

# Rules and Regulations

Federal Register

Vol. 75, No. 204

Friday, October 22, 2010

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## 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:** Final rule.

**SUMMARY:** We are amending 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 associated with allowing other varieties of *M. domestica* apples from Japan into the United States is the same as that posed by Fuji variety apples. This rule allows 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:** Effective Date: October 22, 2010.

**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 nipponensis*), 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.

On March 10, 2010, we published in the **Federal Register** (75 FR 11071–11072, Docket No. APHIS-2009-0020) a proposal<sup>1</sup> to amend the regulations in § 319.56–27 by allowing all varieties of *Malus domestica* apples into the United States from Japan under the same treatment and inspection conditions required for Fuji variety apples from Japan. We prepared a commodity import evaluation document (CIED) as part of our evaluation of Japan's request to allow *M. domestica* varietal apples into the United States. Based on the evidence presented in the CIED, we determined that the measures currently in place for Fuji apples are adequate to manage pest risks associated with all varieties of *M. domestica* apples from Japan.

We solicited comments concerning the proposed rule for 60 days ending May 10, 2010. We received six comments by that date. They were from private citizens and from an association of horticultural producers. Four commenters supported the rule. The other two commenters opposed the

proposal to allow the importation of all varieties of *M. domestica* apples into the United States from Japan.

One commenter stated that allowing the importation of additional variety of apples from Japan would be unreasonable since Japan continues to restrict apples and cherries from the United States, requiring separate testing for treatment efficacy for each variety of those fruits without providing scientific evidence to justify their requirement. The commenter stated that the varietal testing requirements constitute a trade barrier and suggested that, if Japan is unwilling to allow additional varieties of apples and cherries to be exported from the United States, then we should not allow additional apple varieties to be imported from Japan.

The second commenter asked why we thought the importation of additional varieties of apples from Japan was necessary. Specifically, the commenter wanted to know whether the demand for apples had increased enough to necessitate the importation of additional apple varieties from Japan, which could increase the potential for importing pests into the United States.

We have evaluated the potential pest risk associated with the importations of additional apple varieties from Japan. Based on our evaluation, we have determined that the measures currently in place for Fuji apples are adequate to manage pest risks associated with all varieties of *M. domestica* apples from Japan. In any case, the mitigations currently in place for Fuji apples are sufficient to mitigate the risk of importing pests into the United States. Therefore, it is appropriate to grant Japan's request to allow the importation of additional apple varieties into the United States.

Any increase in the quantity of apples from Japan because of importation of these other, scarcely grown *M. domestica* varieties is expected to be insignificant. We will continue to work with the NPPO of Japan to resolve technical barriers to exporting U.S. fruits.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

#### Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made

<sup>1</sup> To view the proposed rule, the CIED, and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0020>.

effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for *M. domestic* apple varieties from Japan is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This final 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 on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Allowing imports of all varieties of *M. domestica* apples from Japan into the United States is expected to 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 will not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12988**

This final rule allows all varieties of *M. domestica* apples to be imported into the United States from Japan. State and local laws and regulations regarding the importation of *M. domestica* apples under this rule will be preempted while the fruit is in foreign commerce. Fresh

fruits are generally imported for immediate distribution and sale to the consuming public, and 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. 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 final 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 are amending 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 18th day of October 2010.

**Kevin Shea,**

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

[FR Doc. 2010–26750 Filed 10–21–10; 8:45 am]

**BILLING CODE 3410–34–P**

#### **FEDERAL HOUSING FINANCE AGENCY**

##### **12 CFR Part 1203**

#### **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

##### **Office of Federal Housing Enterprise Oversight**

##### **12 CFR Part 1705**

**RIN 2590-AA29**

##### **Equal Access to Justice Act Implementation**

**AGENCY:** Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing a final regulation that establishes procedures for the submission and consideration of applications for awards of fees and other expenses by prevailing parties in adjudications against FHFA.

**DATES:** The final regulation is effective November 22, 2010.

##### **FOR FURTHER INFORMATION CONTACT:**

Janice A. Kullman, Associate General Counsel, telephone (202) 414–8970 (not a toll-free number); Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

##### **SUPPLEMENTARY INFORMATION:**

###### **I. Background**

*A. Establishment of the Federal Housing Finance Agency*

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) and the Federal Home Loan Bank Act (12 U.S.C. 1421 *et seq.*) to establish FHFA as an independent agency of the Federal Government.<sup>1</sup> HERA transferred the supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), and the Federal Home Loan Banks (collectively, regulated entities), from the Office of Federal Housing Enterprise Oversight

<sup>1</sup> See Division A, titled the “Federal Housing Finance Regulatory Reform Act of 2008,” Title I, Section 1101 of HERA.