

# 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. APHIS–2012–0014]

RIN 0579–AD68

#### Importation of Papayas From Peru

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to allow, under certain conditions, the importation of commercial consignments of fresh papayas from Peru into the continental United States. The conditions for the importation of papayas from Peru would include requirements for approved production locations; field sanitation; hot water treatment; procedures for packing and shipping the papayas; and fruit fly trapping in papaya production areas. This action would allow for the importation of papayas from Peru while continuing to provide protection against the introduction of quarantine pests into the continental United States.

**DATES:** We will consider all comments that we receive on or before October 8, 2013.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0014-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2012-0014, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0014> or in our reading room, which 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) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dorothy Wayson, Senior Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2036.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart–Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–59, 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 that are new to or not widely distributed within the United States. The national plant protection organization (NPPO) of Peru has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh papayas (*Carica papaya*) to be imported from Peru into the continental United States.

As part of our evaluation of Peru’s request, we have prepared a pest risk assessment (PRA), titled “Importation of Fresh Papaya, *Carica papaya*, from Peru into the Continental United States” (March 2012). The PRA evaluates the risks associated with the importation of papaya into the continental United States from Peru. Copies of the PRA may be obtained by contacting the individual 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 identified two pests of quarantine significance present in Peru that could be introduced into the United States through the importation of papaya: The Mediterranean fruit fly (Medfly), *Ceratitis capitata* Wiedemann, and the South American fruit fly, *Anastrepha fraterculus* (Wiedemann). Both of these pests were rated as posing a high risk.

APHIS has determined that measures beyond standard port of arrival inspection are required to mitigate the

risks posed by the plant pests associated with papayas from Peru. Therefore, we propose to require that the papayas be subjected to a systems approach to pest mitigation. This systems approach would require that the papayas be produced at places of production registered with the NPPO of Peru, would require packing procedures designed to exclude quarantine pests, and would require fruit fly trapping, field sanitation, and hot water treatment to remove pests of concern from the pathway. Only commercial consignments of papayas would be allowed to be imported from Peru. Consignments of papayas from Peru would also be required to be accompanied by a phytosanitary certificate issued by the NPPO of Peru stating that the papayas were grown, packed, and shipped in accordance with the proposed requirements.

The proposed systems approach to pest mitigation for the importation of papayas from Peru has been used successfully to mitigate the risk associated with the importation of papayas from Central America, Brazil, Colombia, and Ecuador (§ 319.56–25). The risk management document for papayas from Peru evaluated the effectiveness of these measures against the quarantine pests identified in the PRA and concluded that the provisions in § 319.56–25, along with the general requirements for the importation of fruits and vegetables in the regulations, will be sufficient to prevent the introduction of those pests into the continental United States. Therefore, we propose to amend § 319.56–25 to allow for the importation of papayas from Peru. The mitigation measures for the proposed systems approach are outlined in greater detail below.

##### Commercial Consignments

The importation of fresh papayas from Peru would be limited to commercial consignments of papaya of cultivar Solo only.

This condition would reduce the likelihood that papayas will introduce injurious plant pests into the continental United States. Commercial consignments are 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 override,

may be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. 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.

Papayas weighing 2 kilograms or less are considered “Solo” papayas. The limitation would ensure that the hot water dip treatment discussed later in this document is effective, as that treatment has not been tested on larger papayas.

#### *Registered Growers*

The papayas would have to be grown by a grower registered with the NPPO of Peru and packed for shipment to the continental United States (including Alaska) in Peru. This condition would ensure that papayas intended for the continental United States are grown in places of production where fruit fly traps are maintained and where the other elements of the systems approach described below are in place. In addition, grower registration allows for traceback and removal from the export program of production sites with confirmed pest problems, and the papaya orchards would be monitored by the NPPO to ensure that pest and disease-excluding sanitary procedures are employed.

#### *Harvesting Procedures*

Beginning at least 30 days before harvest begins and continuing through the completion of harvest, all trees in the area where the papayas are grown would have to be kept free of papayas that are one-half or more ripe (more than one-quarter of shell surface yellow), and all culled and fallen fruit would have to be buried, destroyed, or removed from the farm at least twice a week.

Although papayas are a potential host for Medfly and South American fruit fly, these fruit flies typically prefer ripe fruits as well as culled or fallen papayas. Therefore, requiring that only green papayas (less than half ripe) be present on the trees and that culled and fallen fruit be buried, destroyed, or removed from the farm would reduce the populations of Medfly and South American fruit fly in the fields where papayas intended for importation into the continental United States are grown.

#### *Treatment*

The papayas would have to be held for 20 minutes in hot water at 48 °C (118.4 °F). This treatment is currently used to treat papayas imported from Central America, Brazil, Colombia, and Ecuador for fruit flies under the existing regulations in § 319.56–25. Hot water treatment mitigates the pest risk that could result if fruit flies lay eggs in papayas immediately before harvest. This treatment, in conjunction with other safeguards that would be required by the regulations for papayas from Peru, would reduce the likelihood that papayas will introduce Medfly and South American fruit fly into the continental United States.

#### *Packaging Procedures*

When packed, the papayas would have to be less than one-half ripe (shell surface no more than one-quarter yellow, surrounded by light green) and appear to be free of all injurious insect pests.

This condition would reduce the risk of introduction of Medfly and South American fruit fly into the continental United States. Papayas that are less than one-half ripe (green) are not preferred hosts for fruit flies. Requiring papayas to be less than one-half ripe when packed thus reduces the risk of their infestation with Medfly or South American fruit fly.

The papayas would have to be safeguarded from exposure to fruit flies from harvest to export, including being packaged to prevent access by fruit flies or other injurious insect pests during transit. The package containing the papayas would not be allowed to contain any other fruit, including papayas not qualified for importation into the continental United States. These conditions would ensure that papayas that have already been inspected and packaged for shipment to the continental United States are not at risk for fruit fly infestation.

#### *Fruit Fly Trapping*

Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps would have to be maintained in the field where the papayas were grown. Fifty percent of the traps would have to be of the McPhail type, and 50 percent of the traps of the Jackson type. The traps would have to be placed at the rate of 1 trap per hectare and checked for fruit flies at least once a week by plant health officials of the NPPO. The NPPO would have to keep records of the fruit fly finds for each trap, updating the records each time the traps are checked,

and make the records available to APHIS upon request. The records would have to be maintained for at least 1 year. This condition would ensure the earliest possible detection of increasing populations of fruit flies in and around fields where papayas are grown.

If the average Jackson fruit fly trap catch is greater than seven Medflies per trap per week, measures would have to be taken to control the Medfly population in the production area. If the average Jackson trap catch exceeds 14 Medflies per trap per week, importations of papayas from that production area would be halted until the rate of capture drops to an average of 7 or fewer Medflies per trap per week.

If the average McPhail trap catch is greater than seven South American fruit flies per trap per week, measures would have to be taken to control the South American fruit flies population in the production area. If the average McPhail trap catch exceeds 14 South American fruit flies per trap per week, importations of papayas from that production area would be halted until the rate of capture drops to an average of 7 or fewer South American fruit flies per trap per week.

These thresholds for Medfly and South American fruit fly trapping would help detect increasing populations of these fruit flies in growing areas; as such, this condition would help ensure that these fruit flies are not associated with imports of papayas into the continental United States.

All activities would have to be conducted under the supervision and direction of plant health officials of the NPPO of the exporting country to help ensure that all activities required by the regulations are properly carried out. This requirement is found in paragraph (h) of § 319.56–25, which currently refers to the activities in paragraphs (a) through (h) of the section. Since paragraph (h) contains the supervision requirement, we are proposing to correct the reference to instead refer to supervision of the activities described in paragraphs (a) through (g) of § 319.56–25.

#### *Phytosanitary Certificate*

All shipments of papayas would have to be accompanied by a phytosanitary certificate issued by the NPPO of Peru stating that the papayas were grown, packed, and shipped in accordance with the proposed requirements. This condition would help ensure that the provisions of the regulations have been met. In addition, as part of issuing the phytosanitary certificate, the NPPO would inspect the commodities and

certify that they are free of quarantine pests.

#### 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 the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. 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).

This proposed rule would allow the importation of fresh papaya fruit from Peru into the continental United States. Papaya is a relatively minor crop in the United States that is primarily grown in Hawaii, and to a lesser extent, in Florida. Very small acreages are found in Texas and California.

Peru is expected to ship up to 36 metric tons of fresh papaya to the United States per year. This amount would be equivalent to less than 0.03 percent of net imports of fresh papaya by the United States in 2011. With U.S. net imports estimated to be at least eight times as large as U.S. fresh papaya production, any market effects of such a relatively negligible change in papaya imports are as likely to impact foreign suppliers as they are U.S. producers. In addition, effects for the majority of U.S. papaya producers, who are located in Hawaii, would be further muted by the proposed prohibition on entry of fresh papaya from Peru into that State.

While most if not all U.S. papaya farms are small entities, we expect this proposed rule to have a very minor impact regardless of the size of operation.

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 would allow papayas to be imported into the continental United States from Peru. If this proposed rule is adopted, State and local laws and regulations regarding papayas 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-2012-0014. Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, 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.

Allowing the importation of papayas into the continental United States from Peru will require grower registration, trapping records, and phytosanitary certificates.

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 1.5 hours per response.

*Respondents:* The NPPO of Peru and growers.

*Estimated annual number of respondents:* 51.

*Estimated annual number of responses per respondent:* 1.9.

*Estimated annual number of responses:* 101.

*Estimated total annual burden on respondents:* 154 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.

#### § 319.56-25 [Amended]

- 2. Section 319.56-25 is amended as follows:
  - a. In paragraph (b), by removing the words "or Ecuador" and adding the words ", Ecuador, or Peru" in their place.
  - b. In paragraph (g)(2), by adding the word "Peru," after the word "Ecuador,".
  - c. In paragraph (h), by removing the citation "(h)" and adding the citation "(g)" in its place.

Done in Washington, DC, this 5th day of August 2013.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2013-19314 Filed 8-8-13; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Part 317

[Docket No. FSIS-2008-0017]

#### Descriptive Designation for Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Products

**AGENCY:** Food Safety and Inspection Service, USDA.

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

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is extending the comment period for the **Federal Register** proposed rule, “Descriptive Designation for Needle- or blade-tenderized (Mechanically Tenderized) Beef Products” until October 8, 2013. The Agency is taking this action in response to two requests made by trade associations.

**DATES:** Comments are due by October 8, 2013.

**ADDRESSES:** FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

*Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to <http://www.regulations.gov/>. Follow the on-line instructions at that site for submitting comments.

*Mail, including CD-ROMs:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8-163B, Washington, DC 20250-3700.

*Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8-163B, Washington, DC 20250-3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2007-0017. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

*Docket:* For access to background documents or to comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8-164, Washington, DC 20250-3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

#### FOR FURTHER INFORMATION CONTACT:

Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, Telephone: (202) 205-0495, or by Fax: (202) 720-2025.

**SUPPLEMENTARY INFORMATION:** On June 10, 2013, FSIS published a proposed rule in the **Federal Register** (78 FR 34589), “Descriptive Designation for Needle- or blade-tenderized (Mechanically Tenderized) Beef Products.”

In the rule, FSIS is proposing to require the use of the descriptive designation “mechanically tenderized” on the labels of raw or partially cooked needle- or blade-tenderized beef products, including beef products injected with marinade or solution, unless such products are destined to be fully cooked at an official establishment. FSIS is proposing that the product name for such beef products include the descriptive designation “mechanically tenderized” and an accurate description of the beef component. FSIS is also proposing to require that the print for all words in the product name appear in the same style, color, and size and on a single-color contrasting background. In addition, FSIS is proposing to require that labels of raw and partially cooked needle- or blade-tenderized beef products destined for household consumers, hotels, restaurants, or similar institutions include validated cooking instructions that inform consumers that these products need to be cooked to a specified minimum internal temperature, and whether they need to be held at that minimum temperature for a specified time before consumption, i.e., dwell time or rest time, to ensure that they are fully cooked.

FSIS is also announcing that it has posted on its Web site guidance for developing validated cooking instructions for mechanically tenderized product.

Two trade associations addressed letters to FSIS requesting an additional 120 days to comment on the proposed rule and the guidance for validated cooking instructions. Both letters stated that additional time was needed to submit comprehensive comments because the Agency had asked for comment on not only the proposed rule and the guidance but also on numerous related issues.

For the reason given in these requests, FSIS agrees to extend the comment period. The Agency believes that an additional 60-day extension is sufficient. The comment period for the proposed rule will now end on October 8, 2013.

#### USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250-9410 or call (202) 720-5964 (voice and TTY). USDA is an equal opportunity provider and employer.

#### Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at <http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register/federal-register-notices>.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at <http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service>. Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.