

# 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-2009-0020]

RIN 0579-AD08

#### Removal of Varietal Restrictions on Apples from Japan

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations that allow the importation of Fuji variety apples from Japan to allow all varieties of *Malus domestica* apples into the United States under the same conditions as those for Fuji variety apples. We have determined that the risk of introducing insects and diseases through the pathway of all varieties of *M. domestica* fresh apples to be very low under the mitigation measures presently in place for Fuji apples. This action would allow all varieties of *M. domestica* apples from Japan to be imported into the United States while continuing to protect against the introduction of quarantine pests.

**DATES:** We will consider all comments that we receive on or before May 10, 2010.

**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=APHIS-2009-0020>) to submit or view comments and to view supporting and related materials available electronically.

- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2009-0020, 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-2009-0020.

**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:** Ms. Claudia Ferguson, M.S., Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 734-0754.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-50, 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 regulations in § 319.56-27 allow the importation of Fuji variety apples from Japan and the Republic of Korea if the apples are cold treated and then fumigated under the supervision of an Animal and Plant Health Inspection Service (APHIS) inspector for the peach fruit moth (*Carposina niponensis*), the yellow peach moth (*Conogethes punctiferalis*), and the fruit tree spider mite (*Tetranychus viennensis*), in accordance with 7 CFR part 305. The regulations also provide that the apples must be inspected upon completion of the cold treatment and fumigation, prior to export from Japan or the Republic of Korea, by an APHIS inspector and an inspector from the national plant protection organization (NPPO) of Japan or the Republic of Korea. The regulations also require the NPPO of the exporting country to enter into a trust fund agreement with APHIS in accordance with § 319.56-6 before APHIS will provide the services necessary for Fuji apples to be imported

into the United States from Japan or the Republic of Korea.

The Japanese NPPO has requested that APHIS amend the regulations in § 319.56-27 to allow any variety of *M. domestica* apples to be imported into the United States under the conditions currently prescribed for Fuji variety apples. As part of our evaluation of Japan's request, we prepared a commodity import evaluation document (CIED, February 2009). The CIED documents our review of the data collected from 1994 to 2008 regarding pest interceptions of Fuji apples from Japan and our evaluation of any additional potential risks that might be associated with the importation of all varieties of *M. domestica* apples into the United States from Japan based on the collected data. Copies of the CIED may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. The CIED may also be viewed on the Internet on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room).

As noted in the CIED, no pests of concern have been reported from the preclearance program in Japan, and no quarantine pests on commercial cargo of Fuji apples have been intercepted, reported, or identified at U.S. ports of entry from 1994 to 2008. Treatment of the apples and inspection of packed fruit prior to export from Japan by an APHIS inspector and an inspector from the Japanese NPPO during preclearance program activities both reduce the probability that pests will follow the pathway of fresh apples.

APHIS considers it highly unlikely that any other varieties of *M. domestica* apples would have a significantly different pest host status than Fuji variety apples given that the varieties are of the same species. The treatment and inspection required by the regulations have been effective in mitigating the pest risks at origin for Fuji variety apples. Consequently, APHIS has concluded that the risk of introducing insects and diseases through the pathway of all varieties of *M. domestica* fresh apples to be very low under the mitigation measures presently in place for Fuji apples.

Based on the evidence presented in the CIED, we have determined that the measures currently in place for Fuji

apples are effective and appropriate to manage pest risks associated with all varieties of *M. domestica* apples from Japan. Therefore, we propose to amend the regulations to allow the entry of all varieties of *M. domestica* apples from approved areas in Japan to the United States under the provisions of § 319.56-27.

Specifically, we would revise the introductory text of § 319.56-27 to indicate that any variety of *M. domestica* apples may be imported from Japan under the conditions in § 319.56-27. We would also remove specific references to Fuji variety apples in the section heading and the regulatory text and instead refer generally to apples. We would also revise the term “national plant protection agency” to read “national plant protection organization,” to make the regulations consistent with the International Glossary of Phytosanitary Terms (International Standards for Phytosanitary Measures No. 5).<sup>1</sup>

#### 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.

For this proposed rule we have prepared an economic analysis. The economic analysis supports our conclusion that allowing imports of all varieties of *M. domestica* apples from Japan into the United States would have minimal economic impact on U.S. entities, large or small. Although the Fuji apple is the most common variety grown in Japan, it constituted only 0.1 percent of U.S. apple imports in 2008. Allowing entry of other *M. domestica* varieties is expected to change the quantity of apple imports from Japan only minimally. The wide price differential between apples grown in Japan and in the United States suggests that apples imported from Japan are not a close substitute for the principal U.S.-grown apple varieties. 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.

The full economic analysis may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing 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.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### Executive Order 12988

This proposed rule would allow all varieties of *M. domestica* apples to be imported into the United States from Japan. If this proposed rule is adopted, State and local laws and regulations regarding all varieties of *M. domestica* apples 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

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.

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.

2. Section 319.56-27 is amended as follows:

a. By revising the section heading and the introductory text to read as set forth below.

b. In paragraphs (b) and (c), by removing the words “Fuji variety” each time they occur.

c. In paragraphs (b) and (c), by removing the word “agency” each time it occurs and adding the word “organization” in its place.

#### § 319.56-27 Apples from Japan and the Republic of Korea.

Any variety of *Malus domestica* apples may be imported into the United States from Japan, and Fuji variety apples may be imported into the United States from the Republic of Korea, only in accordance with this section and all other applicable provisions of this subpart.

\* \* \* \* \*

Done in Washington, DC, this 4<sup>th</sup> day of March 2010.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2010–5114 Filed 3–9–10; 12:46 pm]

**BILLING CODE 3410–34–S**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2005–21242; Directorate Identifier 2005–NE–09–AD]

**RIN 2120–AA64**

#### Airworthiness Directives; Turbomeca Arriel 1B, 1D, 1D1, and 1S1 Turboshaft Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) for certain Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines. That AD requires initial and repetitive relative position checks of the gas generator 2nd stage turbine blades on Turbomeca Arriel 1B (that incorporate Turbomeca Modification (mod) TU 148), Arriel 1D, 1D1, and 1S1 turboshaft engines that do not incorporate mod TU 347. That AD also requires initial and repetitive replacements of 2nd stage turbines on Arriel 1B, 1D, and 1D1 engines. This proposed AD would require lowering the repetitive threshold for relative position checks on Arriel 1B engines. This proposed AD would also require lowering the initial and repetitive thresholds for replacement of 2nd stage turbines on Arriel 1B, 1D, and 1D1 engines. This proposed AD results from reports of new cases of failures of 2nd stage turbine blades since we issued AD 2008–07–01. We are proposing this AD to prevent the failure of 2nd stage turbine blades, which could result in an uncommanded in-flight engine

<sup>1</sup> To view the glossary on the Internet, go to (<http://www.ippc.int/IPPC/En/default.jsp>) and click on the “Adopted ISPMs” link under the “Standards (ISPMs)” heading.