

# Proposed Rules

Federal Register

Vol. 76, No. 100

Tuesday, May 24, 2011

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2010–0113]

RIN 0579–AD40

### Importation of Fresh Pitaya Fruit From Central America Into the Continental United States

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the fruits and vegetables regulations to allow the importation of fresh pitaya fruit from Central America into the continental United States. As a condition of entry, pitaya fruit from Central America would be subject to a systems approach that would include requirements for monitoring and oversight, establishment of pest-free places of production, and procedures for packing the pitaya fruit. This action would allow for the importation of pitaya fruit from Central America into the continental United States while continuing to provide protection against the introduction of plant pests.

**DATES:** We will consider all comments that we receive on or before July 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-2010-0113> 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–2010–0113, 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–2010–0113.

**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:** Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit, 133, Riverdale, MD 20737–1236; (301) 734–0627.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–50, 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 within the United States.

The national plant protection organizations (NPPOs) of the countries of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama have requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow pitaya fruit (*Hylocereus* spp.) to be imported from these countries into the continental United States. This document will refer to these countries collectively as Central America.

As part of our evaluation of this 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 Pitaya Fruit, *Hylocereus* spp. and several other genera and species, from Central America into the Continental United

States” (October 2009), evaluates the risks associated with the importation of pitaya fruit into the continental United States from Central America. The PRA identified four pests of quarantine significance present in Central America that could be introduced into the United States through the importation of pitaya fruit. These are the Mexican fruit fly or Mexfly (*Anastrepha ludens*), Mediterranean fruit fly or Medfly (*Ceratitidis capitata*), the gray pineapple mealybug (*Dysmicoccus neobrevipes*), and the passionvine mealybug (*Planococcus minor*). All four of these pests were determined to pose a high pest risk potential.

APHIS has determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of pitaya fruit from Central America into the continental United States only if they are produced in accordance with a systems approach to mitigate pest risk as outlined below. We are proposing to add the systems approach to the regulations in a new § 319.56–51 governing the importation of pitaya fruit from Central America.

#### Proposed Systems Approach

##### Monitoring and Oversight

Paragraph (a) of proposed § 319.56–51 would set out monitoring and oversight requirements for the NPPOs of the countries exporting pitaya fruit to the United States. Paragraph (a)(1) would require the NPPO of the exporting country to provide a workplan to APHIS that details the activities the NPPO will carry out to meet the requirements of the systems approach, subject to APHIS’s approval of the workplan. APHIS would be directly involved with the NPPO in monitoring and auditing implementation of the systems approach. 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)(2) would require the NPPO of the exporting country to conduct inspections at the packinghouses and monitor packinghouse operations to verify that the packinghouses comply with the systems approach requirements. The NPPO of the exporting country would also have to visit and inspect the places of production monthly, starting 2 months (60 days) before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the systems approach requirements. If the NPPO finds that a place of production or packinghouse is not complying with the requirements of the systems approach, no fruit from the place of production or packinghouse would be eligible for export to the United States until APHIS and the NPPO conduct an investigation and appropriate remedial actions have been implemented.

Paragraph (a)(3) would require the NPPO of the exporting country to review and maintain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

The monitoring and oversight described above would ensure that the required phytosanitary measures are properly implemented throughout the process of growing and packing pitaya fruit for export to the United States.

#### *Place of Production Requirements*

Paragraph (b)(1) of proposed § 319.56–51 would require the personnel conducting the trapping for Mexfly and Medfly described later in this document to be hired, trained, and supervised by the NPPO of the exporting country. The exporting country's NPPO must certify that each place of production has effective fruit fly trapping programs, and follows control guidelines, when necessary, to reduce quarantine pest populations. APHIS would be able to monitor the places of production. This condition would ensure that pitaya fruit intended for export to the continental United States are grown and packed in production and packing areas of Central America where fruit fly traps are maintained and where the other elements of the systems approach described below are in place.

Under proposed paragraph (b)(2), pitaya fruit would have to be grown in approved places of production that are registered with the NPPO of the exporting country.

Paragraph (b)(3) would specify that trees and other structures, other than the crop itself, may not shade the crop during the day and no other host plants of Medfly or Mexfly may be grown within 100 meters of the edge of the production site. During hot, sunny weather, pests congregate in shaded areas for survival. These requirements would reduce the pest pressure of Medfly and Mexfly outside the production site.

Paragraph (b)(4) would require that pitaya fruit that has fallen on the ground be removed from the place of production at least once every 7 days. Although pitaya fruit are a potential host for the identified pests, the pests typically prefer fallen fruit. Therefore, requiring that fallen fruit be removed from the place of production would reduce populations of pests in the fields where pitaya fruit intended for importation into the continental United States are grown. In addition, fallen fruit would not be allowed to be included in field containers of fruit to be packed for export because fruit that has fallen from trees may be damaged and thus more susceptible to infestation.

Under paragraph (b)(5), harvested pitaya fruit would have to be placed in field cartons or containers that are marked to show the place of production. This requirement would ensure that APHIS and the NPPO of the exporting country could identify the place of production for the pitaya fruit if inspectors were to find quarantine pests in the fruit either before export or at the port of entry.

#### *Mitigation Measures for Medfly and Mexfly*

APHIS has on rare instances intercepted fruit flies in pitaya fruit. Records of pitaya fruit being a host for either Medfly or Mexfly are either unverified references in old literature or based on cage infestations. As a result, pitaya fruit are considered to be poor hosts to fruit flies. Based on this, we would use trapping to demonstrate that places of production are free of fruit flies in conjunction with a systems approach to mitigate the risk posed by these fruit flies.

Paragraph (c)(1)(i) of proposed § 319.56–51 would specify the trapping requirements to demonstrate place of production freedom from Medfly and Mexfly. Beginning at least 1 year before the start of harvest and continuing through the end of the shipping season,

trapping for Mexfly and Medfly would have to be conducted in the places of pitaya fruit production with at least 1 trap per hectare of APHIS-approved traps and traps must be serviced every 7 days.

Under proposed paragraph (c)(1)(ii), we would begin requiring places of production to meet standards for cumulative levels of flies per trap per day starting at 2 months prior to harvest through the end of the shipping season. The interval between the start of trapping and the enforcement of standards for flies per trap per day would allow the NPPO time to establish a baseline for compliance. Beginning 2 months prior to harvest, when traps are serviced, if either Medfly or Mexfly are trapped at a particular place of production at cumulative levels above 0.07 flies per trap per day, pesticide bait treatments would have to be applied in the affected place of production in order for the place of production to remain eligible to export pitaya fruit to the continental United States. If the average Medfly or Mexfly catch is greater than 0.07 flies per trap per day for more than 2 consecutive weeks, the place of production would be ineligible for export until the rate of capture drops to an average of less than 0.07 flies per trap per day.

Paragraph (c)(1)(iii) would state that the NPPO would have to keep records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS inspectors upon request. The records would have to be maintained for at least 1 year.

Paragraph (c)(2) would provide pest-free areas as another option for mitigating the risk associated with Medfly. If pitaya fruit were produced in an area designated by APHIS as free of Medfly in accordance with § 319.56–5, no further mitigation for those fruit flies would be necessary for fruit produced in that area. For instance, Belize conducts a national fruit fly program, including Jackson traps, to maintain its pest-free status for Medfly, and APHIS currently recognizes all of Belize as free of Medfly. We are not proposing to provide for the use of pest-free areas for Mexfly because local conditions in these countries are not likely to allow the establishment of such areas.

Section 319.56–5 sets out specific requirements for determination that an area is a pest-free area. Paragraph (a) of § 319.56–5 states that determinations of pest-free areas be made in accordance with International Standards for Phytosanitary Measures (ISPM) No. 4, which is incorporated by reference in § 300.5. ISPM No. 4 sets out three main

criteria for recognition of a pest-free area:

- Systems to establish freedom;
- Phytosanitary measures to maintain freedom; and
- Checks to verify freedom has been maintained.

#### *Packinghouse Requirements*

Paragraph (d) of proposed § 319.56–51 would set out requirements for the packinghouses where the pitaya fruit would be processed. The packinghouse would have to be registered with the NPPO of the exporting country. 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 be required to have double doors at the entrance to the facility and at the interior entrance to the area where the pitaya fruit would be packed. Such entrances are designed to exclude fruit flies from the packinghouse. In addition, the packinghouse could only accept fruit from registered places of production while the packinghouse is in use for exporting pitaya fruit to the United States. These procedures would reduce the risk that quarantine pests are present on pitaya fruit exported to the United States.

#### *Post-Harvest Procedures*

Paragraph (e) would require that the fruit be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to a pest-exclusionary packinghouse and while awaiting packing. Pitaya fruit would have to be packed within 24 hours of harvest in insect-proof cartons or containers that can be sealed at the packinghouse against the entry of pests, or covered with insect-proof mesh or a plastic tarpaulin for transport to the United States. These safeguards would have to remain intact until arrival in the United States. These measures would prevent harvested fruit from being infested by quarantine pests.

#### *Phytosanitary Inspection*

Paragraph (f)(1) would require a biometric sample of pitaya fruit jointly agreed upon by APHIS and the NPPO to be inspected in the exporting country by the NPPO of that country following any post-harvest processing. The biometric sample would be visually inspected for gray pineapple mealybug and passionvine mealybug, which are external pests. A portion of the fruit would also be cut open to detect Mexfly

and Medfly, which are internal pests. If the fruit is from a pest-free area for Medfly, then the fruit would only be inspected for Mexfly. External and internal inspection of a sample would ensure that pests at various life stages are detected.

Under proposed paragraph (f)(2), the pitaya fruit would be subject to inspection for all quarantine pests of concern at the port of entry. In addition, shipping documents identifying the place(s) of production in which the fruit had been produced and the packing shed(s) in which the fruit had been processed would have to accompany each lot of fruit presented for inspection at the port of entry to the United States and would have to be maintained until the fruit is released for entry.

Under paragraph (f)(3), if a gray pineapple mealybug and passionvine mealybug were to be found, the entire consignment of fruit would be prohibited from import into the United States unless it were treated in accordance with 7 CFR part 305. If a single larva of either fruit fly were to be found in a shipment (either by the NPPO in the exporting country or by inspectors at the U.S. port of entry), the entire consignment of fruit would be prohibited from export, and the place of production producing that fruit would be suspended from the export program until appropriate measures, as agreed upon by the NPPO of the exporting country and APHIS, had been taken.

#### *Commercial Consignments*

Paragraph (g) would state that only commercial consignments of pitaya fruit would be allowed to be imported. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control.

#### *Phytosanitary Certificate*

Paragraph (h) sets out the requirement for a phytosanitary certificate. Each consignment of fruit would have to be accompanied by a phytosanitary

certificate issued by the NPPO of the exporting country, providing an additional declaration stating that the fruit in the consignment was produced in accordance with the requirements in proposed § 319.56–51. This requirement would certify that the provisions of the regulations have been met.

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

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

This proposed rule would allow the importation of fresh pitaya fruit from Central America into the continental United States. Pitaya fruit is produced in Hawaii, California, and Florida, but the quantities domestically produced, numbers of U.S. producers, quantities imported, and other factors needed to assess the likely economic effects of this rule are not known. The quantity of pitaya fruit that would be imported from Belize, Costa Rica, El Salvador, Guatemala, Honduras, and Panama is also unknown. Nicaragua estimates exporting 1,200 metric tons (60 40-foot containers) of pitaya fruit to the continental U.S. annually, and it is thought that the other countries may ship similar or smaller amounts.

Lack of information about the quantity of pitaya fruit that would be imported from these countries, and about the quantities produced and already imported by the United States, prevents a clear understanding of what the economic effects of the proposed

rule may be. We welcome information that the public may offer regarding the possible economic effects of this rule for U.S. small entities.

#### Executive Order 12988

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

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2010–0113. Please send a copy of your comments to: (1) Docket No. APHIS–2010–0113, 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 fresh pitaya fruit from Central America into the continental United States. As condition of entry, pitaya fruit from Central America would be subject to a systems approach that would include requirements for monitoring and oversight, establishment of pest-free places of production, and procedures for packing the pitaya. This action would allow for the importation of pitaya fruit from Central America into the continental United States while continuing to provide protection against the introduction of quarantine pests.

Implementing this rule requires the exporting country's NPPO to certify production sites, provide a workplan, maintain records of fruit fly detections and shipping documents, register packinghouses, and complete a phytosanitary certificate.

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 0.8652 hours per response.

*Respondents:* Shippers and producers of fresh pitaya, NPPOs of Central America.

*Estimated annual number of respondents:* 27.

*Estimated annual number of responses per respondent:* 5.2222.

*Estimated annual number of responses:* 141.

*Estimated total annual burden on respondents:* 122 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. Section 319.56–51 is added to read as follows:

##### § 319.56–51 Fresh pitaya from certain Central American countries.

Fresh pitaya fruit (*Hylocereus* spp.) may be imported into the United States from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama in accordance with the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Anastrepha ludens*, *Ceratitidis capitata*, *Dysmicoccus neobrevipes*, and *Planococcus minor*.

(a) *Monitoring and oversight.* (1) The national plant protection organization (NPPO) of the exporting country must provide a workplan to APHIS that details the activities that the NPPO will, subject to APHIS's approval, carry out to meet the requirements of this section. APHIS will be directly involved with the NPPO in the monitoring and auditing implementation of the systems approach.

(2) The NPPO of the exporting country must conduct inspections at the packinghouses and monitor packinghouse operations. Starting 2 months before harvest and continuing until the end of the shipping season, the NPPO of the exporting country must visit and inspect the places of production monthly to verify compliance with the requirements of this section. If the NPPO finds that a packinghouse or place of production 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 have conducted an investigation and appropriate remedial actions have been implemented.

(3) The NPPO must review and maintain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(b) *Place of production requirements.*

(1) The personnel conducting the trapping required in paragraph (c) of this section must be hired, trained, and supervised by the NPPO of the exporting country. The exporting country's NPPO must certify that each place of production has effective fruit fly trapping programs, and follows control guidelines, when necessary, to reduce quarantine pest populations. APHIS may monitor the places of production.

(2) The places of production producing pitaya for export to the United States must be registered with the NPPO of the exporting country.

(3) Trees and other structures, other than the crop itself, must not shade the crop during the day. No *C. capitata* or *A. ludens* host plants may be grown within 100 meters of the edge of the production site.

(4) Pitaya fruit that has fallen on the ground must be removed from the place of production at least once every 7 days and may not be included in field containers of fruit to be packed for export.

(5) Harvested pitaya fruit must be placed in field cartons or containers that are marked to show the place of production.

(c) *Mitigation measures for C. capitata and A. ludens.* (1) *Pest-free places of production.* (i) Beginning at least 1 year before harvest begins and continuing through the end of the shipping season, trapping for *A. ludens* and *C. capitata* must be conducted in the places of pitaya fruit production with at least 1 trap per hectare of APHIS-approved traps, serviced every 7 days.

(ii) From 2 months prior to harvest through the end of the shipping season, when traps are serviced, if either *A. ludens* or *C. capitata* are trapped at a particular place of production at cumulative levels above 0.07 flies per trap per day, pesticide bait treatments must be applied in the affected place of production in order for the place of production to remain eligible to export pitaya fruit to the continental United States. If the average *A. ludens* or *C. capitata* catch is greater than 0.07 flies per trap per day for more than 2 consecutive weeks, the place of production is ineligible for export until the rate of capture drops to an average of less than 0.07 flies per trap per day.

(iii) The NPPO must maintain records of fruit fly detections for each trap,

update the records each time the traps are checked, and make the records available to APHIS upon request. The records must be maintained for at least 1 year for APHIS review.

(2) *Pest-free area for C. capitata.* If the pitaya fruit are produced in a place of production located in an area that is designated as free of *C. capitata* in accordance with § 319.56–5, the trapping in paragraph (c)(1) of this section is not required for *C. capitata*.

(d) *Packinghouse requirements.* (1) The packinghouses must be registered with the NPPO of the exporting country.

(2) All openings to the outside 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 packinghouses.

(3) The packinghouses must have double doors at the entrance to the facilities and at the interior entrance to the area where the pitaya fruit are packed.

(4) While in use for packing pitaya fruit for export to the United States, the packinghouses may only accept pitaya fruit that are from registered places of production and that are produced in accordance with the requirements of this section.

(e) *Post-harvest procedures.* The pitaya fruit must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. Pitaya fruit must be packed in insect-proof cartons or containers that can be sealed at the packinghouse, or covered with insect-proof mesh or a plastic tarpaulin for transport to the United States. These safeguards must be intact upon arrival in the United States.

(f) *Phytosanitary inspection.* (1) The NPPO of the exporting country must visually inspect a biometric sample of pitaya fruit, jointly approved by APHIS and the NPPO of the exporting country, for *D. neobrevipes* and *P. minor*, and cut open a portion of the fruit to detect *A. ludens* and *C. capitata*. If the fruit is from a pest-free area for *C. capitata*, then the fruit will only be inspected for *A. ludens*.

(2) The fruit are subject to inspection at the port of entry for all quarantine pests of concern. Shipping documents identifying the place(s) of production in which the fruit was produced and the packing shed(s) in which the fruit was processed must accompany each lot of fruit presented for inspection at the port of entry to the United States. This identification must be maintained until the fruit is released for entry into the United States.

(3) If *D. neobrevipes* or *P. minor* is found, the entire consignment of fruit will be prohibited from import into the

United States unless the shipment is treated with an approved treatment monitored by APHIS. If inspectors (either from the exporting country's NPPO or at the U.S. port of entry) find a single fruit fly larva in a shipment, they will reject the entire consignment for shipment to the United States, and the place of production for that shipment will be suspended from the export program until appropriate measures, agreed upon by the NPPO of the exporting country and APHIS, have been taken.

(g) *Commercial consignments.* The pitaya fruit may be imported in commercial consignments only.

(h) *Phytosanitary certificate.* Each consignment of pitaya fruit must be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country, containing an additional declaration stating that the fruit in the consignment was produced in accordance with requirements in 7 CFR 319.56–51.

Done in Washington, DC, this 18th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12755 Filed 5–23–11; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2010–1167]

#### Proposed Airworthiness Directives Legal Interpretation

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Extension of comment period for a proposed airworthiness directives legal interpretation.

**SUMMARY:** The Federal Aviation Administration published a proposed airworthiness directives legal interpretation for comment. In response to several requests, we are extending the comment period to allow additional time for comment. Comments from the public are requested to assist the agency in developing the final legal interpretation.

**DATES:** Comments must be received on or before June 30, 2011.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2010–1167 using any of the following methods: