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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2008-0060]

RIN 0579-AD13

Hass Avocados from Mexico; Importation into the Commonwealth of Puerto Rico and Other Changes

AGENCY:

Animal and Plant Health Inspection Service, USDA.

ACTION:

Proposed rule.

SUMMARY:

We are proposing to amend our fruits and vegetables regulations to provide for the importation of Hass avocados from Mexico into Puerto Rico under the same systems approach currently required for the importation of Hass avocados into all States of the United States from Michoacn, Mexico. The systems approach requirements include trapping, orchard certification, limited production area, trace back labeling, pre-harvest orchard surveys for all pests, orchard sanitation, post-harvest safeguards, fruit cutting and inspection at the packinghouse, port-of-arrival inspection, and clearance activities. This action would allow for the importation of Hass avocados from Michoacn, Mexico, into Puerto Rico while continuing to provide protection against the introduction of quarantine pests. In addition, we are proposing to amend the regulations to provide for the Mexican national plant protection organization to use an approved designee to inspect avocados for export and to suspend importation of avocados into the United States from Michoacn, Mexico, only from specific orchards or packinghouses when quarantine pests are detected, rather than suspending imports from the entire municipality where the affected orchards or packinghouses are located. These changes would provide additional flexibility in operating the export program while continuing to provide protection against the introduction of quarantine pests.

DATES:

We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

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=AP>)

HIS-2008-0060) 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-2008-0060, 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-2008-0060.

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 20737-1231; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in Subpart-Fruits and Vegetables (7 CFR 319.56 through 319.5650), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States. The requirements for importing Hass avocados into the United States from Michoacán, Mexico, are described in 319.56-30. Those requirements include pest surveys and pest risk-reducing practices, treatment, packinghouse procedures, inspection, and shipping procedures.

In this document, we are proposing to:

• Allow the importation of Hass avocados from Michoacán, Mexico, into Puerto Rico, under the same conditions required for importation into the 50 States;

• Provide for the Mexican national plant protection organization (NPPPO) to use an approved designee to inspect avocados for export; and

• Limit the scope of suspension of export certification to the orchard or packinghouse in which pests are found, rather than the municipality in which the orchard or packinghouse is located.

These changes are discussed directly below.

Importation of Hass Avocados from Michoacán, Mexico, into Puerto Rico

In a final rule published on November 30, 2004 in the Federal Register (69 FR 69749-69722, Docket No. 03-022-5) and effective on January 31, 2005, we amended the regulations governing the importation of fruits and vegetables to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in

approved municipalities in Michoac´n, Mexico, may be distributed. Currently, Hass avocados from Michoac´n, Mexico, are permitted entry into the 50 States if they are produced in accordance with the requirements of a systems approach as provided in 319.56-30. This action was based on a pest risk assessment (PRA), Importation of Avocado Fruit (*Persea americana* Mill. var. ‘Hass’), from Mexico, A Risk Assessment (November 2004), which evaluated the risk of permitting the importation of Mexican Hass avocados only into the 50 States.

At the request of the Government of Mexico, we prepared a commodity import evaluation document (CIED) to determine what phytosanitary measures should be applied to mitigate the pest risk associated with the importation of Hass avocados from Michoac´n, Mexico, into the Commonwealth of Puerto Rico. Copies of the CIED 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).

In the CIED, titled Importation of Hass Avocado fruit from Michoac´n, Mexico into Puerto Rico (September 2009), we determined that because the systems approach currently in place is successful in mitigating the risks of introducing quarantine pests associated with the importation of Hass avocado from Mexico into the 50 U.S. States, and because avocados entering the United States from other approved exporting countries may also move to Puerto Rico without additional requirements, the current systems approach will also adequately mitigate the risks of introducing quarantine pests directly into Puerto Rico as well. We concluded the phytosanitary risks for insect pests associated with the importation of Hass avocados from Michoac´n, Mexico, into the Commonwealth of Puerto Rico would be effectively mitigated using the same systems approach as is currently used for the importation of Hass avocados from Michoac´n, Mexico, into the 50 States, as set fourth in 319.56-30. These import requirements include trapping, orchard certification, limited production area, trace back labeling, pre-harvest orchard surveys for all pests, orchard sanitation, post-harvest safeguards, fruit cutting and inspection at the packinghouse, port-of-arrival inspection, and clearance activities.

Based on the findings of the CIED and the November 2004 PRA, we are proposing to amend 319.56-30 to allow commercial shipments of Hass avocados from Michoac´n, Mexico, to be imported into Puerto Rico. Specifically, we are proposing to amend 319.56-30(a)(2), which currently prohibits Hass avocados from Mexico from being imported into or distributed in Puerto Rico and U.S. territories, to allow their importation into Puerto Rico. Because Mexico’s request was specific to Puerto Rico, the CIED did not consider U.S. territories, so that prohibition would remain.

In addition, we are proposing to amend 319.56-30(c)(3)(vii) to remove the requirement that boxes of avocados be marked to indicate that their distribution in Puerto Rico or U.S. territories is prohibited. The prohibition on distribution in U.S. territories would continue to be enforced through the APHIS permitting process. Specifically, we would implement this distribution limitation by denying permit applications for consignments of the avocados to destinations outside the 50 States and Puerto Rico and, for consignments imported into the 50 States and Puerto Rico, by including as a condition of the permit a prohibition on moving the avocados to any U.S. territory. This same paragraph also contains a requirement for box marking that applied from January 31, 2005, through January 31, 2007; as this requirement is outdated, we would remove it.

Use of an Approved Designee to Inspect Avocados for Export

Currently, our regulations in 319.56-30(c)(3)(iv) require samples of Hass avocados produced in Michoacán, Mexico, to be selected, cut, and inspected by the Mexican NPPO and found free from pests. The Mexican NPPO has requested that we amend the regulations to provide for the use of an approved designee to perform these functions. The use of approved designees in situations such as this is consistent with the International Plant Protection Convention's International Standard for Phytosanitary Measures (ISPM) No. 20, which describes a system that NPPOs may use to authorize other government services, non-governmental organizations, agencies, or persons to act on their behalf for certain defined functions. This system includes the development of procedures to determine the competency of designees, to perform system audits and review, to implement corrective actions, and to withdraw authorization. We have determined that an approved designee could perform NPPO functions when a system meeting the criteria of ISPM 20 is used. Accordingly, we are proposing to amend the regulations to provide for the Mexican NPPO to use an approved designee to perform these functions. Specifically, we are proposing to amend 319.56-30(c)(3)(iv) to provide for avocados to be selected, cut, and inspected by either the Mexican NPPO or its approved designee.

To view this and other ISPMs on the Internet, go to (<http://www.ippc.int/>) and click on the Adopted Standards link under the Core activities heading.

Limiting the Scope of Suspension of Export Certification

Paragraph (e) of 319.56-30 sets out the procedures that are followed when a pest is detected in the required inspections. Currently, under paragraph (e)(1), when avocado seed pests are detected during semiannual pest surveys, orchard surveys, packinghouse inspections, or other monitoring or inspection activities, the entire municipality in which the pests are discovered loses its pest-free certification and avocado exports from that municipality are suspended. However, our regulations in paragraphs (e)(2) and (e)(3) call for the suspension of the export certification of individual orchards and packinghouses where the stem weevil *Copturus aguacatae* is detected, rather than for the suspension of the export certification of the entire municipality. This difference in the scope of suspension was originally created because we had limited specific information on the mobility of avocado seed pests within approved municipalities in Mexico, so we took a more cautious approach by providing for the suspension of the entire municipality in which a seed pest was detected.

Now that we have had years to evaluate the effectiveness of the systems approach used to mitigate pests in approved municipalities, APHIS has concluded that the mobility of avocado seed pests creates no greater risk of their avoiding detection than the mobility of the avocado stem weevil, and that the same scope of export suspension should apply to avocado seed pests and the stem weevil. In addition, if avocado seed pests are present in places of production close to a place of production in which an avocado seed pest is found, the required surveys would find it in those nearby places of production, and we would suspend those places of production as well. Of course, the entire municipality would be suspended if the pests were detected in all places of production within that municipality. Given this information, APHIS has concluded that suspension of shipments from an affected orchard or packinghouse, rather than from an entire municipality, would provide sufficient safeguards against pest introduction while minimizing trade disruptions. Therefore, we are proposing to apply

suspensions only to an affected orchard or packinghouse, rather than to an entire municipality, when seed pests are detected. Specifically, we are proposing to replace paragraphs (e)(1) through (e)(3) of 319.56-30 with a new paragraph (e) that would state that suspension of avocado shipments applies to orchards or packinghouses within a municipality when the pests *Heilipus lauri*, *Conotrachelus aguacatae*, *C. perseae*, *Copturus aguacatae*, or *Stenoma catenifer* are detected.

Protocols for reinstatement from suspension of export of Hass avocados would continue to be included in the operational work plan between Mexico and the United States required under 319.56-30(c).

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.

We have prepared an initial regulatory flexibility analysis for this proposed rule. The analysis examines the potential economic effects of this action on small entities, as required by the Regulatory Flexibility Act. The analysis identifies avocado producers, importers, and wholesalers in Puerto Rico as the small entities most likely to be affected by this action and considers the effects of increased imports of avocados. Puerto Rico is a large net importer of avocados. Imports for 2007 totaled around 3,700 short tons while exports totaled only 8 short tons, as preliminarily reported by the Puerto Rican Department of Agriculture's Office of Agricultural Statistics.² In other words, three-fifths of Puerto Rico's avocado supply is imported. In addition, there may well be movement of avocado from the mainland United States to Puerto Rico, which would not be reported as imports. Based on the information presented in the analysis, we expect affected entities would experience minimal economic effects as a result of additional imports arriving in Puerto Rico from Mexico. We invite comment on the analysis, which is posted with this proposed rule on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov) and may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

²Puerto Rico Dept. of Agriculture, Office of Agricultural Statistics. 18.58F23 Fresh Fruits. November 13, 2007. p. 23.

Executive Order 12988

This proposed rule would allow Hass avocados to be imported into Puerto Rico from Michoacán, Mexico. If this proposed rule is adopted, State and local laws and regulations regarding Hass avocados imported under this rule would be preempted while the fruit is in foreign commerce. Fresh Hass avocados are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If the 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 the rule.

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 in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

<REGTEXT TITLE="7" PART="319">

Accordingly, we propose to amend 7 CFR part 319 as follows:

<REGTEXT TITLE="7" PART="319">

PART 319 FOREIGN QUARANTINE NOTICES

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

Authority:

7 U.S.C. 450, 77017772, and 77817786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

<REGTEXT TITLE="7" PART="319">

2. Section 319.56-30 is amended as follows:

a. By revising paragraph (a)(2) to read as set forth below.

b. In paragraph (c)(3)(iv), by adding the words or its approved designee after the word NPPO.

c. In paragraph (c)(3)(vii), by removing the last two sentences.

d. By revising paragraph (e) to read as set forth below.

319.56-30

Hass avocados from Michoac´n, Mexico.

(a) ***

(2) Shipping restrictions. The avocados may be imported into and distributed in all States and in Puerto Rico, but not in any U.S. Territory.

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(e) Pest detection. If any of the avocado pests *Heilipus lauri*, *Conotrachelus aguacatae*, *C. perseae*, *Copturus aguacatae*, or *Stenoma catenifer* are detected during the semiannual pest surveys in a packinghouse, certified orchard or areas outside of certified orchards, or other monitoring or inspection activity in the municipality, the Mexican NPPO must immediately initiate an investigation and take measures to isolate and eradicate the pests. The Mexican NPPO must also provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. Orchards affected by the pest detection will lose their export certification immediately, and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective.

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Done in Washington, DC, this 10th day of May 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

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