

# Proposed Rules

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-2016-0099]

RIN 0579-AE45

### Importation of Fresh Avocado Fruit From Continental Ecuador Into the Continental United States; Reopening of Comment Period

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We are reopening the comment period for a proposed rule to allow the importation of commercial avocados from continental Ecuador into the continental United States after taking a new pest into consideration and including additional phytosanitary measures. We are also notifying the public of the availability of a revised pest risk assessment and revised risk management document associated with this notice. This action will allow interested persons additional time to prepare and submit comments.

**DATES:** The comment period for the proposed rule published on June 15, 2018 (83 FR 27918–27922) is reopened. We will consider all comments that we receive on or before May 17, 2021.

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

- **Federal eRulemaking Portal:** Go to [www.regulations.gov](http://www.regulations.gov). Enter APHIS-2016-0099 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

- **Postal Mail/Commercial Delivery:** Send your comment to Docket No. APHIS-2016-0099, 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 [regulations.gov](http://regulations.gov) or in our reading Room, which is located in Room 1620 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. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2352.

**SUPPLEMENTARY INFORMATION:** On June 15, 2018, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (83 FR 27918–27922, Docket No. APHIS-2016-0099) a proposed rule<sup>1</sup> to authorize the importation of commercial fresh avocado from continental Ecuador into the continental United States.

The proposed rule was based on a pest risk assessment (PRA) that found four quarantine pests to be candidates for pest risk management. The quarantine pests were the fruit flies *Anastrepha fraterculus* (Wiedemann), *Anastrepha serpentina* (Wiedemann), *Anastrepha striata* (Schiner), and *Ceratitis capitata* (Wiedemann). All avocado varieties except the Hass variety are hosts for these quarantine pests. Consequently, APHIS proposed to allow the importation of avocados from Ecuador into the United States under a systems approach that included phytosanitary measures to safeguard against these pests for all varieties of avocado except the Hass variety.

During the public comment period, we received information from a commenter that led us to add the avocado seed pest *Stenoma catenifer* to a revised PRA. The revised PRA determined that *Stenoma catenifer* was a candidate for pest risk management for all varieties of avocado imported from continental Ecuador. In light of this change, we revised the risk management document (RMD) to include pest risk management measures for *Stenoma catenifer* for all avocado varieties. We are making the more recent version of

<sup>1</sup> To view the proposed rule, supporting documents, and comments we received, please follow the directions above for the Federal eRulemaking Portal under **ADDRESSES**.

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the PRA available for public review and comment, as well as the revised version of the RMD that reflects this change.

Based on the findings of the revised PRA, we are proposing that commercial fresh avocado fruit may be imported into the continental United States from continental Ecuador subject to the conditions outlined in the June 2018 proposed rule, as well as additional conditions designed to safeguard against *Stenoma catenifer*. These additional conditions are:

- Avocados must be grown in pest free places of production for the avocado seed pest *Stenoma catenifer* that are established and maintained in accordance with international standards. APHIS must approve the survey protocol used by the National Plant Protection Organization (NPPO) of Ecuador to determine and maintain pest free status.

- If the avocados are grown in a municipality free of *Stenoma catenifer*, the municipality must be surveyed every 6 months (twice a year) for the pest. Representative areas of the municipality where there are avocado trees, including production sites and urban areas, must be sampled.

- If the avocados are grown in a municipality not completely free of *Stenoma catenifer*, the NPPO of Ecuador can certify individual places of production as pest free. The surveys for pest free places of production must include representative areas from all parts of each registered place of production and a buffer zone of 1 kilometer. The places of production and buffer zone must be surveyed monthly for *Stenoma catenifer* from 2 months before harvest until harvest is completed.

- If one or more *Stenoma catenifer* are detected during a survey or during any other monitoring or inspection activity, the place of production will be prohibited from exporting avocados to the continental United States until APHIS and the NPPO of Ecuador jointly agree that the risk has been mitigated.

- The NPPO of Ecuador must keep records of *Stenoma catenifer* detections for each place of production, and update the records each time the places of production are surveyed. The records must be maintained for at least 1 year and provided for APHIS' review, if requested.

These conditions are described in further detail in the revised RMD. The

NPPO of Ecuador would also have to enter into an operational work plan with APHIS that details the daily procedures the NPPO will take to meet these and all conditions.

Comments on the proposed rule were required to be received on or before August 14, 2018. We are reopening the comment period on Docket No. APHIS-2016-0099 for an additional 30 days. This action will allow interested persons additional time to review the revised PRA and RMD, and prepare and submit comments.

Finally, we note that the proposed rule was issued prior to the October 15, 2018, effective date of a final rule<sup>2</sup> that revised the regulations in 7 CFR 319.56-4 by broadening an existing performance standard to provide for approval of all new fruits and vegetables for importation into the United States using a notice-based process. That final rule also specified that region- or commodity-specific phytosanitary requirements for fruits and vegetables would no longer be found in the regulations, but instead in APHIS' Fruits and Vegetables Import Requirements database (FAVIR). With those changes to the regulations, we will be unable to issue the final regulations as contemplated in our June 2018 proposed rule. Instead, following this reopened comment period, if we finalize this action, it will be through the issuance of a notification.

**Authority:** 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 12th day of April 2021.

**Mark Davidson,**

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

[FR Doc. 2021-07747 Filed 4-15-21; 8:45 am]

**BILLING CODE 3410-34-P**

<sup>2</sup>To view the final rule, please follow the directions above for the Federal eRulemaking Portal under **ADDRESSES**, and enter APHIS-2010-0082 in the search field.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Doc. No. AMS-SC-20-0087; SC21-985-1 PR]

### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2021–2022 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to establish salable quantities and allotment percentages for Class 1 (Scotch) and Class 3 (Native) spearmint oil produced in Washington, Idaho, Oregon, and designated parts of Nevada and Utah (the Far West) for the 2021–2022 marketing year.

**DATES:** Comments must be received by June 15, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; or internet: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: <https://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Joshua R. Wilde, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, or email: [Joshua.R.Wilde@usda.gov](mailto:Joshua.R.Wilde@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower,

Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or email: [Richard.Lower@usda.gov](mailto:Richard.Lower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. Part 985 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of spearmint oil producers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. Under the Order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish quantities and allotment percentages for Scotch and Native spearmint oil for the 2021–2022 marketing year, which begins on June 1, 2021.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. Such a handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States (U.S.) in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed