

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–2015–0053]

RIN 0579–AE22

Importation of Fresh Raspberry Fruit From Morocco Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh raspberry fruit from Morocco into the continental United States. As a condition of entry, the raspberries would have to be produced under a systems approach to mitigate for the fungus *Monilinia fructigena* and would have to be inspected prior to exportation from Morocco and found free of this pest. The raspberries would have to be imported in commercial consignments only, produced at registered places of production, and field inspected for signs of *M. fructigena* infection no more than 30 days prior to harvest in registered packinghouses. The raspberries would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that the conditions for importation have been met. Raspberry consignments would be subject to further inspection at the port of entry into the continental United States. This action would allow the importation of raspberries from Morocco while continuing to protect against the introduction of plant pests into the United States.

DATES: We will consider all comments that we receive on or before October 25, 2016.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0053>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0053, 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-2015-0053> 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. Claudia Ferguson, Senior Regulatory Policy Specialist, Imports, Regulations, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–75, 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 Morocco has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh raspberry fruit from Morocco to be imported into the continental United States.

As part of our evaluation of Morocco’s request, we prepared a pathway initiated pest risk assessment (PRA), titled “Importation of Fresh Fruit of Raspberry (*Rubus idaeus* L.) into the Continental United States from Morocco” (February 2013). The PRA evaluated the risks associated with the importation of raspberries into the continental United States from Morocco.

The PRA identified one pest of quarantine significance present in

Morocco that could be introduced into the United States through the importation of raspberries. According to our PRA, this pest, a fungus (*Monilinia fructigena* Honey ex Whetzel), is rated as high risk potential. Pests with high pest risk potential generally require measures in addition to inspection at the port of entry to mitigate risk.

APHIS prepared a risk management document (RMD) for the importation of fresh raspberry fruit from Morocco that identifies a systems approach of specific mitigation measures against the quarantine pest and concludes that those measures, along with the general requirements for the importation of fruits and vegetable, will be sufficient to prevent the introduction of the pest into the continental United States. Copies of the PRA and RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the [Regulations.gov](http://www.Regulations.gov) Web site (see **ADDRESSES** above for instructions for accessing [Regulations.gov](http://www.Regulations.gov)).

Based on the recommendations of the RMD, we are proposing to allow the importation of raspberries from Morocco into the continental United States only if they are produced in accordance with a systems approach. The systems approach we are proposing would be added to the regulations in a new § 319.56–76. The proposed measures are described below.

General Requirements

Paragraph (a) of proposed § 319.56–76 would set out general requirements for the NPPO of Morocco and for growers producing fresh raspberries for export to the continental United States.

Paragraph (a)(1) of proposed § 319.56–76 would require the NPPO of Morocco to provide an operational workplan to APHIS that details the activities that the NPPO would, subject to APHIS’ approval of the workplan, carry out to meet the requirements of proposed § 319.56–76. An operational workplan is an agreement developed 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 be carried out to comply with our regulations governing the importation of a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and

guidance for the day-to-day operations of specific import/export programs. Operational 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 an operational workplan to be developed.

Paragraph (a)(2) of proposed § 319.56–76 would state that raspberries from Moroccan can be imported in commercial consignments only. Produce grown commercially is less likely to be infested with plant pests than noncommercial shipments.

Noncommercial shipments 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. 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.

Places of Production Requirements

Paragraph (b)(1) would require raspberries to be grown at a place of production that is registered with the NPPO of Morocco. All production sites participating in the raspberry export program would be required to register with the NPPO of Morocco. Registering places of production would allow APHIS and the NPPO of Morocco to trace back consignments of raspberries to the orchard of origin if a pest or disease of concern is detected after harvest.

M. fructigena is the most common cause of fruit rot in the fruit orchards in Europe and Asia, causing characteristic brown rot symptoms that can easily be identified during visual inspections. Therefore, proposed paragraph (b)(2) would require that, no more than 30 days prior to harvest, raspberries be inspected in the field by the NPPO of Morocco for signs of *M. fructigena* infection. If the fungal disease is detected, the NPPO of Morocco would have to notify APHIS, at which point APHIS will prohibit the importation of raspberries into the continental United States from the place of production for the remainder of the season. The place of production may resume shipments of raspberries to the United States in the next growing season if an investigation

is conducted and APHIS and the NPPO of Morocco agree that appropriate remedial actions have been taken.

Packinghouse Requirement

Paragraph (c)(1) of proposed § 319.56–76 would require that raspberries be packed in packinghouses that are registered with the NPPO of Morocco. Paragraph (c)(2) would state that the detection of *M. fructigena* infection at a packinghouse may result in the suspension of the packinghouse until an investigation is conducted and APHIS and the NPPO of Morocco agree to appropriate remedial measures.

Phytosanitary Certificate

The NPPO of Morocco would be responsible for export certification, inspection, and issuance of a phytosanitary certificate. Paragraph (d) of proposed § 319.56–76 would require each consignment of raspberries imported from Morocco into the continental United States to be accompanied by a phytosanitary certificate issued by the NPPO of Morocco with an additional declaration stating that the requirements of § 319.56–76 have been met and the consignment has been inspected and found free of *M. fructigena*.

Under the general conditions for the importation of fruits and vegetables in § 319.56–3, each consignment of raspberries would be subject to further inspection at the port of entry into the United States.

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*).

The proposed rule would allow importation into the continental United States of fresh raspberries (*Rubus idaeus* L.) from Morocco under certain phytosanitary restrictions. Morocco produces around 4,000 metric tons (MT) of fresh raspberries per year. Between 2012 and 2014, Morocco exported a yearly average of about 3,650 MT of raspberries, mostly to Europe due to proximity and lower shipping costs.

Morocco expects to export between 200 and 500 MT of fresh raspberries to the United States annually. At \$1,580 per MT, the estimated value of these imports would be between \$316,000 and \$790,000.

The majority of U.S. raspberry farms are in three States: California, Oregon, and Washington. They are classified within the North American Industry Classification System (NAICS) under “Berry except Strawberry Farming” (NAICS 111334). For this industry classification, a business is considered to be a small entity if its annual receipts are not more than \$750,000. The average 2012 market value of fruit crops sold by farms in this category was less than \$135,000. We infer that most fresh raspberry production is by small entities.

In 2014, U.S. fresh raspberry production totaled 55,130 MT. Annual imports from Morocco of between 200 and 500 MT would be the equivalent of between 0.4 and 0.9 percent of U.S. fresh raspberry production.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action is not expected to affect the economy of the United States or to negatively affect producers of raspberries in the United States.

Executive Order 12988

This proposed rule would allow fresh raspberry fruit to be imported into the continental United States from Morocco under a systems approach. If this proposed rule is adopted, State and local laws and regulations regarding raspberries 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.*), reporting and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send comments on the Information Collection Request (ICR) to OMB’s

Office of Information and Regulatory Affairs via email to oir_submissions@omb.eop.gov, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2015-0053. Please send a copy of your comments to APHIS using one of the methods described under **ADDRESSES** at the beginning of this document.

This proposed rule would amend the fruits and vegetables regulations to allow the importation of fresh raspberry fruit from Morocco into the continental United States. As a condition of entry, the raspberries would have to be produced under a systems approach employing a combination of mitigation measures for one quarantine pest and would have to be inspected prior to exportation from Morocco and found free of this pest. The raspberries would have to be imported in commercial consignments and accompanied by a phytosanitary certificate with an additional declaration stating that the conditions for importation have been met.

Implementing this rulemaking would require additional information collection activities, such as production site and packinghouse registration, inspection, operational workplan, and the completion of 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 0.667 hours per response.

Respondents: Foreign business and the NPPO of Morocco.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 102.6.

Estimated annual number of responses: 513.

Estimated total annual burden on respondents: 342 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.)

A copy of the information collection may be viewed on the *Regulations.gov* Web site or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Copies can also be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

APHIS 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 Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

Lists 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 are proposing 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 319.56-76 is added to read as follows:

§ 319.56-76 Fresh raspberries from Morocco.

Fresh fruit of raspberry (*Rubus idaeus* L.) may be imported into the continental United States from Morocco only under the conditions listed in this section. These conditions are designed to

prevent the introduction of the fungus *Monilinia fructigena* Honey ex Whetzel.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of Morocco must develop an operational workplan, subject to APHIS approval, that details the activities that the NPPO of Morocco would carry out to meet the requirements of this section.

(2) The raspberries may be imported in commercial consignments only.

(b) *Places of production requirements.*

(1) Raspberry fruit must be grown at a place of production that is registered with the NPPO of Morocco.

(2) During the growing season, raspberries must be inspected in the field by the NPPO of Morocco for signs of *M. fructigena* infection no more than 30 days prior to harvest. If the fungal disease is detected, the NPPO of Morocco must notify APHIS. APHIS will prohibit the importation of raspberries from Morocco into the continental United States from the place of production for the remainder of the growing season. The exportation of raspberries from the rejected place of production may resume in the next growing season if an investigation is conducted and APHIS and the NPPO of Morocco agree that appropriate remedial actions have been taken.

(c) *Packinghouse requirements.* (1) Raspberries must be packed in packinghouses that are registered with the NPPO of Morocco.

(2) Detection of *M. fructigena* infection at a packinghouse may result in the suspension of the packinghouse until an investigation is conducted and APHIS and the NPPO of Morocco agree to appropriate remedial measures.

(d) *Phytosanitary certificate.* Each consignment of raspberries must be accompanied by a phytosanitary certificate issued by the NPPO of Morocco with an additional declaration stating that the conditions of this section have been met, and that the consignment has been inspected prior to export from Morocco and found free of *M. fructigena*.

Done in Washington, DC, this 22nd day of August 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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