2), in addition to conducting fruit inspections at the packinghouses, the NPPO of Spain would be required to monitor packinghouse operations to verify that the packinghouses are complying with the packinghouse requirements for fruit origin, pest exclusion, cleaning, safeguarding, and identification that are described later in this document.

Under paragraph (b)(3), if the NPPO of Spain finds that a place of production or a packinghouse is not complying with the proposed regulations, no fruit from the place of production or packinghouse would be eligible for export to the United States until APHIS and the NPPO of Spain conduct an investigation and appropriate remedial actions have been implemented.

² Cold treatment upon arrival is only available at certain ports in accordance with 7 CFR 305.6.

³ Within part 305, § 305.2 provides that approved treatment schedules are set out in the PPQ Treatment Manual, found online at http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf. The manual specifies which treatment schedules are effective in neutralizing *C. capitata* on avocados.

Paragraph (b)(4) would require the NPPO of Spain to retain all forms and documents related to export program activities in groves and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

Grove Sanitation

Under paragraph (c) of proposed § 319.56–58, avocado fruit that has fallen from the trees would have to be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest. This procedure would reduce the amount of material in the groves that could serve as potential host material for *C. capitata*.

Avocado fruit of any variety that has fallen from avocado trees to the ground may be damaged and thus more susceptible to infestation by *C. capitata*, and even the normally resistant Hass variety may become infested under these circumstances. Therefore, proposed paragraph (c) would not allow fallen avocado fruit to be included in field containers of fruit brought to the packinghouse to be packed for export.

Harvesting Requirements

Paragraph (d) of proposed § 319.56–58 sets out requirements for harvesting. Harvested avocados would have to be placed in field cartons or containers that are marked with the official registration number of the place of production. The place of production where the avocados were grown would have to remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process. These requirements would ensure that APHIS and the NPPO of Spain could identify the place of production where the avocados were produced if inspectors find Medflies in the fruit either before export or at the port of entry.

We would require the fruit to be moved to a registered packinghouse within 3 hours of harvest or to be protected from fruit fly infestation until moved. The fruit would have to be safeguarded by an insect-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. These requirements would prevent the fruit from being infested by fruit flies between harvest and packing.

Packinghouse Requirements

We are proposing several requirements for fruit origin and packinghouse activities, which would be contained in paragraph (e) of proposed § 319.56–58.

Paragraph (e)(1) would require registered packinghouses to accept only avocados that are from registered places

of production and that are produced in accordance with the requirements of the systems approach during the time they are in use for packing avocados for export to the United States.

Paragraph (e)(2) would require avocados to be packed within 24 hours of harvest in an insect-exclusionary packinghouse. All openings to the outside of the packinghouse would have to be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering. Screening with openings of not more than 1.6 mm excludes fruit flies. The packinghouse would have to have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed. These proposed requirements are designed to exclude fruit flies from the packinghouse.

Paragraph (e)(3) would require all avocados to be cleaned of all plant debris before packing. This procedure would ensure that the fruit alone is exported to the United States; other parts of the avocado tree may harbor pests other than the quarantine pest *C. capitata*, and the cleaning process helps to remove them.

Paragraph (e)(4) would state that cartons or boxes in which avocados are packed would be required to be labeled with a lot number that provides information to identify the orchard where the fruit was grown and the packinghouse where the fruit was packed. The labeling would have to be large enough to clearly display the required information and be located on the side of cartons to facilitate inspection by APHIS.

Paragraph (e)(5) would require avocados to be packed in insect-proof packaging, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States, to prevent fruit fly infestation after the fruit is packed. These safeguards would have to remain intact until arrival in the United States.

Paragraph (e)(6) would require shipping documents accompanying consignments of avocados from continental Spain that are exported to the United States to include the official registration number of the place of production at which the avocados were grown and to identify the packing shed or sheds in which the fruit was processed and packed. This identification would have to be maintained until the fruit is released for entry into the United States. These requirements would ensure that APHIS and the NPPO of Spain could identify the packinghouse at which the fruit was packed if inspectors find *C. capitata* in

the fruit either before export or at the port of entry.

Inspection by the NPPO of Spain

To ensure that the mitigations required in the systems approach are effective at producing fruit free of quarantine pests, paragraph (f) of proposed § 319.56–58 would require inspectors from the NPPO of Spain to inspect a biometric sample from each place of production at a rate to be determined by APHIS. The inspectors would have to visually inspect the fruit and a portion of the fruit would be cut open to inspect for internal stages of *C. capitata*. If *C. capitata* is detected in this inspection, the place of production where the infested avocados were grown would immediately be suspended from the export program until an investigation has been conducted by APHIS and the NPPO of Spain and appropriate mitigations have been implemented.

Phytosanitary Certificate

To certify that the avocados from continental Spain have been grown and packed in accordance with the requirements of proposed § 319.56–58, proposed paragraph (g) would require each consignment of avocados imported from Spain into the United States to be accompanied by a phytosanitary certificate issued by the NPPO of Spain. The phytosanitary certificate accompanying Hass variety avocados would have to contain an additional declaration stating that the avocados are Hass variety and were grown in an approved place of production and the consignment has been inspected and found free of *C. capitata*. The phytosanitary certificate accompanying non-Hass avocados would have to contain an additional declaration stating that the avocados were grown in an approved place of production and the consignment has been inspected and found free of *C. capitata* and, if treated prior to export, that the consignment has been treated for *C. capitata* in accordance with 7 CFR part 305.

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 set forth below.

The NPPO of Spain has requested that APHIS authorize market access for

commercial shipments of fresh avocados into the United States for domestic consumption. APHIS is proposing to grant this request if Spain produces the avocados in accordance with a systems approach intended to prevent the introduction of quarantine pests.

In 2009, the United States was the world's third largest avocado producer, after Mexico and Chile; the United States accounted for about 7 percent of global production, while Mexico and Chile accounted for 32 percent and 9 percent, respectively. U.S. commercial production of avocado occurs in three States. California accounts for about 90 percent of U.S. production, followed by Florida with about 9 percent, and Hawaii with less than 1 percent. In 2010, U.S. utilized production of avocado totaled about 135,500 metric tons (MT), only one-half of the 271,000 MT produced in 2009, and indicative of the significant variability in yield from year to year.

In the last decade, U.S. per capita consumption of avocado has risen significantly, from 1 kilogram in 2000 to 1.86 kilograms in 2010, representing an annual growth rate of about 6.4 percent. Although the United States is a major producer of avocado, it is also the largest import market (since 2002) and has been a net importer since the late 1980s. During this time, the gap between U.S. imports and U.S. exports has widened substantially. The average annual value of U.S. avocado imports, 2008–2010, was nearly \$622 million, compared to average annual exports valued at less than \$16 million.

Spanish avocado producers expect to export to the United States about 260 MT of fresh avocado annually, an amount equivalent to 0.15 percent of U.S. production, 0.07 percent of U.S. net imports (imports minus exports), and 0.05 percent of U.S. supply (production plus net imports), based on 2008–2010 average annual U.S. production and trade quantities.

Entities that may be directly affected by the proposed rule are U.S. importers and producers of avocado. Avocado importers are classified in the North American Industry Classification System (NAICS) under Fresh Fruit and Vegetable Merchant Wholesalers (NAICS 424480). Avocado producers are classified under Other Noncitrus Fruit Farming (NAICS 111339). The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small. A firm primarily engaged in fresh fruit and vegetable wholesaling is considered small if it employs not more than 100 persons. A firm primarily engaged in noncitrus

fruit farming is considered small if it has annual sales of not more than \$750,000.

In 2007, nearly 95 percent of fruit and vegetable wholesale establishments (4,207 of 4,437 businesses) that operated the entire year were small by the SBA's small-entity threshold of not more than 100 employees. That same year, nearly 93 percent of farms that sold fruits, tree nuts, or berries (104,424 of 112,690 operations) had annual sales of less than \$500,000, well below the SBA's small-entity threshold of \$750,000. The subset of these farms that comprise the industry Other Noncitrus Fruit Farming numbered 23,641, and can be assumed to be also primarily composed of small entities. Of these Other Noncitrus Fruit Farming establishments, there were 8,245 avocado farms in 2007, also presumed to be principally small operations.

While most entities that may be affected by the proposed rule are small, any effects would be insignificant because of the small quantity of avocado expected to be imported from continental Spain.

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 avocados to be imported into the United States from continental Spain. If this proposed rule is adopted, State and local laws and regulations regarding avocados imported under this rule would be preempted while the fruit is in foreign commerce. Fresh avocados 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–2012–0002. Please send a copy of your comments to: (1) Docket No. APHIS–2012–0002, 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.

We are proposing to amend the fruits and vegetables regulations to allow the importation of avocados from continental Spain into the United States, including Hawaii and U.S. territories. As a condition of entry, avocados from continental Spain would have to be produced in accordance with a systems approach that would include requirements for importation in commercial consignments; registration and monitoring of places of production and packinghouses; grove sanitation; and inspection for quarantine pests by the NPPO of Spain. Implementation of this proposed rule would require the submission of documents such as phytosanitary certificates, trust fund agreements, workplans, records for recordkeeping, and production site and packinghouse registration and inspection forms. This proposed rule will also require the labeling of boxes or cartons.

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 0.029503 hours per response.

Respondents: Producers and importers of avocados and the NPPO of Spain.

Estimated annual number of respondents: 28.

Estimated annual number of responses per respondent: 515.6785.

Estimated annual number of responses: 14,439.

Estimated total annual burden on respondents: 426 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. Add § 319.56-58 to read as follows:

§ 319.56-58 Avocados from continental Spain.

Fresh avocados (*Persea americana* P. Mill.) may be imported into the United States from continental Spain (excluding the Balaeric Islands and Canary Islands) only under the conditions described in this section. These conditions are designed to prevent the introduction of the quarantine pest *Ceratitidis capitata*

(Wiedemann), the Mediterranean fruit fly.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of Spain must provide a workplan to APHIS that details the activities that the NPPO of Spain will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The NPPO of Spain must also establish a trust fund in accordance with § 319.56-6.

(2) The avocados must be grown at places of production in continental Spain that are registered with the NPPO of Spain and that meet the requirements of this section.

(3) The avocados must be packed for export to the United States in packinghouses that are registered with the NPPO of Spain and that meet the requirements of this section.

(4) Avocados from Spain may be imported in commercial consignments only.

(5) Avocados other than Hass variety from continental Spain must be treated for *C. capitata* in accordance with part 305 of this chapter.

(b) *Monitoring and oversight.* (1) The NPPO of Spain 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 paragraph (c) of this section and follow pest control guidelines, when necessary, to reduce quarantine pest populations.

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

(3) If the NPPO of Spain finds that a place of production or packinghouse is not complying with the requirements of this section, no fruit from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO of Spain conduct an investigation and appropriate remedial actions have been implemented.

(4) The NPPO of Spain must retain all forms and documents related to export program activities in groves and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(c) *Grove sanitation.* Avocado fruit that has fallen from the trees must be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest. Fallen avocado fruit

may not be included in field containers of fruit brought to the packinghouse to be packed for export.

(d) *Harvesting requirements.* Harvested avocados must be placed in field cartons or containers that are marked with the official registration number of the place of production. The place of production where the avocados were grown must remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process. The fruit must be moved to a registered packinghouse within 3 hours of harvest or must be protected from fruit fly infestation until moved. The fruit must be safeguarded by an insect-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing.

(e) *Packinghouse requirements.* (1) During the time registered packinghouses are in use for packing avocados for export to the United States, the packinghouses may only accept avocados that are from registered places of production and that are produced in accordance with the requirements of this section.

(2) Avocados must be packed within 24 hours of harvest in an insect-exclusionary packinghouse. All openings to the outside of the packinghouse must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(3) Before packing, all avocados must be cleaned of all plant debris.

(4) Boxes or cartons in which avocados are packed must be labeled with a lot number that provides information to identify the orchard where grown and the packinghouse where packed. The labeling must be large enough to clearly display the required information and must be located on the outside of the boxes to facilitate inspection.

(5) Avocados must be packed in insect-proof packaging, 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.

(6) Shipping documents accompanying consignments of avocados from continental Spain that are exported to the United States must include the official registration number of the place of production at which the avocados were grown and must identify the packing shed or sheds in which the fruit was processed and packed. This identification must be maintained until

the fruit is released for entry into the United States.

(f) *NPPO of Spain inspection.* Following any post-harvest processing, inspectors from the NPPO of Spain must inspect a biometric sample of fruit at a rate determined by APHIS. Inspectors must visually inspect the fruit and cut a portion of the fruit to inspect for *C. capitata*. If any *C. capitata* 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 Spain and appropriate mitigations have been implemented.

(g) *Phytosanitary certificate.* Each consignment of avocados imported from Spain into the United States must be accompanied by a phytosanitary certificate issued by the NPPO of Spain.

(1) The phytosanitary certificate accompanying Hass variety avocados must contain an additional declaration stating that the avocados are Hass variety and were grown in an approved place of production and the consignment has been inspected and found free of *C. capitata*.

(2) The phytosanitary certificate accompanying non-Hass avocados must contain an additional declaration stating that the avocados were grown in an approved place of production and the consignment has been inspected and found free of *C. capitata*. If the consignment has been subjected to treatment for *C. capitata* prior to export in accordance with 7 CFR part 305, the additional declaration must also state this.

Done in Washington, DC, this 25th day of January 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013-02017 Filed 1-29-13; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2011-0132]

RIN 0579-AD62

Importation of Fresh Apricots From Continental Spain

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 into the United States of fresh apricots from continental Spain. As a condition of entry, fresh apricots from continental Spain would have to be produced in accordance with a systems approach that would include registration of production locations and packinghouses, pest monitoring, sanitary practices, chemical and biological controls, and phytosanitary treatment. The fruit would also have to be imported in commercial consignments, with each consignment identified throughout its movement from place of production to port of entry in the United States. Consignments would have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of Spain certifying that the fruit is free from all quarantine pests and has been produced in accordance with the systems approach. This proposed rule would allow for the importation of fresh apricots from continental Spain into the 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 April 1, 2013.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0132-0001>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2011-0132, 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-2011-0132> 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) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith C. Jones, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737-1231; (301) 851-2018.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart-Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-57, 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.

Currently, the regulations prohibit imports of fresh apricot fruit (*Prunus armeniaca* Marshall) from continental Spain (excluding the Balearic Islands and Canary Islands) due to the fruit serving as a likely pathway for four quarantine pests. The Animal and Plant Health Inspection Service (APHIS) received a request from the national plant protection organization (NPPO) of Spain to allow fresh apricots from continental Spain to be imported into the United States subject to a systems approach. As part of our evaluation of Spain’s request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). 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 Fresh Apricot, *Prunus armeniaca* (L.) fruit, from Continental Spain into the United States, including Hawaii and U.S. Territories” (March 2010), evaluates the risks associated with the importation of fresh apricot fruit into the United States from continental Spain. The RMD draws upon the findings of the PRA to determine the phytosanitary measures necessary to ensure the safe importation into the United States of apricots from continental Spain.

The PRA identifies four quarantine pests that could follow the pathway of consignments of fresh apricots imported from continental Spain into the United States:

- The Mediterranean fruit fly (Medfly), *Ceratitis capitata* Wiedemann,
- The plum fruit moth, *Cydia funebrana* (Treitschke),
- Leaf scorch, *Apiognomonia erythrostoma* (Pers.), a fungus, and
- Brown rot, *Monilinia fructigena* Honey, a fungus.

A quarantine pest is defined in § 319.56-2 as a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. Plant pest risk potentials associated with the importation of fresh