

§ 319.56–2w Administrative instruction; conditions governing the entry of papayas from Costa Rica.

The Solo type of papaya may be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands from the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica, only under the following conditions:

(a) The papayas were grown and packed for shipment to the United States in the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica.

(b) Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the field where the papayas were grown were kept free of papayas that were $\frac{1}{2}$ or more ripe (more than $\frac{1}{4}$ of the shell surface yellow), and all culled and fallen fruits were removed from the field at least twice a week.

(c) When packed, the papayas were less than $\frac{1}{2}$ ripe (the shell surface was no more than $\frac{1}{4}$ yellow, surrounded by light green), and appeared to be free of all injurious insect pests.

(d) The papayas were packed in an enclosed container or under cover so as to prevent access by fruit flies and other injurious insect pests, and were not packed with any other fruit, including papayas not qualified for importation into the United States.

(e) All activities described in paragraphs (a) through (d) of this section were carried out under the general supervision and direction of plant health officials of the national Ministry of Agriculture.

(f) Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at a rate of 1 trap per hectare and were checked for fruit flies at least once weekly by plant health officials of the national Ministry of Agriculture. Fifty percent of the traps were of the McPhail type, and fifty percent of the traps were of the Jackson type. The national Ministry of Agriculture kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors upon request. The records were maintained for at least 1 year.

(g) All shipments must be accompanied by a phytosanitary certificate issued by the national Ministry of Agriculture stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

Done in Washington, DC, this 22nd day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25488 Filed 9–24–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319, 321, and 330

[Docket No. 97–010–2]

Foreign Potatoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations concerning imported plants and plant products to prohibit the importation of potato tubers from Bermuda and to prohibit the importation of potato plants from Newfoundland and a portion of Central Saanich, British Columbia, Canada. These changes appear necessary to prevent the introduction of foreign potato diseases and insect pests into the United States. We are also reorganizing and streamlining the regulations concerning the importation of potatoes into the United States. These changes remove unnecessary regulations and relieve restrictions that no longer appear warranted.

EFFECTIVE DATE: October 27, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange, Staff Officer, Import-Export Team, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236; (301)–734–6799; fax (301)–734–5786; or e-mail: jpdmanage@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations concerning the importation of foreign potato tubers have been contained in 7 CFR part 321, Restricted Entry Orders, Subpart—Foreign Potatoes (referred to below as the Foreign Potatoes regulations). The Foreign Potatoes regulations have allowed the importation of potato tubers from Bermuda and Canada (except for Newfoundland and a portion of South Saanich, British Columbia) without restriction. The Foreign Potatoes regulations also have contained provisions for importing potato tubers from other countries that are free of injurious potato diseases and insect pests that are new to or not widely

distributed throughout the United States. However, only Bermuda and parts of Canada have been considered free of injurious potato diseases and insect pests.

The regulations concerning the importation of foreign potato plants are contained in 7 CFR 319.37 through 319.37–14, Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products (referred to below as the Nursery Stock regulations). The Nursery Stock regulations prohibit the importation of potato plants from all parts of the world except Canada.

The regulations concerning the importation of most foreign fruits and vegetables are contained in 7 CFR 319.56 through 319.56–8, Subpart—Fruits and Vegetables (referred to below as the Fruits and Vegetables regulations). The Fruits and Vegetables regulations have referred readers to the Foreign Potatoes regulations for rules governing the importation of potatoes.

These regulations are intended to prevent the introduction of foreign plant diseases and insect pests into the United States.

On May 7, 1997, we published in the **Federal Register** (62 FR 24849–24851), Docket No. 97–010–1), a proposal to prohibit the importation of potato plants from Newfoundland and a portion of Central Saanich, British Columbia, Canada. We also proposed to prohibit the importation of potato tubers from Bermuda. These actions were intended to prevent the introduction of foreign potato diseases and insect pests into the United States. Further, we proposed to move the prohibitions on the importation of potato tubers from Bermuda, parts of Canada (Newfoundland and a portion of Central Saanich, British Columbia), and all other parts of the world from the Foreign Potatoes regulations to the Nursery Stock regulations. In conjunction with this change, we proposed to remove the Foreign Potatoes regulations from the Code of Federal Regulations, since the remainder of the regulatory text appeared to be unnecessary. We also proposed to amend the Fruits and Vegetables regulations to refer readers to the Nursery Stock regulations, rather than the Foreign Potatoes regulations, for rules governing the importation of potatoes. These actions were intended to consolidate the regulations for importing potatoes into one place and eliminate provisions that are not being used.

We also proposed to make an editorial change in the Federal Plant Pest regulations, contained in 7 CFR part 330.

We solicited comments concerning our proposal for 60 days ending July 7, 1997. We received two comments by that date. They were from representatives of a State government and State University students. Both comments fully supported the proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule, without change.

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.

This rule moves the prohibitions on importing potato tubers from part 321 to subpart 319.37, prohibits the importation of potato tubers from Bermuda, and prohibits the importation of potato plants from Newfoundland and a portion of Central Saanich, British Columbia, Canada. These actions are not expected to have any economic impact. There have been no requests to import potato tubers from Bermuda, no record of shipments of potato tubers from Bermuda, and Bermuda has no potato tuber production for export. Canada does not allow potato tubers or plants to move from Newfoundland or the portion of Central Saanich that is covered by this rule due to the presence

of potato wart disease and golden nematode. 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference,

Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 321

Imports, Plant diseases and pests, Potatoes, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly title 7, chapter III, is amended 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 § 319.37–2 paragraph (a), the table is amended by revising the entry for *Solanum* spp. (potato) to read as follows.

§ 319.37–2 Prohibited Articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
<p style="text-align: center;">* * *</p> <p><i>Solanum</i> spp. (potato) (tuber bearing species only—Section Tuberarium), including potato tubers.</p>	<p style="text-align: center;">* * *</p> <p>All except Canada (except Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road.</p>	<p style="text-align: center;">* * *</p> <p>Andean potato latent virus; Andean potato mottle virus; potato mop top virus; dulcamara mottle virus; tomato blackring virus; tobacco rattle virus; potato virus Y (tobacco vein necrosis strain); potato purple top wilt agent; potato marginal flavescence agent; potato purple top roll agent; potato witches broom agent; stolbur agent; parastolbur agent; potato leaflet stunt agent; potato spindle tuber viroid; arracacha virus B; potato yellowing virus.</p>
<p style="text-align: center;">* * *</p>	<p style="text-align: center;">* * *</p>	<p style="text-align: center;">* * *</p>

3. In § 319.56–2, footnote 1 and the reference to it are removed, footnote 2 and the reference to it are redesignated as footnote 1, and paragraph (c) is revised to read as follows:

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

* * *

(c) Fruits and vegetables grown in Canada may be imported into the United States without restriction under this subpart; *provided*, that potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road are prohibited

importation into the United States in accordance with § 319.37–2 of this part.
* * *

PART 321—[REMOVED]

Under the authority of 7 U.S.C. 136, 136a, 154, 159, and 162; 7 CFR, Chapter III, is amended by removing “Part 321—Restricted Entry Orders.”

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, and QUARRY PRODUCTS; GARBAGE

4. The authority citation for part 330 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd–150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.22, 2.80, and 371.2(c).

5. In § 330.300a, the words “South Saanich” are removed and the words “Central Saanich” are added in their place.

Done in Washington, DC, this 22nd day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV97–981–3 FIR]

Almonds Grown in California; Revision to Requirements Regarding Inedible Almonds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule revising the administrative rules and regulations of the California almond marketing order regarding inedible almonds. Under the terms of the order, handlers are required to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Handlers are then required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible to non-human consumption outlets. This rule allows alternative methods of determining handlers' inedible disposition obligations in such instances. It will add flexibility to the order's rules and regulations and will help ensure that the integrity of the quality control provisions is maintained.

EFFECTIVE DATE: October 27, 1997.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional

Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the “order.” The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule revises the administrative rules and regulations of the California almond order regarding inedible

almonds. Under the terms of the order, handlers are required to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Handlers are then required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible to non-human consumption outlets. The quantity of almonds required to be disposed of is the handler's inedible disposition obligation. However, there are times when an incoming inspection sample may not be drawn, may be lost, or the size of the sample drawn may be too small for an inedible weight to be determined. This rule provides handlers with the opportunity in such cases to substantiate to the Board the weight of almonds received, the edible and inedible kernel weights, and the adjusted kernel weight. Such information can often be obtained from an outgoing inspection certificate. The inedible disposition obligation may then be based on that information. If a handler is only able to substantiate the approximate weight of almonds received, an inedible disposition obligation of 10 percent of the weight of almonds received in that particular lot may be applied, upon agreement between Board staff and the handler. The appropriate weight received can often be obtained from a weighmaster's weight certificate. In adding these procedures to the text of the rules and regulations, this rule will add flexibility to the rules and regulations and will help ensure that the integrity of the quality control provisions of the order is maintained. This change was unanimously recommended by the Board.

Section 981.42(a) of the almond order requires handlers to obtain incoming inspection on almonds received from growers to determine the percent of inedible kernels in any variety. Handlers are required to report such inedible determination for each lot received to the Board. Inedible kernels are those kernels, pieces, or particles of kernels with any defect scored as serious damage (excluding the presence of web and frass), or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Grades of Shelled Almonds, or which have embedded dirt not easily removed by washing. Edible kernels are kernels, pieces, or particles of almond kernels that are not inedible. Section 981.42(a) also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to