

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 99-020-1]

#### Mexican Hass Avocado Import Program

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend our regulations governing the importation of Hass avocados from Mexico to require handlers and distributors to enter into compliance agreements with the Animal and Plant Health Inspection Service. We would also amend the stickering requirement for the avocados and add requirements regarding the repackaging of the avocados after their entry into the United States. These proposed amendments are necessary to ensure that distributors and handlers are familiar with the distribution restrictions and other requirements of the regulations and to strengthen the effectiveness of the marking requirements used to identify the avocados and allow them to be tracked back to their grove of origin. These proposed amendments would serve to reinforce the existing safeguards of the avocado import program.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by August 24, 1999.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 99-020-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 99-020-1.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-6799; e-mail: Donna.L.West@usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56-8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

The regulations in § 319.56-2ff allow fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, to be imported into certain areas of the United States subject to certain conditions. Those conditions, which include pest surveys and pest risk-reducing cultural practices, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year (November through February) that shipments may enter the United States, are designed to reduce the risk of pest introduction to a negligible level. Further, the regulations in § 319.56-2ff limit the distribution of the avocados to 19 northeastern States and the District of Columbia, where climatic conditions preclude the establishment in the United States of any of the exotic plant pests that may attack avocados in Michoacan, Mexico. In this document, we are proposing to make several changes to the regulations.

## Compliance Agreements

The regulations in § 319.56-2ff became effective in March 1997. During the first shipping season (November 1997 through February 1998), we found that one distributor had shipped Mexican Hass avocados to Georgia, Iowa, Missouri, North Carolina, South Carolina, and Tennessee, none of which are among the 19 approved States. In the second shipping season (November 1998 through February 1999), we found that five other distributors had allowed Mexican Hass avocados to be shipped those same six States as well as to the non-approved States of Florida, Minnesota, Mississippi, Nebraska, and South Dakota.

In order to help prevent recurrences of such unauthorized shipments in future shipping seasons, we are proposing to amend the regulations to require all handlers and distributors of Mexican Hass avocados to enter into a compliance agreement with the Animal and Plant Health Inspection Service (APHIS). The compliance agreement would serve both as an educational tool to ensure that all handlers and distributors have been fully informed about the limitations that the regulations place on the movement of the avocados and as an enforcement tool that would provide a greater measure of accountability for handlers or distributors who may violate the distribution restrictions of the regulations. This proposed compliance agreement requirement would be added to the regulations in § 319.56-2ff as a new paragraph (k), "Compliance agreements."

Specifically, proposed paragraph (k)(1) would state that any person other than the person who received a permit to import the avocados (the permittee) who moves or distributes Mexican Hass avocados following their importation into the United States must enter into a compliance agreement with APHIS. In that compliance agreement, the person moving or distributing the avocados would have to acknowledge, and agree to observe, the restrictions found in § 319.56-2ff regarding the movement of the avocados in the United States. Those restrictions, a copy of which would be provided to the person entering into the compliance agreement, are found in § 319.56-2ff in paragraph (a), "Shipping restrictions;" paragraph (f), "Ports;" paragraph (g), "Shipping areas;"

paragraph (h), "Shipping requirements;" and paragraph (i), "Inspection;" as well as in proposed new paragraph (j), "Repackaging" (which is explained later in this document) and proposed paragraph (k), "Compliance agreements."

By requiring handlers and distributors to sign a compliance agreement, we would be able to document that they have received a copy of the regulations and have had those regulations explained to them. This would effectively eliminate any uncertainty or misunderstanding that they may have regarding their responsibilities under the regulations. Paragraph (k)(1) would conclude by stating that compliance agreements forms are available free of charge, from local offices of Plant Protection and Quarantine, which are listed in local telephone directories.

Proposed paragraph (k)(2) would state that the permittee would have to ensure that any person to whom he or she released the avocados for movement or distribution (i.e., a second-party handler) has entered into a compliance agreement with APHIS. While the importers themselves must acknowledge the requirements of the regulations before they receive a permit to import Mexican Hass avocados, it is possible that a second-party handler might fail to fully familiarize himself or herself with the distribution limitations and other restrictions associated with the Avocados. We believe requiring permittees to confirm that the person to whom they are releasing the avocados for distribution has entered into a compliance agreement with APHIS would ensure that second-party handlers are made aware of their responsibilities under the regulations. This proposed requirement would also be made a condition of the permit that the permittee must obtain prior to importing Mexican Hass avocados, and failure to observe the conditions of a permit is grounds for its revocation. Therefore, paragraph (k)(2) would also state that APHIS may revoke an import permit for the remainder of the current shipping season if the permittee failed to confirm that the second-party handler had entered into a compliance agreement.

For the same reasons that we would address the transfer of avocados from the permittee to a second-party handler, as described in the previous paragraph, we are also proposing to require that any second-party or subsequent handler who releases the avocados to another person for movement or distribution must ensure that the person receiving the avocados has entered into a compliance agreement with APHIS.

This proposed requirement would be stated in paragraph (k)(3). Again, the compliance agreement would ensure that persons receiving the avocados from second-party or subsequent handlers are made aware of their responsibilities under the regulations. Further, the compliance agreement would serve to establish a chain of custody that would indicate at what point this proposed compliance agreement requirement was disregarded. Because a compliance agreement would be required for persons moving or distributing the avocados, paragraph (k)(3) would also state that APHIS may revoke a second-party or subsequent handler's compliance agreement for the remainder of the current shipping season if that second-party or subsequent handler failed to confirm that the person to whom he or she released the avocados had entered into a compliance agreement.

Finally, in order to help prevent repeated violations of the proposed compliance agreement requirement, paragraph (k)(4) would provide that APHIS may deny an import permit application from, or refuse to enter into a compliance agreement with, a person who has had his or her import permit or compliance agreement revoked twice within any 5-year period. This would prevent permittees or handlers who repeatedly disregard or violate the compliance agreement requirement from receiving or moving shipments of Mexican Hass avocados.

#### **Stickers**

The regulations in § 319.56–2ff(c)(3)(vi) require, among other things, that prior to being packed in boxes at the packinghouse in Mexico, each avocado fruit must be labeled with a sticker that bears the Sanidad Vegetal registration number of the packinghouse. This requirement is intended to make it easier to identify Mexican-origin avocados at terminal markets and presents an additional obstacle to transshipment of the fruit to non-approved States.

It has come to our attention that some packinghouses in Mexico may be using the same sticker required by the regulations for "program fruit" (i.e., avocados that meet the requirements of § 319.56–2ff for export to the northeastern United States) on "non-program fruit" shipped to Canada or used for domestic consumption in Mexico. While using the sticker for non-program fruit is not currently prohibited by the regulations, we believe that such uses of the sticker dilute the effectiveness of the stickers as a tool for identifying Mexican avocados in the

United States and for differentiating program fruit from non-program fruit that may have been smuggled into the United States.

Therefore, we are proposing to amend § 319.56–2ff(c)(3)(vi) to require that the stickers used for program fruit not only bear the Sanidad Vegetal registration number of the packinghouse, but that they also bear the letters "M/US" after that number, and that those stickers be used only for fruit produced in accordance with § 319.56–2ff for export to the United States. These proposed amendments to the sticker requirement would ensure that the stickers will serve their intended purpose of making it easier to identify Mexican-origin avocados at terminal markets and would further allow us to differentiate between program fruit and non-program fruit that may have been smuggled into the United States.

#### **Repackaging**

The regulations in § 319.56–2ff(c)(3)(vii) require that, at the packinghouse in Mexico, the avocados must be packed in clean, new boxes, and the boxes must be clearly marked with the identity of the grower, packinghouse, and exporter, and the statement "Distribution limited to the following States: CT, DC, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and WI." This requirement ensures that the avocados can be traced back to their grove of origin in the event that pests are detected at any time after the avocados are placed in boxes at the packinghouse.

We acknowledge that there may be instances where the avocados may have to be packed in new boxes after their entry into the United States due to damage to the original shipping box or some other legitimate reason. It is also possible that a person may attempt to conceal the origin of the avocados by repackaging them into unmarked boxes or removing the stickers that are required by § 319.56–2ff(c)(3)(vi). The regulations, however, currently do not address the removal of stickers or the repackaging of avocados after their arrival in the United States.

Therefore, we are proposing to add a new paragraph (j) to § 319.56–2ff that would clearly state that if any avocados are removed from their original shipping boxes and repackaged, the stickers may not be removed or obscured and the new boxes must be clearly marked with the same information that must be placed on the original boxes at the packinghouse. Adding these provisions to the regulations would help ensure these identifying measures would be

maintained in the event that repackaging became necessary, thus preserving the important information regarding the identity and origin of the avocados that those measures provide.

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

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

This proposed rule would amend our regulations governing the importation of Hass avocados from Mexico to require handlers and distributors to enter into compliance agreements with APHIS. This proposed rule would also amend the stickering requirement for the avocados and add requirements regarding the repackaging of the avocados after their entry into the United States. These proposed amendments would ensure that distributors and handlers are familiar with the distribution restrictions and other requirements of the regulations and would strengthen the effectiveness of the marking requirements used to identify the avocados and allow them to be traced back to their grove of origin.

During the first shipping season for Mexican Hass avocados (November 1997 through February 1998), Mexico exported 13.296 million pounds of fresh avocados to the northeastern United States (U.S. Department of Agriculture, Foreign Agricultural Service, GAIN Report No. MX8140, November 24, 1998). During the second shipping season (November 1998 through February 1999), Mexico exported approximately 22 million pounds of fresh avocados to the northeastern United States.

Although it was anticipated that the importation of fresh Hass avocados from Mexico into the northeastern United States would result in lower prices for consumers and losses for domestic avocado producers, there has, to date, been little or no price change. The average wholesale price for avocados in the approved 19 northeastern States and the District of Columbia before the first shipping season began in November 1997 was \$1.47 per pound, while after the shipping season began, the average wholesale price was \$1.60 per pound. For the non-approved States, the average wholesale prices were \$1.46 before November 1997 and \$1.57 after the first shipping season began. (The wholesale prices in the approved States are based on averages in Baltimore, Boston, Chicago, Detroit, New York, and

Philadelphia; the wholesale prices for the non-approved States are based on averages in Atlanta, Dallas, Los Angeles, Miami, San Francisco, and Seattle.) There was no statistically significant difference between the wholesale prices in the approved States and the non-approved States before or after Mexican Hass avocados entered the domestic market. It should be noted that the average wholesale prices for fresh avocados in Mexico were only about \$0.33 and \$0.32 per pound in 1997 and 1998, respectively.

As discussed in the background section of this proposed rule, compliance agreements are available from APHIS free of charge and the stickering of individual avocados in Mexico is already required under the regulations. Therefore, the only aspect of this proposed rule that could be expected to result in additional costs for any U.S. entities, large or small, would be the proposed requirement for the marking of new boxes in cases where the avocados are repackaged after their entry into the United States.

According to industry sources, the cost of the current box marking and fruit stickering requirements of the regulations is approximately \$0.06 per pound. This cost is borne at the Mexican production/export end of the Hass avocado export program. If 20 percent of all shipments had to be repackaged following their arrival in the United States due to damage to original shipping boxes or for other reasons, the proposed requirement for the marking of new boxes could result in additional costs to U.S. importers or distributors of approximately \$160,000 to \$264,000. This estimate was arrived at using 20 percent of the total volume of Mexican Hass avocados shipped to the northeastern United States during the two export seasons of 1997–1998 (13.296 million pounds  $\times$  \$0.06  $\times$  0.2=\$159,552) and 1998–1999 (22 million pounds  $\times$  \$0.06  $\times$  0.2=\$264,000). However, because the \$0.06 figure used includes the costs of stickering as well as box marking, it is likely that the costs to U.S. importers or distributors of marking new boxes in the United States would actually be less than that estimate. Since, as noted above, the price spread between domestic and Mexican wholesale prices is so large, U.S. importers and distributors may be able to absorb any additional costs resulting from the proposed requirement for marking new boxes without passing those costs on to consumers.

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 has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed 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.

#### **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. 99–020–1. Please send a copy of your comments to: (1) Docket No. 99–020–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 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.

Our regulations currently allow fresh Hass avocado fruit grown in approved orchards in Michoacan, Mexico, to be imported into the United States under certain conditions. In this document, we are proposing to amend our regulations governing the importation of Hass avocados from Mexico to require handlers and distributors to enter into compliance agreements with APHIS. We are also proposing to amend the existing stickering requirement for the avocados and to add requirements regarding the marking of new boxes when avocados are repackaged after their entry into the United States.

These proposed amendments would require the use of several information collection procedures, including a compliance agreement, enhanced product identification, and additional container marking requirements. We are asking OMB to approve our use of these information collections in connection with our efforts to ensure that fresh Hass avocados from Mexico pose a negligible risk of introducing exotic insect pests into the United States.

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 1.195 hours per response.

*Respondents:* Packinghouse owner/operators in Mexico and importers, shippers, distributors, and handlers of fresh Hass avocados imported into the United States.

*Estimated annual number of respondents:* 210.

*Estimated annual number of responses per respondent:* 1.195.

*Estimated annual number of responses:* 210.

*Estimated total annual burden on respondents:* 251 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

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

Bees, Coffee, Cotton, Fruits, Honey, 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 would continue to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.56–2ff, paragraph (c)(3)(vi) would be revised and new paragraphs (j) and (k) would be added to read as follows:

**§ 319.56–ff Administrative instructions governing movement of Hass avocados from Mexico to the Northeastern United States.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(vi) Prior to being packed in boxes, each avocado fruit must be cleaned of all stems, leaves, and other portions of plants and labeled with a sticker that bears the Sanidad Vegetal registration number of the packinghouse followed by the letters “M/US.” The stickers may be used only for fruit produced in accordance with this section for export to the United States.

\* \* \* \* \*

(j) *Repackaging.* If any avocados are removed from their original shipping boxes and repackaged, the stickers required by paragraph (c)(3)(vi) of this section may not be removed or obscured and the new boxes must be clearly marked with all the information required by paragraph (c)(3)(vii) of this section.

(k) *Compliance agreements.* (1) Any person other than the permittee (i.e., a second-party or subsequent handler) who moves or distributes the avocados following their importation into the United States must enter into a compliance agreement with APHIS. In the compliance agreement, the person must acknowledge, and agree to observe, the requirements of paragraph (a) and paragraphs (f) through (k) of this section. Compliance agreement forms are available, free of charge, from local offices of Plant Protection and Quarantine, which are listed in local telephone directories.

(2) Before transferring the avocados to any person (i.e., a second-party handler) for movement or distribution, the permittee must confirm that the second-party handler has entered into a compliance agreement with APHIS as required by paragraph (k)(1) of this section. If the permittee transfers the avocados to a second-party handler who has not entered into a compliance agreement, APHIS may revoke the permittee's import permit for the remainder of the current shipping season.

(3) Any second-party or subsequent handler who transfers the avocados to another person for movement or distribution must confirm that the

person receiving the avocados has entered into a compliance agreement with APHIS as required by paragraph (k)(1) of this section. If the second-party or subsequent handler transfers the avocados to a person who has not entered into a compliance agreement, APHIS may revoke the handler's compliance agreement for the remainder of the current shipping season.

(4) *Action on repeat violators.* APHIS may deny an application for an import permit from, or refuse to enter into a compliance agreement with, any person who has had his or her import permit or compliance agreement revoked under paragraph (k)(2) or (k)(3) of this section twice within any 5-year period.

Done in Washington, DC, this 21st day of June 1999.

**Joan M. Arnoldi,**

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

[FR Doc. 99–16173 Filed 6–24–99; 8:45 am]

BILLING CODE 3410–34–M

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 920

[Docket No. FV98–920–4 PR]

#### Kiwifruit Grown in California; Changes in Minimum Size, Pack, Container, and Inspection Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on proposed changes to the minimum size, pack, container, and inspection requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule would specify minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and make minor changes to clarify pack and container marking requirements for several containers. In addition, this rule proposes to continue, for the 1999–2000 season, the suspension of minimum net weight requirements for kiwifruit tray packs scheduled to expire at the end of the 1998–1999 season. Also, proposed to be continued for the 1999–2000 season is