

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-2007-0153]

RIN 0579-AC88

Importation of Eggplant From Israel

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow the importation of commercial shipments of fresh eggplant from Israel. As a condition of entry, the eggplant would be grown under a systems approach that would include requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse procedures. The eggplant would also be required to be accompanied by a phytosanitary certificate issued by the Israeli national plant protection organization with an additional declaration confirming that the eggplant had been produced in accordance with the proposed requirements. This action would allow for the importation of commercial consignments of fresh eggplant from Israel into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before January 12, 2009.

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-2007-0153> 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-2007-0153, 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-2007-0153.

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. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737-1231; (301) 734-8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-47, 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 Israeli national plant protection organization (NPPO) has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh eggplant (*Solanum melongena* L.) to be imported from Israel into the continental United States. As part of our evaluation of Israel’s request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The PRA, titled “Evidence-based, Pathway-Initiated Risk Assessment of the Importation of Fresh Eggplant, *Solanum melongena*, from Israel into Continental United States” (March 26,

2008), evaluates the risks associated with the importation of fresh eggplant into the continental United States (the lower 48 States and Alaska) from Israel.

The PRA and supporting documents identified six pests of quarantine significance present in Israel that could be introduced into the United States through the importation of fresh eggplant. These include the Mediterranean fruit fly (Medfly, *Ceratitidis capitata*); two moths, *Helicoverpa armigera* and *Spodoptera littoralis*; a mite, *Eutetranychus orientalis*; a mealybug, *Nipaecoccus viridis*; and a thrips, *Scirtothrips dorsalis*.

APHIS has determined that measures beyond standard port of arrival inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of fresh eggplant from Israel into the continental United States only if the eggplant is produced under a systems approach. The systems approach would require that the eggplant be grown in approved production sites in pest-exclusionary structures, would require trapping inside and outside the pest-exclusionary structures for Medfly, and would require packinghouse procedures designed to exclude all six quarantine pests. Consignments of eggplant from Israel would also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the eggplant had been produced in accordance with the proposed requirements. Only commercial consignments of eggplant would be allowed to be imported from Israel.

The mitigation measures in the proposed systems approach are discussed in greater detail below.

Approved Production Sites

The eggplant would have to be grown in pest-exclusionary structures in approved production sites in the Arava Valley of Israel by growers registered with the Israeli NPPO. The Israeli NPPO and APHIS would have to jointly approve of the production sites. The pest-exclusionary structures would have to be equipped with double self-closing doors to prevent inadvertent introduction of pests into the pest-exclusionary structures. In addition, any vents or openings in the pest-exclusionary structures (other than the

double self-closing doors) would have to be covered with screening 1.6 mm or smaller in order to prevent the entry of pests into the pest-exclusionary structure. The 1.6 mm maximum screening size is adequate to exclude all pests of quarantine significance named earlier in this docket except for the thrips species. However, even the thrips species is at least partially discouraged by the physical barrier of the 1.6 mm mesh and the resultant reduced velocity of wind currents upon which they are borne. In addition, because thrips are external feeders, they would most likely be detected during inspection of the pest-exclusionary structures for quarantine pests.

We would require that the pest-exclusionary structures be inspected periodically by the Israeli NPPO or its approved designee to ensure that sanitary procedures are employed to exclude plant pests and diseases and to verify that the screening is intact.

The pest-exclusionary structures would also have to be inspected monthly for the six quarantine pests listed earlier by the Israeli NPPO or its approved designee, beginning 2 months before harvest and continuing for the duration of the harvest. APHIS would have to be granted access in order to monitor or inspect the pest-exclusionary structures during this period as well. If, during these inspections, quarantine pests were found inside the pest-exclusionary structure, the Israeli NPPO would have to immediately prohibit that pest-exclusionary structure from exporting eggplants to the continental United States and notify APHIS of the action. The prohibition would remain in effect until the Israeli NPPO and APHIS agree that the risk has been mitigated.

Trapping for Medfly

Trapping for Medfly would be required both inside and outside the pest-exclusionary structures. Trapping would have to begin 2 months before harvest and continue for the duration of the harvest.

APHIS-approved traps, with an approved protein bait, would have to be placed inside the pest-exclusionary structures at a density of four traps per hectare, with a minimum of at least two traps per pest-exclusionary structure. The traps would have to be serviced at least once every 7 days. If a single Medfly was found in a trap inside a pest-exclusionary structure, the Israeli NPPO would have to immediately prohibit that pest-exclusionary structure from exporting eggplant to the United States and notify APHIS of the action. The prohibition would remain in effect until the Israeli NPPO and APHIS agree

that the risk has been mitigated. Measures we might use to mitigate the risk include delimiting the source of the infestation, increasing trap density, applying pesticide sprays, or other measures acceptable to APHIS to prevent further occurrences.

In order to reduce the pest pressure of Medfly outside the pest-exclusionary structures, no shade trees would be permitted within 10 meters of the entry door of the pest-exclusionary structures, and no fruit fly host plants would be permitted within 50 meters of the entry door of the pest-exclusionary structures. While trapping is being conducted, no fruit fly host material (such as fruit) would be allowed to be brought into the pest-exclusionary structures or discarded within 50 meters of the entry door of the pest-exclusionary structures. A treatment jointly approved by the Israeli NPPO and APHIS would have to be applied in the areas of the Arava Valley where fruit fly host material occurs in backyards, in order to reduce the Medfly population. This treatment would have to be applied for the duration of the eggplant harvest. Trapping for Medfly would have to be conducted by the Israeli NPPO or its approved designee throughout the year in the agricultural region along the Arava Highway 90 and in the residential area of Paran. These trapping records would have to be kept and made available to APHIS for review upon request.

Packinghouse Procedures

The eggplant would have to be packed within 24 hours of harvest in a pest-exclusionary packinghouse. While packing the eggplant for export to the continental United States, the packinghouse would only be allowed to accept eggplant from approved pest-exclusionary structures. As with the pest-exclusionary structures, no shade trees would be permitted within 10 meters of the entry door of the packinghouse, and no fruit fly host plants would be permitted within 50 meters of the entry door of the packinghouse. The eggplant would have to be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Packinghouse procedures would have to include culling of any visibly damaged, overripe, or infested eggplant.

The eggplant would have to be packed for shipment to the continental United States in either individual insect-proof cartons or boxes labeled with the specific place of origin or non-insect-proof cartons or boxes that are covered by insect-proof mesh or plastic

tarpaulins. Covered non-insect-proof cartons or boxes would have to be placed in shipping containers that have identification labels indicating the specific place of origin. Labeling the cartons or boxes and/or containers with the place of origin would facilitate traceback if necessary and help ensure that only shipments from approved pest-exclusionary structures are shipped to the continental United States. These safeguards would have to remain intact until the arrival of the eggplant in the continental United States or the consignment would not be allowed to enter the continental United States. These safeguards would prevent the eggplant from being infested with plant pests during departure from the approved pest-exclusionary structures until its arrival in the continental United States.

Commercial Consignments

Only commercial consignments of eggplant from Israel would be allowed to be imported into the United States. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Phytosanitary Certificate

To certify that the eggplant has been produced in accordance with the mitigations described in this document, we would require that each consignment of eggplant be accompanied by a phytosanitary certificate of inspection issued by the Israeli NPPO bearing an additional declaration that reads “The eggplant in this consignment has been grown in an approved production site and inspected and found free of the pests listed in 7 CFR 319.56–48.” These proposed provisions governing the importation of eggplant from Israel would be added to the regulations as a new § 319.56–48.

Executive Order 12866 and Regulatory Flexibility Act

This proposed 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.

We are proposing to allow the importation of commercial shipments of fresh eggplant from Israel. As a condition of entry, the eggplant would have to be grown under a systems approach that would include requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse

procedures. The eggplant would also be required to be accompanied by a phytosanitary certificate issued by the Israeli NPPO with an additional declaration confirming that the eggplant had been produced in accordance with the proposed requirements. This action would allow for the importation of commercial consignments of fresh eggplant from Israel into the United States while continuing to provide protection against the introduction of quarantine pests.

Eggplant, which is native to India and Pakistan, is a warm-season crop that is sensitive to cool temperatures. World production of eggplant is highly concentrated, with 83 percent of output by the top two producers, China (55 percent) and India (28 percent), and

with the United States a distant 20th in production.

According to the 2002 Census of Agriculture, there were 50,000 farms in 47 States that may produce, among other vegetables, some eggplant, but only about 4 percent of the 50,000 farms reported harvesting eggplant. In all, about 7,000 acres are devoted to eggplant production in the United States, with 72 percent of eggplant production taking place in 11 counties in 4 States: California, Florida, Georgia, and New Jersey (table 1). In addition, 63 percent of the number of acres planted in eggplant in the United States are in these four States. Production at a much lower level takes place in other States including Hawaii, Michigan, and New York.

TABLE 1—2006 STATE-LEVEL PRODUCTION OF EGGPLANTS IN THE UNITED STATES

| States/counties | Eggplant production (metric tons) | Number of acres planted with eggplants |
|---|-----------------------------------|--|
| California (Fresno and Riverside) | 17,690.11 | 1,364. |
| Florida (Palm Beach, Hillsborough, Dade) | 15,875.74 | 1,174. |
| Georgia (Colquitt, Echols, Lowndes) | 14,870.75 | 1,100. |
| New Jersey (Gloucester, Cumberland, Atlantic) | 11,748.05 | 800. |
| Sum of 4 States | 60,184.65 (72% of production) .. | 4,438 (63% of planted area). |
| United States | 83,914.61 | 7,000. |

Source: United States Department of Agriculture (USDA), Economic Research Service (ERS), Vegetables and Melons Situation and Outlook Yearbook, December 2006; U.S. Census of Agriculture, 2002.

Despite a per-capita consumption rate of less than 1 pound, the United States is the leading importer of eggplant in the world, accounting for 20 percent of world eggplant import volume.¹ The next largest eggplant importers are France with 15 percent, Syria with 12

percent, Germany with 11 percent, and Canada with 9 percent of world eggplant import volume. These 5 countries account for 67 percent of world eggplant imports. The remaining 33 percent of world eggplant imports is divided among the rest of the world. Between

2004 and 2006, the United States imported on average \$45 million worth of eggplant (table 2).

Most U.S. eggplant imports enter during the cooler months of the year. Florida is the only domestic shipper during the winter.²

TABLE 2—U.S. TRADE OF FRESH EGGPLANTS, 2004–2006

| | U.S. imports | U.S. exports | Net imports |
|----------------------------------|--------------|--------------|-------------|
| Value in thousand dollars | | | |
| 2004 | \$49,028 | \$8,148 | \$40,880 |
| 2005 | 45,981 | 8,735 | 37,246 |
| 2006 | 39,986 | 8,943 | 31,043 |
| Quantities in metric tons | | | |
| 2004 | 49,768.4 | 9,669.1 | 40,099.3 |
| 2005 | 54,096.8 | 9,660.5 | 44,436.3 |
| 2006 | 49,065.0 | 9,626.2 | 39,438.8 |

Source: U.S. Department of Commerce, Bureau of Census, as reported by Global Trade Information Services. **Note:** Based on the Harmonized Schedules 070930.

¹ Vegetables and Melons Outlook/VGS-318/ December 14, 2006, Economic Research Service, U.S. Department of Agriculture (pages 23–27).

² On average, during 2004–06, the winter season (January–March) accounted for 55 percent of U.S. eggplant imports; the spring season (April–June) accounted for 20 percent; the summer season (July–

September) accounted for 5 percent; and, the fall season (October–December) accounted for 31 percent.

Impact on Small Entities

U.S. entities that could be affected by the proposed rule are domestic producers of fresh eggplant and wholesalers that import fresh eggplant. Businesses producing fresh eggplant are classified in the North American Industry Classification System (NAICS) within the category of other vegetable (except potato) and melon farming (NAICS 111219). The Small Business Administration's (SBA) small-entity standard for this category is \$750,000 or less in annual receipts. While available data do not provide the number of U.S. eggplant-producing entities or information on the size distribution of U.S. eggplant-producing entities, it is reasonable to assume that the majority of the operations are small by SBA standards, based on the fact that the average vegetable farm is small.

Israel is a small exporter of eggplant. For example, in 2006 Israel's exports of commercial shipments of fresh eggplant were valued at only \$20,000. This value is only 0.05 percent of the value of U.S. eggplant imports in 2006 (nearly \$40 million). In other words, even if all of Israel's 2006 worldwide eggplant exports are diverted entirely to the United States, they would represent a negligible share of total U.S. imports and an even smaller share of the U.S. eggplant supply.

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.

Executive Order 12988

This proposed rule would allow eggplant to be imported into the continental United States from Israel. If this proposed rule is adopted, State and local laws and regulations regarding eggplant 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.

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 proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, *Attention:* Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2007-0153. Please send a copy of your comments to: (1) Docket No. APHIS-2007-0153, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to allow the importation of commercial consignments of fresh eggplant from Israel. As a condition of entry, the eggplant would be grown under a systems approach that would include requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse procedures. The eggplant would also be required to be accompanied by a phytosanitary certificate issued by the Israeli national plant protection organization with an additional declaration confirming that the eggplant had been produced in accordance with the proposed requirements. This action would allow for the importation of commercial consignments of fresh eggplant from Israel into the United States while continuing to provide protection against the introduction of quarantine pests.

Implementing this information collection will allow respondents to complete various documents such as trapping records, labeling of boxes, inspection, and phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

- (1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.0047 hours per response.

Respondents: Importers of eggplants, foreign officials (non-government).

Estimated annual number of respondents: 18,005.

Estimated annual number of responses per respondent: 1.0031.

Estimated annual number of responses: 18,061.

Estimated total annual burden on respondents: 85 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS's Information Collection Coordinator, at (301) 851-2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS's Information Collection Coordinator, at (301) 851-2908.

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. A new § 319.56-48 is added to read as follows:

§ 319.56–48 Eggplant from Israel.

Eggplant (*Solanum melongena* L.) may be imported into the continental United States from Israel only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Ceratitis capitata*, *Eutetranychus orientalis*, *Helicoverpa armigera*, *Nipaeococcus viridis*, *Scirtothrips dorsalis*, and *Spodoptera littoralis*.

(a) *Approved pest-exclusionary structures.* The eggplant must be grown in pest-exclusionary structures in approved production sites in the Arava Valley of Israel by growers registered with the Israeli national plant protection organization (NPPO). Initial approval of the production sites must be completed jointly by the Israeli NPPO and APHIS.

(1) The pest-exclusionary structures must be equipped with double self-closing doors.

(2) Any vents or openings in the pest-exclusionary structures (other than the double self-closing doors) must be covered with 1.6 mm or smaller screening in order to prevent the entry of pests into the pest-exclusionary structure.

(3) The pest-exclusionary structures must be inspected periodically by the Israeli NPPO or its approved designee to ensure that sanitary procedures are employed to exclude plant pests and diseases and to verify that the screening is intact.

(4) The pest-exclusionary structures also must be inspected monthly for the quarantine pests listed in the introductory text of this section by the Israeli NPPO or its approved designee, beginning 2 months before harvest and continuing for the duration of the harvest. APHIS must be granted access to inspect or monitor the pest-exclusionary structures during this period as well. If, during these inspections, any quarantine pests listed in the introductory text of this section are found inside a pest-exclusionary structure, the Israeli NPPO will immediately prohibit that pest-exclusionary structure from exporting eggplant to the continental United States and notify APHIS of the action. The prohibition will remain in effect until the Israeli NPPO and APHIS agree that the risk has been mitigated.

(b) *Trapping for Medfly.* Trapping for Mediterranean fruit fly (Medfly, *Ceratitis capitata*) is required both inside and outside the pest-exclusionary structures. Trapping must begin 2 months before harvest and continue for the duration of the harvest.

(1) *Inside the pest-exclusionary structures.* APHIS-approved fruit fly

traps with an approved protein bait must be placed inside the pest-exclusionary structures at a density of four traps per hectare, with a minimum of at least two traps per pest-exclusionary structure. The traps must be serviced at least once every 7 days. If a single Medfly is found in a trap inside a pest-exclusionary structure, the Israeli NPPO will immediately prohibit that pest-exclusionary structure from exporting eggplant to the continental United States and notify APHIS of the action. The prohibition will remain in effect until the Israeli NPPO and APHIS agree that the risk has been mitigated.

(2) *Outside the pest-exclusionary structures.* (i) No shade trees are permitted within 10 meters of the entry door of the pest-exclusionary structures, and no fruit fly host plants are permitted within 50 meters of the entry door of the pest-exclusionary structures. While trapping is being conducted, no fruit fly host material (such as fruit) may be brought into the pest-exclusionary structures or be discarded within 50 meters of the entry door of the pest-exclusionary structures.

(ii) A treatment jointly approved by the Israeli NPPO and APHIS must be applied for the duration of the eggplant harvest in the areas of the Arava Valley where fruit fly host material occurs in backyards.

(iii) Trapping for Medfly must be conducted by the Israeli NPPO or its approved designee throughout the year in the agricultural region along the Arava Highway 90 and in the residential area of Paran.

(iv) Trapping records must be kept and made available for APHIS review upon request.

(c) *Packinghouse procedures.* The eggplant must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. While packing the eggplant for export to the continental United States, the packinghouse may only accept eggplant from approved pest-exclusionary structures. No shade trees are permitted within 10 meters of the entry door of the packinghouse, and no fruit fly host plants are permitted within 50 meters of the entry door of the packinghouse. The eggplant must be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Packinghouse procedures must include culling of any visibly damaged, overripe, or infested eggplant. The eggplant must be packed in either individual insect-proof cartons or boxes labeled with the specific place of origin or non-insect-proof cartons or boxes that are covered by insect-proof mesh or plastic tarpaulins. Covered non-insect-

proof cartons or boxes must be placed in shipping containers that have identification labels indicating the specific place of origin. These safeguards must remain intact until the arrival of the eggplant in the continental United States or the consignment will not be allowed to enter the continental United States.

(d) *Commercial consignments.* Eggplant from Israel may be imported in commercial consignments only.

(e) *Phytosanitary certificate.* Each consignment of eggplant must be accompanied by a phytosanitary certificate of inspection issued by the Israeli NPPO with an additional declaration reading as follows: "The eggplant in this consignment has been grown in an approved production site and inspected and found free of the pests listed in 7 CFR 319.56*48."

Done in Washington, DC, this 5th day of November 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–26814 Filed 11–10–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 17

[Docket No. FDA–2008–N–0561]

Maximum Civil Money Penalty Amounts and Compliance With the Federal Civil Penalties Inflation Adjustment Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing this companion proposed rule to the direct final rule, published elsewhere in this issue of the **Federal Register**, which is intended to amend our regulations to adjust for inflation the maximum civil money penalty amounts for the various civil money penalty authorities within our jurisdiction. We are taking this action to comply with the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended. The last adjustment was published in the **Federal Register** of July 20, 2004 (69 FR 43299), and the FCPIAA requires Federal agencies to adjust their civil money penalties at least once every 4 years. This proposed rule does not adjust the civil money provisions