

APHIS' Proposed Quarantine 56 Revision

In accordance with the Plant Protection Act (7 U.S. Code 7701 et seq.), the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the spread of plant pests into or through the United States. This authority includes regulating the importation of fruits and vegetables. The Secretary has delegated this authority to the Administrator of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS).

Using this authority, APHIS has proposed a rule to revise and reorganize its regulations pertaining to the importation of fruits and vegetables, otherwise known as its Q56 regulations. The rule would consolidate into one place the requirements of general applicability, eliminate redundant and outdated requirements, update terms, update the regulations that apply to importations of fruits and vegetables into U.S. territories, and make various editorial and nonsubstantive changes.

APHIS is also proposing to make substantive changes to the regulations, including:

- Establishing a framework whereby APHIS may authorize certain imports without rulemaking;
- Establishing a similar framework for the approval of pest-free areas without rulemaking;
- Eliminating the listing of specific commodities that may be imported subject to certain types of risk-management measures; and
- Providing for the issuance of special-use permits for fruits and vegetables.

All of these changes would simplify and expedite the APHIS process for approving new imports and pest-free areas while continuing to allow for public participation in the rulemaking process. The changes proposed in the rule would not alter which fruits and vegetables are eligible for importation or how the risks associated with those commodities are evaluated or mitigated. The new rule would only make more timely the approval of fruits and vegetables that are safe for importation into the United States.

Proposed Rule

Nonsubstantive Changes

Most of the proposed revisions to the Q56 regulations are intended to make them easier to understand. The following are types of nonsubstantive changes APHIS proposes to make to the Q56 regulations:

- **Consolidate Requirements of General Applicability**—APHIS is proposing to consolidate all requirements of general applicability into one section. For example, instructions about permits that are required, ports-of-entry that can be used, charges for APHIS services, and other general requirements for importing fruits and vegetables would be located at the beginning of the Q56 regulations.
- **Remove Redundant and Outdated Requirements**—APHIS proposes to remove sections of the Q56 regulations that are redundant with other regulations. An example of this type of change is the proposed removal of treatment schedules for imported fruits and vegetables. Because these treatment schedules and other treatment-related information are already available in another section of the Code of Federal Regulations (CFR), removing them from the Q56 regulations will improve the clarity of import requirements.
- **Update Terms**—APHIS is proposing to remove outdated terms as well as add several new definitions to the Q56 regulations. For example, APHIS is proposing to remove the definition for Deputy Administrator because references to that official would be changed to refer to the Administrator under this proposal. As a result, we are also proposing to add a definition for Administrator.
- **Update Regulations to the Territories**—The Q56 regulations generally apply to fruits and vegetables imported into any U.S. State, including U.S. territories and possessions. In some instances, the regulations provide different conditions for the importation of fruits and vegetables into territories and possessions than the conditions required for imports to U.S. States. APHIS is proposing to consolidate all of the import requirements for territories and possessions into one section. In conjunction with those changes, APHIS is also proposing to amend

requirements to update place names and changes in political associations and to update import conditions based on changes in pest prevalence in exporting countries.

Substantive Changes

Prior to 1987, APHIS authorized the importation of a fruit or vegetable by simply issuing a permit once the agency was satisfied that the relevant criteria in the regulations had been met. These permits were issued without prior public notice, without rulemaking, and without specifically listing the approved commodities in the regulations. In 1987, in an effort to make the process more transparent, APHIS began approving new imports of fruits and vegetables through formal rulemaking.

This rulemaking process for approving fruit and vegetable imports requires that APHIS conduct a pest-risk analysis for each import request. The risk analysis serves as the primary basis for a proposed rule, which is published in the *Federal Register* for public comment. The public comments are considered, and if appropriate, a final rule to authorize the imports is prepared.

APHIS estimates that it takes a minimum of 18 months to evaluate and approve new import requests under this rulemaking-based system. In reality, the process typically takes 2 to 3 years and longer in some cases. With international trade in fruits and vegetables increasing steadily, maintaining the current process will make it difficult to keep pace with the volume of import requests. Therefore, APHIS is proposing to establish criteria that would allow for faster, more efficient approval of certain fruits and vegetables for importation into the United States, while providing the same level of protection against foreign pests and diseases and the same level of public participation in the rulemaking process.

APHIS is proposing a new “notice-based process” that would still require that a pest risk analysis be conducted for new fruits or vegetables, just as in the rulemaking-based process. However, if the risk analysis shows that the commodity’s risk can be sufficiently mitigated by one or more of four designated phytosanitary measures, the commodity will be eligible for a more streamlined approval process. Under the streamlined process, the pest-risk analysis will be published in the *Federal Register* for public comment for 60 days. Barring substantive comments that disprove the findings of the pest-risk analysis, a notice will be published in the *Federal Register* to announce that APHIS will begin issuing import permits for the commodity.

APHIS is similarly proposing to establish criteria that, if met, would allow us to be more responsive in recognizing changes in the pest-free status of

foreign areas. APHIS currently recognizes changes in the pest-free status of countries via rulemaking. Given the time it takes to propose a change to the regulations, accept comments on the proposal, and publish a final rule, the regulations often do not reflect the actual pest status of a particular area. APHIS is proposing to move to a notice-based process for amending pest-free status, as well.

If the notice-based processes are adopted for use by APHIS, any future commodities approved under this approach would no longer be listed individually in the regulations. Additionally, any commodities that are already approved for importation because they are subject to one or more of the four designated phytosanitary measures would not be listed. However, APHIS would specifically list in the CFR any commodities that are eligible for import under mitigation measures other than one of the four designated phytosanitary measures.

Finally, APHIS is proposing to add new provisions to the regulations that would authorize the issuance of special-use permits for the importation of small lots of fruits or vegetables that are otherwise prohibited under the regulations. These permits would provide for the importation of fruits and vegetables for special events, such as trade shows, and for scientific research. In each case, such imports would be allowed only under strict conditions approved by the APHIS Administrator, to address the particular risk posed by the specific imported fruit or vegetable.

How Interested Parties Can Submit Comments

If you would like to comment on the proposed amendment, please send an original and three copies by postal mail or commercial delivery to Docket No. APHIS–2005–0106, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. If you wish to send your comments using the Internet, go to the Federal eRulemaking portal at <http://www.regulations.gov> and, in the “Search Regulations and Federal Actions” box, select “Animal and Plant Health Inspection Service” from the agency drop-down menu; then click on “Submit.” In the Docket ID column, select APHIS–2005–0106 to submit or view public comments and to view supporting and related materials available electronically.

APHIS will also be hosting a series of public hearings to gather feedback from interested parties in the following locations:

- Seattle, Wash., Tuesday, May 23, at the Seattle Renaissance Hotel, 515 Madison St., from 9 a.m. to 1 p.m.
- Los Angeles, Calif., Wednesday, May 24, at The Westin Los Angeles Airport, 5400 West Century Blvd., from 1 p.m. to 5 p.m.

- Miami, Fla., Friday, May 26, at the Hilton Miami Airport, 5101 Blue Lagoon Drive, from 9 a.m. to 1 p.m.
- Washington, D.C., Tuesday, June 20, at USDA's Jamie L. Whitten Building, 1400 Independence Ave., S.W., from 9 a.m. to 1 p.m.

Onsite registration will take place 30 minutes prior to the scheduled start of each meeting. Persons wishing to speak at one or all of the public meetings may register in advance by phone or e-mail. To register by phone, leave a reservation message at the regulatory analysis and development voice mail box at (301) 734-8138. Please provide your name and organization along with the location of the hearings you wish to attend. To register by e-mail, please send the same information described above to <ppq.public.hearings@aphis.usda.gov>. Please write the location of the hearings you plan to attend in the subject line. Advance registration for the meetings must be received by 3 p.m., on the day prior to the meetings you wish to attend. Additional details, including parking information, can be found on the Internet at <<http://www.aphis.usda.gov/ppq/Q56>>.

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