Rules and Regulations

Federal Register
Vol. 64, No. 12
Wednesday, January 20, 1999

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 97–107–3]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to declare certain areas in the Mexican States of Baja California Sur, Chihuahua, and Sonora as fruit-fly-free areas. We are taking this action based on our determination that these areas meet our criteria for pest-free areas with regard to fruit flies. This action relieves restrictions on the importation of certain fruits from those areas while continuing to prevent the introduction of plant pests into the United States.

EFFECTIVE DATE: January 20, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; or E-mail: Ronald.C.Campbell@usda.gov.

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 fruit flies and other injurious plant pests that are new to or not widely distributed within and throughout the United States.

The regulations at § 319.56–2 (e)(4) provide for the importation of certain fruits and vegetables from foreign areas that are determined to be free of certain injurious plant pests under the criteria in § 319.56–2(f). Paragraph (h) of § 319.56–2 lists areas in Mexico that meet the pest-free criteria of § 319.56–2(e) and (f) with regard to certain fruit flies and includes a list of fruits that may be imported from those areas without treatment for those fruit flies.

On June 5, 1998, we published in the **Federal Register** (63 FR 30646–30655, Docket No. 97–107–1) a proposal to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States and to amend § 319.56–2(h) of the regulations to declare additional areas in Mexico as free of certain fruit flies. We proposed these actions at the request of various importers and foreign ministries of agriculture and after conducting pest risk analyses that indicated that these actions could be taken without significant risk of introducing plant pests into the United States.

We solicited comments concerning our proposal for 60 days ending August 4, 1998. We received six comments by that date. They were from representatives of industry and a State government. Four commenters supported the proposed rule in its entirety; one commenter pointed out an inadvertent omission from the proposed rule; and one commenter had reservations about specific provisions of the proposed rule. One of the concerns expressed by the commenter having reservations pertained to the proposed amendment of § 319.56–2(h) to declare additional areas in Mexico as free of fruit flies. Because we believed that this issue warranted further review and consideration, we published a final rule on November 30, 1998 (63 FR 65650–65657, Docket No. 97–107–2), concerning all portions of our June 5, 1998, proposed rule except the portion concerning additional fruit-fly-free areas in Mexico.

We have now completed our review of the data concerning the proposed fruit-fly-free areas in Mexico and are proceeding with a final rule on that issue. Our discussion of the two comments received pertaining to this issue follows:

Comment: The expansion of the fruit-fly-free zone in Mexico is premature. Since May of this year, 30 Mexican fruit flies have been trapped in Tijuana, and, once again, a Mediterranean fruit fly population is building in the States of Chiapas and Tabasco. Mexico has not provided any information on its plans to combat these populations. Further, Mexican authorities have put the sterile Mexican fruit fly release program on hold for lack of an appropriate release site.

In addition, as of July 1997, the Animal and Plant Health Inspection Service (APHIS) did not consider Chihuahua free of fruit flies, and agency officials said that they would not do so until a pest risk assessment was performed for each export commodity under consideration. Have these assessments been submitted to and reviewed by APHIS staff?

Response: The three locations—Tijuana, Chiapas, and Tabasco—mentioned by the commenter as being associated with fruit flies are separated by long distances or natural boundaries, such as mountains and rivers, from the municipalities listed in the proposed rule for recognition as being free of fruit flies. Further, Mexico's sterile Mexican fruit fly release program applies to the Tijuana area only and, therefore, is not a relevant issue for consideration in relation to the fruit-fly-free areas in Baja California Sur, Chihuahua, and Sonora that were proposed.

Pest risk assessments have been performed for each export commodity (i.e., apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines) affected by declaring the municipalities of Bachiniva, Casas Grandes, Cuahutemec, Guerrero, Namiquipa, and Nuevo Casas Grandes in the State of Chihuahua as fruit-fly-free areas. In addition, all of the municipalities declared in the proposed rule to be fruit-fly-free areas in Mexico, including those municipalities in the State of Chihuahua, provided APHIS with trapping data and information on measures employed to prevent the establishment of fruit flies. This information demonstrates that these areas meet the criteria in § 319.56–2 (e) and (f).[1]

Comment: The municipality of Plutarco Elías Calles should have been

[1] Information on these pest risk assessments and the other data referenced above may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT** or by calling the Plant Protection and Quarantine fax vault at (301) 734–3560.

included in the list of municipalities in the State of Sonora proposed as fruit-fly-free areas.

Response: We agree. In the proposed rule, we neglected to correct an out-of-date reference to the municipality of Puerto Penasco in Sonora, Mexico. Puerto Penasco has been divided into two sections: Puerto Penasco and Plutarco Elías Calles. Accordingly, we are adding Plutarco Elías Calles to the list in § 319.56–2(h).

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the change discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made 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. 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 rule has been reviewed under Executive Order 12866. The 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 5 U.S.C. 603, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. In our proposed rule, we invited comments on the potential effects of the proposed actions. In particular, we requested information on the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. No comments were submitted. Based on the information we have, there is no basis to conclude that adoption of this rule will result in any significant economic impact on a substantial number of small entities.

Under the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and the Plant Quarantine Act (7 U.S.C. 151–165 and 167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests. We are amending the fruits and vegetables regulations to declare additional areas in Mexico as fruit-fly-free areas. With the addition of new fruit-fly-free areas in the Mexican States of Baja California Sur, Chihuahua, and Sonora, the importation into the United States of four types of fruit will be affected. These fruits are apple, orange, peach, and tangerine. We project that increases in exports to the United States of those fruits would be as follows: Apples, 4,000 metric tons; oranges, 28,144 metric tons; peaches, 2,000 metric tons; and tangerines, 280 metric tons. Import levels of apricots, grapefruits, persimmons, and pomegranates—the other fruits eligible for importation into the United States from Mexico under § 319.56–2(h)—are not expected to be affected by this rule.

U.S. apple production in 1996 totaled 4,732,860 metric tons and was worth $1.84 billion. Projected additional imports from Mexico of 4,000 metric tons represent less than 0.1 percent of U.S. production. Further, the United States is a net exporter of apples, exporting more than three times as many apples as it imports.

U.S. orange production in 1996 totaled 10,634,920 metric tons and was worth $1.895 billion. Projected additional imports from Mexico of 28,144 metric tons represent less than 0.3 percent of U.S. production. In 1996, the quantity of oranges exported by the United States was 22 times greater than the quantity imported.

U.S. peach production in 1996 totaled 938,940 metric tons and was worth $378 million. Projected additional imports from Mexico of 2,000 metric tons represent about 0.2 percent of U.S. production. Further, the United States is a net exporter of peaches, exporting 1.7 times as many peaches as it imports.

U.S. tangerine production in 1996 totaled 315,700 metric tons and was worth $112 million. Projected additional imports from Mexico of 280 metric tons represent less than 0.1 percent of U.S. production. Further, the United States is a net exporter of tangerines, exporting six times as many tangerines as it imports.

In the case of each of these four fruits, the amount of projected additional exports to the United States due to the newly recognized fruit-fly-free areas is extremely small compared to U.S. production. Also, in each case, the United States is a net exporter of the fruit, reflecting excess supply. Impacts on costs or prices for U.S. producers and consumers are expected to be negligible. APHIS does not anticipate any adverse effects on small entities or the ability of U.S. entities to compete in domestic and export markets as a result of this rule.

Executive Order 12988

This rule reduces restrictions on the importation into the United States of apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines from specified fruit-fly-free areas of Mexico. State and local laws and regulations regarding the importation of those fruits imported under this rule are preempted while the fruits are in foreign commerce. Fresh fruits and vegetables 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

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 final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, 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. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.56–2, paragraph (h) is revised to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(h) The Administrator has determined that the following municipalities in Mexico meet the criteria of paragraphs (e) and (f) of this section with regard to the plant pests *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus:* Comondú,

Loreto, and Mulegé in the State of Baja California Sur; Bachiniva, Casas Grandes, Cuahutemoc, Guerrero, Namiquipa, and Nuevo Casas Grandes in the State of Chihuahua; and Altar, Atil, Bacum, Benito Juarez, Caborca, Cajeme, Carbo, Empalme, Etchojoa, Guaymas, Hermosillo, Huatabampo, Navajoa, Pitiquito, Plutarco Elías Calles, Puerto Penasco, San Luis Rio Colorado, San Miguel, and San Rio Muerto in the State of Sonora. Apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines may be imported from these areas without treatment for the pests named in this paragraph.

* * * * *

Done in Washington, DC, this 13th day of January 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–1225 Filed 1–19–99; 8:45 am]

BILLING CODE 3410–34–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300770; FRL–6049–8]

RIN 2070–AB78

Propiconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid in or on blueberries and raspberries. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on blueberries and raspberries. This regulation establishes a maximum permissible level for residues of propiconazole in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on December 31, 1999.

DATES: This regulation is effective January 20, 1999. Objections and requests for hearings must be received by EPA on or before March 22, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300770], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300770], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300770]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9362, e-mail: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408 and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for combined residues of the fungicide propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole, and its metabolite determined as 2,4-dichlorobenzoic acid, in or on blueberries and raspberries at 1.0 part per million (ppm). These tolerances will expire and are revoked on December 31, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will