

# 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 Parts 318 and 319

[Docket No. APHIS-2006-0077]

RIN 0579-AD32

### South American Cactus Moth; Territorial and Import Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Hawaiian and territorial quarantine regulations to prohibit the movement of South American cactus moth host material, including nursery stock and plant parts for consumption to the mainland and Guam from Hawaii, Puerto Rico, and the U.S. Virgin Islands, and to allow South American cactus moth host material to be moved among Hawaii, Puerto Rico, and the U.S. Virgin Islands. We are also proposing to amend the foreign quarantine regulations to prohibit the importation of South American cactus moth host material, including nursery stock and plant parts for consumption, from any country or portion of a country infested with South American cactus moth. These actions would help prevent the introduction or spread of South American cactus moth into noninfested areas of the United States, relieve unnecessary restrictions on movement of host material among infested areas of the United States, and provide consistency to the regulations.

**DATES:** We will consider all comments that we receive on or before April 25, 2011.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0077> to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send one copy of your comment to Docket No. APHIS-2006-0077, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2006-0077.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robyn Rose, National Program Lead, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Rd. Unit 26, Riverdale, MD 20737-1236; (301) 734-7121.

#### SUPPLEMENTARY INFORMATION:

##### Background

The South American cactus moth (*Cactoblastis cactorum*) is a grayish-brown moth with a wingspan of 22 to 35 millimeters (approximately 0.86 to 1.4 inches) that is indigenous to Argentina, southern Brazil, Paraguay, and Uruguay. It is a serious quarantine pest of *Opuntia* spp., and an occasional pest of *Nopalea* spp., *Cylindropuntia* spp., and *Consolea* spp., four closely related genera of the family *Cactaceae*. All plant parts, except seeds, of these species can be infested with South American cactus moth. After an incubation period following mating, the female South American cactus moth deposits an egg stick resembling a cactus spine on the host plant. The egg stick, which consists of 70 to 90 eggs, hatches in 25 to 30 days, and the larvae bore into the cactus pad to feed, eventually hollowing it out and killing the plant. Within a short period of time, the South American cactus moth can destroy whole stands of cactus. Since the South American cactus moth larvae are internal feeders, they are difficult to detect during normal inspection.

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In the 1920s, the South American cactus moth was introduced into Australia and other areas as a biological control agent of invasive prickly pear cactus (*Opuntia* spp.). Its success led to its introduction into the Caribbean and Hawaii in the 1950s. In 1989 it was detected in southern Florida. More recently, South American cactus moth has been discovered in other parts of Florida, as well as in Alabama, Georgia, Louisiana, Mississippi, and South Carolina, and it continues to spread north and west.

The Southwest United States and Mexico are home to 114 native species of *Opuntia*, which are highly valued for their ecological and agricultural uses. The rooting characteristics of *Opuntia* spp. reduce wind and rain erosion, encouraging the growth of other plants in degraded areas. In addition, many species of birds, mammals, reptiles, and insects eat, nest in, or otherwise rely on *Opuntia* spp. for survival. *Opuntia* spp. are also important sources of food, medicine, cosmetics, and dye. In Mexico, *Opuntia* spp. are an important agricultural commodity, comprising 1.5 percent of total agricultural production and representing 2.5 percent of the value of agricultural production. In the Southwest United States, *Opuntia* spp. are only a minor agricultural crop, but are popular plants in the landscaping and ornamental nursery industries. *Opuntia* spp. can also be an important source of emergency forage for cattle grazing during periods of drought. If the South American cactus moth were to spread to these areas, there would be significant environmental and economic damage.

In a final rule published in the **Federal Register** on June 8, 2009 (74 FR 27071-27076, Docket No. APHIS-2006-0153), and effective July 8, 2009, the Animal and Plant Health Inspection Service (APHIS) established regulations quarantining the States of Alabama, Florida, Georgia, Mississippi, and South Carolina, and restricting the movement of South American cactus moth host material from those States to prevent the artificial dissemination of the South American cactus moth into noninfested areas of the United States. In addition, in an interim rule published in the **Federal Register** and effective on July 15, 2010 (75 FR 41073-41074, Docket No. APHIS-2010-0037), we added Louisiana to the list of States

quarantined due to the presence of South American cactus moth. APHIS, in cooperation with the Agricultural Research Service and funding provided by the Government of Mexico, is continuing to test and implement a sterile insect release program along the U.S. Gulf Coast. In support of our sterile insect program and domestic regulations and to make our regulations for the importation and interstate movement of South American cactus moth host material consistent, we are proposing to amend our territorial and import regulations to restrict the movement of South American cactus moth host material into the continental United States.

#### *Hawaiian and Territorial Regulations*

The regulations in 7 CFR part 318 (referred to below as the Hawaiian and territorial regulations) govern the movement of plants and plant products, for consumption and propagation, from Hawaii and from Guam, Puerto Rico, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and all other U.S. territories and possessions between themselves and into the continental United States. In addition, the name and origin of all fruits and vegetables authorized movement under 7 CFR part 318, as well as the applicable requirements for their movement, may be found in the fruits and vegetables manuals for Hawaii and Puerto Rico.<sup>1</sup>

The Hawaiian and territorial regulations currently restrict the movement of all cactus plants or parts thereof from Hawaii, Puerto Rico, and the U.S. Virgin Islands, which are known to be infested with South American cactus moth. Specifically, the regulations in § 318.13–1 prohibit the interstate movement of all cut flowers and fruits and vegetables and plants and portions of plants from Hawaii, which includes cactus plants or parts thereof, unless they are specifically approved for interstate movement or frozen or processed to sufficiently preclude the survival of any pests in accordance with §§ 318.13 and 318.14, respectively. The regulations in § 318.13–16 limit the interstate movement of all cactus plants or parts thereof from Puerto Rico and the Virgin Islands to those cactus plants that are bare-rooted or grown in an approved growing medium listed in § 318.13–2 and that are treated in

accordance with 7 CFR part 305.<sup>2</sup> However, the only treatment listed in the PPQ Treatment Manual for pests of cactus that feed internally is T201-f-2, a treatment for borers and soft scales that consists of fumigation using methyl bromide. There is no data to support the effectiveness of this treatment against South American cactus moth.

As stated in § 305.3, APHIS may add, revise, or remove a treatment schedule if necessary by publishing a notice informing the public of the reasoning behind the addition, revision, or removal, and taking comment on the action. Following the comment period, we will consider comments received on the notice and publish a followup notice announcing our determination with regard to the action. In accordance with that process, we are proposing to amend the PPQ Treatment Manual by adding the words “(other than South American cactus moth (*Cactoblastis cactorum*))” after the word “borers” under the heading “Pest” in treatment schedule T201-f-2.

Except as otherwise noted, the interstate movement of all cactus plants or parts thereof from Hawaii is currently prohibited and the interstate movement of cactus plants or parts thereof from Puerto Rico and the U.S. Virgin Islands is restricted unless the cactus plant is grown in approved growing media and treated in accordance with 7 CFR part 305. Since these requirements were put into place, we have determined that South American cactus moth does not infest all species of cactus. Therefore, we are proposing to amend the table in paragraph (a) of § 318.13–16 by removing the entries for cactus moving interstate from Puerto Rico and the U.S. Virgin Islands. We would amend the Puerto Rico fruits and vegetables manual to indicate that the interstate movement of South American cactus moth host cacti to the mainland United States is prohibited. We are also proposing to amend the fruits and vegetables manuals for Hawaii and Puerto Rico to allow cacti that are not South American cactus moth hosts to be moved between Hawaii and the continental United States and between Puerto Rico, the U.S. Virgin Islands, and the continental United States.

In addition, as Hawaii, Puerto Rico, and the U.S. Virgin Islands are already infested with South American cactus moth, there is no reason to prohibit the movement of South American cactus moth host plants or parts among these

areas. Therefore, we are also proposing to amend the fruits and vegetables manuals for Hawaii and Puerto Rico to allow South American cactus moth host plants and plant parts to be moved between these areas without restriction. Finally, we are proposing to amend the fruits and vegetables manuals for Hawaii and Puerto Rico by removing the obsolete term “cactus borer” in reference to *C. cactorum* and replacing it with the current term “South American cactus moth.”

These changes are necessary because Hawaii, Puerto Rico, and the U.S. Virgin Islands are infested with South American cactus moth and there is no control program for South American cactus moth in those areas. In addition, there is no trade or anticipated trade of South American cactus moth host material among Hawaii and the territories or between Hawaii and the territories and the mainland United States.

These changes would prohibit the movement of unprocessed South American cactus moth host material, such as nursery stock, from Hawaii, Puerto Rico, and the U.S. Virgin Islands into or through the continental United States and all other noninfested territories and possessions as well as allow for the unrestricted movement of plants and plant products that are not hosts of the South American cactus moth from Hawaii, Puerto Rico, or the U.S. Virgin Islands into or through the continental United States.

#### *Importation of Plants for Propagation*

The regulations in 7 CFR part 319 (referred to below as the import regulations) govern the movement into the United States from all foreign countries, of plants and plant products for consumption and propagation. The regulations in §§ 319.37 through 319.37–14 govern the importation of plants and plant products, including nursery stock, for propagation. The import regulations in § 319.37–2(b)(5) currently prohibit the importation of all cactus cuttings for propagation, without roots or branches, that are greater than 153 millimeters (approximately 6 inches) in diameter or greater than 1.2 meters (approximately 4 feet) in length from all countries except Canada unless imported by the United States Department of Agriculture for scientific or experimental purposes under the conditions in § 319.37–2(c). APHIS further prohibits in § 319.37–2(b)(6) the importation of all cactus plants for propagation, from all countries, except Canada, that exceed 460 millimeters (approximately 18 inches) in length from the soil line to the farthest terminal

<sup>1</sup> The fruits and vegetables manuals for Hawaii and Puerto Rico can be found on the Internet at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/Hawaii.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/Hawaii.pdf) and [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/puerto\\_rico.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/puerto_rico.pdf), respectively.

<sup>2</sup> Treatment schedules approved for use under 7 CFR part 305 are available in the PPQ Treatment Manual at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf).

growing point and whose growth habits simulate the woody habits of trees and shrubs unless imported by the United States Department of Agriculture for scientific or experimental purposes under the conditions in § 319.37–2(c).

The current size restrictions were designed to make it easier to handle imported cacti during inspection rather than as a way to prevent South American cactus moth or other cactus pests from entering the United States. As most cactus plants and cuttings imported for propagation are smaller than these size limits, the current regulations effectively permit the entry of all cactus plants and cuttings, including South American cactus moth host species, into the United States. Therefore, we are proposing to amend the table in § 319.37–2(a) to prohibit the importation of all cactus moth host material (excluding seeds) from areas infested with South American cactus moth. These changes would prohibit the movement of cactus moth nursery stock into the United States from all countries infested with South American cactus moth. Countries infested with South American cactus moth<sup>3</sup> include: Antigua, Argentina, Ascension Island, Australia, Bahamas, Botswana, Brazil, Cayman Islands, Cuba, Dominican Republic, Dominica, Guadeloupe, Haiti, Jamaica, Lesotho, Mauritius, Montserrat, Namibia, Nevis, New Caledonia, Paraguay, South Africa, St. Helena, St. Lucia, St. Vincent, St. Kitts, Swaziland, Tanzania, Uruguay, and the Republic of Zimbabwe.

#### Importation of Fruits and Vegetables

The regulations in §§ 319.56–1 through 319.56–50 govern the importation of plants and plant products intended for consumption. Under § 319.564(a), fruits or vegetables that the Administrator has determined may be imported subject to one or more of the designated phytosanitary measures cited in § 319.56–4(b), are listed in the Fruits and Vegetables Import Requirements (FAVIR) database found on the APHIS Web site at <http://www.aphis.usda.gov/favir/info.shtml>. Currently, the importation into the United States of the fruit of *Opuntia* species cacti, called “tuna,” is authorized only from the Bahamas, Belize, Chile, Colombia, the Dominican Republic, Guatemala, Haiti, Israel, Italy, Jamaica, and Mexico. The importation of prickly pear pads, also called

<sup>3</sup> The presence of South American cactus moth in these countries was confirmed by literature from the European and Mediterranean Plant Protection Organization, the International Atomic Energy Agency, and the Centre for Agricultural Bioscience International.

“nopales,” of *Opuntia* species cacti is currently authorized only from Colombia and Mexico. Importation of this fruit from all other countries is prohibited. We are proposing to amend the FAVIR database in order to remove the Bahamas, the Dominican Republic, Haiti, and Jamaica from the list of countries authorized to import tuna or nopales because those countries have been determined to be infested with South American cactus moth.

Any country that is not authorized to export South American cactus moth host material to the United States for consumption would be able to request approval to import South American cactus moth host material. APHIS would evaluate the request and prepare a pest risk assessment and risk management document in order to determine whether the commodity may be safely imported into the continental United States without presenting a risk of introducing South American cactus moth into noninfested areas of the United States.

#### Executive Order 12866 and Regulatory Flexibility Act

This 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.

We are proposing to amend the Hawaiian and territorial quarantine regulations to prohibit the movement of South American cactus moth host material, including nursery stock and plant parts for consumption to the mainland and Guam from Hawaii, Puerto Rico, and the U.S. Virgin Islands, and to allow South American cactus moth host material to be moved among Hawaii, Puerto Rico, and the U.S. Virgin Islands. We are also proposing to amend the foreign quarantine regulations to prohibit the importation of South American cactus moth host material, including nursery stock and plant parts for consumption, from any country or portion of a country infested with South American cactus moth.

Published data on U.S. trade do not offer the level of detail necessary to identify South American cactus moth host plants and plant parts moving in commerce specifically. Accordingly, data on the volume (and value) of U.S. imports of those host plants and plant parts are not available from that source. Nevertheless, APHIS and Agricultural Marketing Service internal reports, as well as informed APHIS staff, indicate that the volume of host plant and host plant part imports from the countries infested with the pest is negligible. Of the countries infested with South

American cactus moth, only the Dominican Republic is known to have shipped host plant parts to the United States in recent years. Virtually all imports of South American cactus moth host plant parts come from Mexico, a country that is not currently infested with the pest. In 2009, Mexico exported 2,266 metric tons of nopales to the United States valued at over \$2 million. The proposed rule, therefore, should have little impact on U.S. imports of South American cactus moth host plant parts.

The restriction on the movement of South American cactus moth host plant parts from Hawaii, Puerto Rico, and the U.S. Virgin Islands to the mainland United States should have little or no impact. For one, such movement from Hawaii is already prohibited, and the interstate movement of cactus plants or parts thereof from Puerto Rico and the U.S. Virgin Islands is limited.

The rule would allow South American cactus moth host plants and plant parts to be moved between Hawaii, Puerto Rico, and the U.S. Virgin Islands. Such movement should have little impact, as those areas are already infested with South American cactus moth, and there is no program in those areas to control the pest. To the extent that it would prevent the spread of South American cactus moth on the mainland, the rule would benefit U.S. entities, primarily those in the ornamental nursery and landscape industries in the Southwest. Most commercial nurseries that produce prickly pear cacti are located in Arizona, followed by California. In Arizona, there are an estimated 40 to 50 producers in the Phoenix area alone; in California, there are an estimated 30 growers of cacti. Many, if not most, cactus growers are small in size.<sup>4</sup>

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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

<sup>4</sup> Source: Irish, M. 2001. The Ornamental Prickly Pear Industry in the Southwest United States. Florida Entomologist 84(4).

**Paperwork Reduction Act**

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects****7 CFR Part 318**

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

**7 CFR Part 319**

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and

recordkeeping requirements, Rice, Vegetables.

Accordingly, we are proposing to amend 7 CFR parts 318 and 319 as follows:

**PART 318—STATE OF HAWAII AND TERRITORIES QUARANTINE NOTICES**

1. The authority citation for part 318 continues to read as follows:

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

**§ 318.13–6 [Amended]**

2. In § 318.13–16, the table in paragraph (a) is amended under Puerto Rico and U.S. Virgin Islands by removing the entries for “Cactus”.

**PART 319—FOREIGN QUARANTINE NOTICES**

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

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

4. In § 319.37–2, paragraph (a), the table is amended by adding, in alphabetical order, new entries for *Consolea* spp., *Cylindropuntia* spp., *Nopalea* spp., and *Opuntia* spp. to read as follows:

**§ 319.37–2 Prohibited articles.**

(a) \* \* \*

Plant pests existing in the places named and capable of being transported with the prohibited article

Prohibited article (includes seeds only if specifically mentioned) Foreign places from which prohibited

| *                               | *  | * | * | * | * | * | * |
|---------------------------------|--|---|---|---|---|---|---|
| <i>Consolea</i> spp. ....       | Antigua, Argentina, Ascension Island, Australia, Bahamas, Botswana, Brazil, Cayman Islands, Cuba, Dominican Republic, Dominica, Guadeloupe, Haiti, Jamaica, Lesotho, Mauritius, Montserrat, Namibia, Nevis, New Caledonia, Paraguay, South Africa, St. Helena, St. Lucia, St. Vincent, St. Kitts, Tanzania, Uruguay, Republic of Zimbabwe. |   |   |   |   |   |   |
| <i>Cylindropuntia</i> spp. .... | Antigua, Argentina, Ascension Island, Australia, Bahamas, Botswana, Brazil, Cayman Islands, Cuba, Dominican Republic, Dominica, Guadeloupe, Haiti, Jamaica, Lesotho, Mauritius, Montserrat, Namibia, Nevis, New Caledonia, Paraguay, South Africa, St. Helena, St. Lucia, St. Vincent, St. Kitts, Tanzania, Uruguay, Republic of Zimbabwe. |   |   |   |   |   |   |
| <i>Nopalea</i> spp. ....        | Antigua, Argentina, Ascension Island, Australia, Bahamas, Botswana, Brazil, Cayman Islands, Cuba, Dominican Republic, Dominica, Guadeloupe, Haiti, Jamaica, Lesotho, Mauritius, Montserrat, Namibia, Nevis, New Caledonia, Paraguay, South Africa, St. Helena, St. Lucia, St. Vincent, St. Kitts, Tanzania, Uruguay, Republic of Zimbabwe. |   |   |   |   |   |   |
| <i>Opuntia</i> spp. ....        | Antigua, Argentina, Ascension Island, Australia, Bahamas, Botswana, Brazil, Cayman Islands, Cuba, Dominican Republic, Dominica, Guadeloupe, Haiti, Jamaica, Lesotho, Mauritius, Montserrat, Namibia, Nevis, New Caledonia, Paraguay, South Africa, St. Helena, St. Lucia, St. Vincent, St. Kitts, Tanzania, Uruguay, Republic of Zimbabwe. |   |   |   |   |   |   |
| *                               | *  | * | * | * | * | * | * |

\* \* \* \* \*

Done in Washington, DC, this 16th day of February 2011.

**Kevin Shea,**

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

[FR Doc. 2011–3991 Filed 2–22–11; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF ENERGY**

[Docket ID: DOE–HQ–2010–0002]

**10 CFR Part 1021****RIN 1990-AA34****National Environmental Policy Act Implementing Procedures**

**AGENCY:** Office of the General Counsel, U.S. Department of Energy.

**ACTION:** Proposed rule: re-opening of public comment period.

**SUMMARY:** The U.S. Department of Energy (DOE) is re-opening the public comment period for proposed amendments to its regulations governing compliance with the National Environmental Policy Act (NEPA), made available for public comment on January 3, 2011 (76 FR 214). This is being done in response to a request on behalf of multiple organizations.

**DATES:** The public comment period ended on February 17, 2011. The comment period is being re-opened and will close on March 7, 2011.