

Proposed Rules

Federal Register

Vol. 66, No. 14

Monday, January 22, 2001

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 93–131–1]

Importation of Mangoes From the Philippines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of fruits and vegetables to allow the importation of mangoes from Guimaras Island in the Republic of the Philippines, subject to inspection and the completion of a prescribed vapor heat treatment. We believe that this action is warranted because there appears to be no significant pest risk associated with the importation of mangoes from Guimaras Island in the Philippines under these circumstances. This action would relieve restrictions on the importation of mangoes from the Philippines without presenting a significant risk of introducing plant pests into the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by March 23, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to:

Docket No. 93–131–1, 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. 93–131–1.

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 dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 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 that are new to or not widely distributed within the United States.

Currently, the regulations do not allow the importation of mangoes from the Philippines. However, the Republic of the Philippines Department of Agriculture (RPDA) has requested that the Animal and Plant Health Inspection Service (APHIS) allow mangoes from the Philippine island of Guimaras to be imported into the United States.

Several plant pests, including the mango seed weevil (*Sternonchetus mangiferae*) and fruit flies of the genus *Bactrocera* are known to attack mangoes in the Philippines. If introduced into the United States, these pests would present a serious threat to domestic fruit crops. We are proposing to allow mangoes to be imported from Guimaras Island in the Philippines under conditions designed to mitigate the risk of plant pest introduction. The provisions for the importation of mangoes from the Philippines would be set out in a new section, § 319.56–2ii, which is explained below.

Limitation of Origin

As stated in paragraph (a) of the proposed regulations, we would allow only mangoes grown on the island of Guimaras, which is free of the mango seed weevil, to be imported into the United States. The regulations in

§ 319.56–2(e) contain provisions for the importation of a fruit or vegetable from a definite area or district of the country of origin that has been found free from certain injurious insects that attack the fruit or vegetable, provided that all other injurious insects that attack the fruit or vegetable in the area or district of the country of origin have been eliminated from the fruit or vegetable by treatment or any other procedures that may be prescribed by the Administrator. In the case of the Philippines, ongoing surveys conducted by the RPDA's Bureau of Plant Industry have established that the island of Guimaras is free from infestations of mango seed weevil. Additionally, the Government of the Philippines has adopted and is enforcing requirements that establish Guimaras as a quarantined area for mangoes in order to prevent the mango seed weevil and other injurious insects from being introduced onto the island from other areas of the Philippines or the world. APHIS has determined that those requirements are at least equivalent to those requirements imposed under the regulations to prevent the introduction into the United States and interstate spread of injurious insects. Finally, as required by § 319.56–2(f)(3), the RPDA has submitted to APHIS written detailed procedures for the conduct of surveys and the enforcement of requirements to prevent the introduction of injurious insects onto Guimaras. (Additional information regarding the establishment and maintenance of the mango seed weevil-free status of Guimaras Island may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**)

Treatment and APHIS Inspection

Because the island of Guimaras has not been found to be free of fruit flies of the genus *Bactrocera*, paragraph (b) of the proposed regulations would require that the mangoes be treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. Specifically, the mangoes would have to be subjected to vapor heat treatment to prevent the introduction of *Bactrocera* spp. fruit flies into the United States. The vapor heat treatment, which would have to be conducted in the Philippines under the

supervision of an APHIS inspector, would be conducted as follows:

- Size the fruit before treatment. Place temperature probes in the centers of several fruits.

- Raise the fruit pulp temperature to 46 °C (115 °F) until the fruit reaches that temperature. Hold temperature at 46 °C (115 °F) for 10 minutes.

The vapor heat treatment described above has been determined by the U.S. Department of Agriculture's (USDA's) Agricultural Research Service to be adequate to provide quarantine security against the two fruit fly species of concern, *Bactrocera occipitalis* and *B. philippensis*. As part of this proposed rule, we would update the PPQ Treatment Manual to prescribe the vapor heat treatment described above for mangoes from the Philippines. Mangoes treated in this manner would present an insignificant risk of introducing fruit flies of the genus *Bactrocera* into the United States. Further, pest risk analyses¹ conducted by APHIS have determined that any other injurious insects that might be carried by mangoes from Guimaras would be readily detectable by an inspector. Therefore, paragraph (c) of the proposed regulations would state that the mangoes are also subject to inspection and disinfection at the port of first arrival in the United States, as provided in § 319.56–6 of the regulations.

Box Labeling

In addition to the pest-free area and treatment requirements discussed above, paragraph (d) of the proposed regulations would also require that each box of mangoes imported into the United States from the Philippines be marked in accordance with § 319.56–2(g) of the regulations. Specifically, each box of mangoes would have to be clearly labeled with the following information:

- The name of the orchard or grove of origin, or the name of the grower;
- A statement that the mangoes were produced on the island of Guimaras, Republic of the Philippines; and
- The type and amount of fruit it contains.

Paragraph (g) of § 319.56–2 requires such box labeling for each box of fruit or vegetables that, like the mangoes that are the subject of this proposed rule, are imported into the United States in accordance with § 319.56–2(e)(3) or (e)(4).

¹ Information regarding these analyses may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Phytosanitary Certificate

Paragraph (e) of the proposed regulations would require each shipment of mangoes to be accompanied by a phytosanitary certificate issued by the RPDA that contains additional declarations stating that the mangoes were grown on the island of Guimaras and have been treated for fruit flies of the genus *Bactrocera* in accordance with the PPQ Treatment Manual. The phytosanitary certificate would serve as RPDA's official confirmation that the origin and treatment requirements of the regulations had been met.

Trust Fund Agreement

We are proposing that APHIS' participation in the treatment and inspection activities in the Philippines that would be required for the importation of mangoes be contingent upon the RPDA entering into a trust fund agreement with APHIS. Under paragraph (f) of the proposed regulations, the trust fund agreement would require the RPDA to pay, in advance of each shipping season, all costs that APHIS estimates that it will incur in providing the necessary services in the Philippines during that shipping season. Such costs would include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing the services.

The trust fund agreement would require the RPDA to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement would further require that the RPDA deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any additional mangoes would be treated or inspected. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the RPDA or held on account until needed, at the RPDA's option.

Department Not Responsible for Damage

Paragraph (g) of the proposed regulations would explain that, although the treatments for mangoes prescribed in the PPQ Treatment Manual are judged from experimental tests to be safe, the USDA is not responsible for any damage that might

be sustained by the mangoes as a result of the prescribed treatment.

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 purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the regulations governing the importation of fruits and vegetables by allowing, under certain conditions, the importation of mangoes from the Philippines into the United States.

Analysis

Nearly all of the mangoes consumed in the United States are imported, and the quantity of imported mangoes has grown steadily and rapidly in recent years. Over the 5-year period 1995 through 1999, mango imports increased at an annual rate of about 9 percent (table 1). During this same period, the average value of imported mangoes fell from about \$0.85 per kg to about \$0.65 per kg. These data suggest a high level of market competition among those countries supplying mangoes to the U.S. market.

TABLE 1.—QUANTITY AND VALUE OF U.S. MANGO IMPORTS, 1995–1999

| Year | Metric tons | Value (in millions) |
|------------|-------------|---------------------|
| 1995 | 141,673 | \$121.01 |
| 1996 | 171,349 | 103.81 |
| 1997 | 186,530 | 119.07 |
| 1998 | 197,587 | 132.43 |
| 1999 | 218,941 | 142.99 |

Source: USDA, National Agricultural Statistics Service.

Mexico is the source of most U.S. mango imports, supplying between 75 percent and 85 percent in each of the 5 years between 1995 and 1999. Other major sources are Brazil, Ecuador, and Peru.

U.S. production of mangoes has primarily been in southern Florida, with a smaller quantity grown in Hawaii and a negligible amount produced in California. According to the 1997 Census of Agriculture, there were 218 mango farms in Florida, 171 in Hawaii, and 2 in California. The total domestic harvest that year was about 2,829 metric tons, of which about 97 percent was produced in Florida and about 3 percent produced in Hawaii. There are no U.S. mango exports.

Florida's mango producers suffered a severe setback in 1992, when Hurricane

Andrew destroyed many of the trees. According to the Florida Agricultural Statistics Service, bearing acres fell from 2,500 in 1992 to 1,400 in 1993. Yields have also declined sharply, from 160 bushels per acre in 1992 to 71 bushels per acre in 1997, due in part to bloom and disease problems at fruit set. Consequently, the value of Florida's mango production in 1997, \$1.45 million, was only one-third of the value of production in 1992, \$4.28 million.

The Florida Agricultural Statistics Service has not reported on mango production since 1997, a reflection of the industry's decline. Little of the State's crop now enters the national market to compete with fresh fruit imports. Most of the production is either consumed fresh within Florida or is processed into chutney or other products.

The quantity of mangoes expected to be imported from Guimaras Island is not known. In 1993, about 3,000 metric tons were reportedly produced there. If all of the island's 1993 production were exported to the United States, it would represent an amount similar to what was harvested domestically in 1997 (the most recent year for which U.S. production data are available). However, given the large quantity of mangoes imported from Mexico and other countries, 3,000 metric tons represent only about 1.6 percent of what the U.S. supply was in 1997, and an even smaller proportion of today's supply; between 1997 and 1999, U.S. mango imports increased by more than 17 percent.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. Whether affected entities may be considered small depends on their annual gross receipts. Annual receipts of \$500,000 or less is the small entity criterion set by the Small Business Administration for establishments primarily engaged in "other noncitrus fruit farming" (NAICS code 111339). Most, if not all, mango producers in the United States are small entities.

Conclusion

U.S. mango imports dwarf domestic production. Mango imports during the late 1990's expanded annually by amounts several times greater than the quantity likely to be imported from Guimaras Island. It is reasonable to assume that the growth in U.S. mango imports will continue, with Guimaras Island but one more foreign source. We do not expect that the economic effects of this proposed rule on U.S. entities, large or small, would be significant.

The proposed importation of mangoes from Guimaras Island is not expected to significantly affect U.S. mango producers. The amount imported will be very small compared to current import levels. Moreover, much of Florida's harvest (the source of 97 percent of domestic production in 1997) is consumed within that State or is processed into chutney and other products; these markets are unlikely to be affected by the availability of an additional source of imported fresh mangoes.

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 mangoes to be imported into the United States from the Philippines. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the mangoes are in foreign commerce. Mangoes 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. 93-131-1. Please send a copy of your comments to: (1) Docket No. 93-131-1, 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.

This proposed rule would amend the regulations governing the importation of fruits and vegetables to provide for the importation into the United States of mangoes grown on Guimaras Island in the Philippines under conditions designed to prevent the introduction into the United States of plant pests. The proposed program for the importation of mangoes from Guimaras Island would require the use of box marking to indicate the origin of the fruit, phytosanitary certificates to confirm that the fruit has been grown and treated in accordance with the conditions set forth in the regulations, and a trust fund agreement between the RPDA and APHIS to cover the Agency's participation in the treatment and inspection activities in the Philippines that would be required for the importation of mangoes.

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 hour per response.

Respondents: Philippine plant protection officials; mango producers and packinghouses on Guimaras Island, Philippines.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 40.

Estimated total annual burden on respondents: 40 hours.

Copies of this information collection can be obtained from Mrs. Celeste

Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant pests and diseases, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend title 7, chapter III, of the Code of Federal Regulations as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: Title IV, Pub. L. 106-224, 114 Stat. 438, 7 U.S.C. 7701-7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through [date], has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: Title IV, Pub. L. 106-224, 114 Stat. 438, 7 U.S.C. 7701-7772; 7 U.S.C. 450; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. A new § 319.56-2ii would be added to read as follows:

§ 319.56-2ii Administrative instructions: conditions governing the entry of mangoes from the Philippines.

Mangoes (fruit) (*Mangifera indica*) may be imported into the United States from the Philippines only under the following conditions:

(a) *Limitation of origin.* The mangoes must have been grown on the island of Guimaras, which the Administrator has determined meets the criteria set forth in § 319.56-2(e)(4) and § 319.56-2(f)

with regard to the mango seed weevil (*Sternonchetus mangiferae*).

(b) *Treatment.* The mangoes must be subjected to vapor heat treatment for fruit flies of the genus *Bactrocera* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. The treatment must be conducted in the Philippines under the supervision of an inspector.

(c) *APHIS inspection.* Mangoes from the Philippines are subject to inspection under the direction of an inspector, either in the Philippines or at the port of first arrival in the United States. Mangoes inspected in the Philippines are subject to reinspection at the port of first arrival in the United States as provided in § 319.56-6.

(d) *Labeling.* Each box of mangoes must be clearly labeled in accordance with § 319.56-2(g).

(e) *Phytosanitary certificate.* Each shipment of mangoes must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains additional declarations stating that the mangoes were grown on the island of Guimaras and have been treated for fruit flies of the genus *Bactrocera* in accordance with the Plant Protection and Quarantine Treatment Manual.

(f) *Trust Fund Agreement.* Mangoes that are treated or inspected in the Philippines may be imported into the United States only if the Republic of the Philippines Department of Agriculture (RPDA) has entered into a trust fund agreement with APHIS. That agreement requires the RPDA to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection services in the Philippines during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement requires the RPDA to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the RPDA to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more mangoes will be treated or inspected in the Philippines. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the RPDA or held on

account until needed, at the RPDA's option.

(g) *Department not responsible for damage.* The treatments for mangoes prescribed in the Plant Protection and Quarantine Treatment Manual are judged from experimental tests to be safe. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment.

Done in Washington, DC, this 16th day of January 2001.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01-1655 Filed 1-19-01; 8:45 am]

BILLING CODE 3410-34-U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 1

[Docket No. 99-087-2]

Licensing and Inspection Requirements for Dealers of Dogs Intended for Hunting, Breeding, or Security Purposes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule to amend the Animal Welfare regulations to reflect our policy of regulating wholesale dealers of dogs intended for hunting, breeding, or security purposes. This action will allow interested persons additional time to prepare and submit comments.

DATES: We invite you to comment on Docket No. 99-087-1. We will consider all comments that we receive by April 3, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 99-087-1, 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. 99-087-1.

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