Rules and Regulations

Federal Register
Vol. 60, No. 189
Friday, September 29, 1995

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 94–114–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables will be required to undergo prescribed treatments for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

EFFECTIVE DATE: September 29, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper or Mr. Peter Grosser, Senior Operations Officers, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236; (301) 734–8645.

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 injurious insects that are new to or not widely distributed within and throughout the United States.

On May 24, 1995, we published in the Federal Register (60 FR 27428–27437, Docket No. 94–114–1) a proposal to amend the regulations by allowing additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables had been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We proposed to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk assessments that indicated that the fruits or vegetables could be imported under certain conditions without significant pest risk.

We solicited comments concerning our proposal for 30 days ending June 23, 1995. We received two comments by that date. They were from a State agency and an industry group. Both commenters had reservations to specific provisions of the proposed rule. The comments are discussed below by topic:

Papayas From Belize

Comment: The Animal and Plant Health Inspection Service (APHIS) did not indicate in the proposal how it would ensure that cartons of papayas marked ''Not for importation into or distribution in HI'' would not enter Hawaii.

Response: Papayas from Belize may not be imported into Hawaii. All importations into Hawaii from foreign countries are inspected by APHIS officials, and any papaya from Belize arriving in Hawaii would be seized or rejected. Belizean papayas shipped from the mainland United States would be intercepted by State of Hawaii Department of Agriculture inspectors, who routinely inspect cargo arriving from the mainland. The State inspectors would inform APHIS of the violation, and APHIS would seize the shipment and determine whether enforcement procedures should be initiated.

Ya Pears From the Peoples Republic of China

Comment: APHIS has not indicated in the proposal how the conditions for the importation of Ya pears from China would be maintained. Also, China has not yet developed a program for pest-free areas for phytosanitary certification, and there is no indication that the current farming and packing practices will lend themselves to the incorporation of a systems approach to attain pest-free status. Should the proposed conditions not be met, what resources does APHIS have to detect pests prior to dissemination in the United States?

Response: The results of APHIS personnel visits to Hebei Province in China to study production and safeguarding procedures for Ya pears led us to propose the requirements explained in the proposal. We believe that the required safeguards will be observed by the Chinese. All shipments will be inspected at the U.S. port of arrival. Any findings of significant quarantine pests will be an indication that the required safeguards are not being applied adequately and will be cause for action by APHIS to ensure that corrective measures are taken. As is our practice, repeated findings of significant quarantine pests will be cause for prohibiting future shipments of the produce. In addition, APHIS intends to make periodic visits to the growing area in Hebei Province to monitor production and safeguarding procedures.

Comment: The agency's pest risk assessment explains that some of the pathogens that attack pears in China differ from those in Japan and Korea. Therefore, the agency's experience with dealing with the disease risk involved in the importation into the United States of produce from Japan and Korea does not account for the added disease risks involved in the importation into the United States of Ya pears from China. The conditions, regulatory capabilities (infrastructure), and differing pests and diseases should be considered when assessing the pest risk of the importation into the United States of Ya pears from China. It should not be assumed by the agency that the systems approach can work for exports from every country.

Response: The pest list does differ between Japan, Korea, and China.

Although the lists are different, we believe that the safeguards are sufficient to exclude the pests that could ordinarily move with the fruit.

Comment: The pest risk assessment for Ya pears from China indicates that *Alternaria alternata,* brown rot, and pear scab are present in China and could be introduced into the United States through the importation of Ya pears. Therefore, APHIS should not allow the importation of Ya pears from China until a detailed plan to prevent the introduction and dissemination of these diseases has been developed and reviewed.

Response: Alternaria alternata is considered a cosmopolitan organism and is widespread within the United States. As such, it falls outside of the scope of the regulatory authority of APHIS. *Alternaria gaisen,* considered by some mycologists to be part of the *Alternaria alternata* species complex, does infect sandpear fruits; however, bagging of the fruits, which will be required for Ya pears imported into the United States from China, prevents infection. In addition, studies in Japan and the United States have shown that the fungus only sporulates in cracked fruits; therefore, we expect it to sporulate only in cracked fruits in China also. Cracked fruits are clearly visible and will be excluded from shipping during packing house operations.

Brown rot and pear scab are reported in China. The bagging of the fruits prevents infection, and the culling and inspections of the fruit in the packing house will exclude from shipping fruits that show signs of rot or scabbing.

Grapes From India

We received one comment concerning the pest risk assessment for grapes from India. In addition, since the publication of the proposed rule, new information has become available that indicates that grapes from India are attacked by a fruit fly, *Bactrocera correcta,* which is not found in the United States. At present, there is no acceptable quarantine treatment for this fruit fly. Therefore, we are taking no action at this time to allow grapes from India to be imported into the United States, and the provisions found in the proposed rule concerning grapes from India are not included in this final rule.

Litchi From Peoples Republic of China

Comment: The litchi proposed for importation into the United States from China presents a risk of introducing *Peronophythora litchii,* which is difficult to detect visually and would present a pest risk to the domestic tomato industry. APHIS should review this pest risk more thoroughly before allowing the importation of litchi. Also, there are no cold treatment facilities on the west coast of the United States authorized to perform the cold treatment designated in the proposed rule for litchi. Where will APHIS require that the cold treatment be performed? Will irradiation be allowed?

Response: Peronophythora litchii causes a white cottony mold to appear on infected fruit. As this mold is quite evident, inspectors can easily identify infected fruit and exclude them from shipping during the packing process. Although this fungus has caused serious losses in Taiwan and China during favorable years for the disease, no field infections on other crops have been reported.

We anticipate that litchi from China and from India will undergo cold treatment en route to the United States aboard ships with cold treatment facilities approved by APHIS. APHIS continues to encourage the development of alternative treatments and will consider irradiation treatment for litchi when procedures and schedules are presented for study.

Lettuce From Israel

Comment: APHIS has not indicated how it will ensure that all of the provisions included in the proposal concerning the importation of lettuce from Israel into the United States are carried out. Also, in the event that the proposed procedures are not followed, APHIS has not indicated the level of resources necessary and available to inspect the product for pests prior to importation into the United States.

Response: The Israeli Ministry of Agriculture will certify on a phytosanitary certificate that the specified conditions have been met. Inspection at the port of entry will also serve to determine whether the conditions were carried out. If pests are found, actions will be taken on the affected shipment, and additional actions can be taken to correct, adjust, or modify the safeguards used to prevent pest infestation.

Many variables can affect the level of resources APHIS can apply to any given program at any given time. APHIS intends to allocate the number of staff hours necessary to inspect Israeli lettuce to provide the level of inspection and enforcement required to protect U.S. agriculture. Apricots, Peaches, Plums, and Nectarines from Zimbabwe

Comment: The proposed conditions for the importation of fruit from Zimbabwe do not adequately address the risk presented by pathogens reported to occur on peaches and nectarines in Zimbabwe. Additionally, there is a risk that *Taphrina mume* could be introduced into the United States on fruit imported from Zimbabwe.

Response: No quarantine-significant pathogens that would move with the fruits from Zimbabwe were identified in the pest risk assessment. *Taphrina mume* has not been reported to occur in Zimbabwe or to infect peaches or nectarines.

Root Crops

Comment: Because low-level nematode infestation cannot be readily detected by visual inspection, APHIS should more adequately address the potential for nematode introduction presented by imported root crops that could be planted or otherwise propagated.

Response: We have long recognized that some products imported for consumption are capable of being propagated and that occasionally individuals, out of curiosity, may plant them. While we do not believe that the extent of this practice makes it a significant pest risk, we have in the past explored three ways of preventing this practice: (a) prohibit the importation of all commodities that could potentially be propagated, (b) treat all commodities capable of propagation with sprout inhibitor, or (c) devitalize the products prior to export. We believe that the first option, prohibition, should be applied only to products that pose pest risks that cannot be mitigated in other ways. We have experimented with the second option, using sprout inhibitors, but they do not offer sufficient quarantine security for high-risk products and are not registered for most products. The third option, devitalization, in most cases renders a product unacceptable for the fresh fruit and vegetable market.

Countries are becoming more and more sophisticated in their production and phytosanitary practices; therefore, the quality of fruits and vegetables in general is increasing. Products are graded and inspected during packing and prior to export, and the products are inspected again upon arrival in the United States. All of this reduces the likelihood of a pest entering the United States. If a person chooses to try to propagate a commodity that has been imported into the United States, that person would likely choose the healthiest-looking material, thus further reducing the probability that a plant pest would be spread. We believe this limited degree of risk is insignificant.

Trapping Program

Comment: In the proposed rule, APHIS has not provided specifics on the Mediterranean fruit fly (Medfly) trapping program conducted within the designated Medfly-free districts. APHIS may want to provide additional discussion in the final rule substantiating the establishment of the pest free zone.

Response: The Medfly trapping techniques, including the type of trap, type of lures, placement of trap, monitoring of trap, etc., used to establish the Medfly-free area in Belize are in accordance with written guidelines patterned after recommendations of the California Department of Food and Agriculture (CDFA) Pest Detection Guide. (To obtain a copy of the CDFA Pest Detection Guide, write to Dr. Isi A. Siddiqui, California Department of Food and Agriculture, 1220 N Street, Sacramento, CA 95814.) Compliance is routinely verified by APHIS personnel.

Treatment Required

Comment: It is essential, given the possible economic impact of fruit fly introduction, that any required treatment be conducted at the point of origin, as opposed to the point of arrival, to ensure that none of the fruit flies are imported into the United States. Also, APHIS should cite its basis for the conclusion that climatic conditions at the port of Wilmington, NC, are unsuitable for the establishment of fruit flies.

Response: APHIS encourages cold treatments in the country of origin or en route to the United States aboard vessels with approved cold treatment facilities. However, our experience shows that cold treatments can be successfully carried out at U.S. ports of arrival without significant risk of fruit fly escape. Therefore, three options are usually available for cold treated fruit: treatment in the country of origin, treatment en route to the United States, and treatment upon arrival in the United States.

When we approved cold treatment at Wilmington, NC, in a final rule published in the Federal Register on August 10, 1994 (59 FR 40794–40797, Docket No. 93–121–3), we imposed additional safeguards not required for cold treatment at more northern locations. A detailed explanation of the additional conditions appears in the preamble of the proposed rule published in the Federal Register on May 13, 1994 (59 FR 24968–24971, Docket No. 93–121–2). The additional conditions are:

1. Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit arriving for cold treatment must be packaged in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

2. Bulk and containerized shipments of fruit arriving at the port of Wilmington, NC, for cold treatment must be cold treated within the port, that is, the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

3. Advance reservations for cold treatment space at the port of Wilmington, NC, must be made prior to the departure of a shipment from its port of origin.

We believe that the conditions established for cold treatment at Wilmington, NC, including these additional conditions, are adequate to prevent the introduction of certain plant pests into the United States.

Pest Risk Assessments

Comment: The pest risk assessments supporting this proposal appear to consist only of a cursory look at the interception histories and a brief review of the available literature. Approval of a number of the commodities proposed for entry should be postponed until additional review can take place.

Response: We believe that the pest risk assessments performed and the safeguards proposed are adequate to prevent the introduction of pests by the commodities proposed for entry. In addition, APHIS is developing a more transparent pest risk assessment process to offer outside reviewers a clearer and more detailed explanation of how we determine pest risk, thereby enhancing public understanding of the pest risk involved with each commodity proposed for entry. This new pest risk assessment process follows the guidelines provided by the international plant protection organizations (e.g. North American Plant Protection Organization and United Nations' Food and Agricultural Organization) and will provide written documentation on the pest risk potential for organisms that rank high for the likelihood of introduction and establishment.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes noted above.

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 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. 601 *et seq.*, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic impact of this rule on small entities.

This rule amends the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain foreign countries and localities under specified conditions. The importation of these fruits and vegetables had been prohibited because of the risk that they could have introduced injurious plant pests into the United States. This final rule revises the status of certain commodities from certain countries and localities, allowing their importation into the United States for the first time.

These changes are based on pest risk assessments that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The pest risk assessments indicate that the fruits or vegetables listed in this rule can, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In addition, some of the fruits and vegetables will be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction into the United States of injurious plant pests by imported fruits and vegetables. Papayas from Belize

The United States produced 71.3 million pounds of papayas in 1993. Papayas are produced commercially on approximately 300 farms, the majority of which are in Hawaii. Nearly 65 percent of those farms are owned by individuals whose major occupation is not farming, while the balance are operated by individuals whose major occupation is farming. All of the farms are considered to be small entities according to Small Business Administration (SBA) size standards.

The United States imported 31.3 million pounds of papayas, valued at $8,883,000, in 1993. Most of the imported papayas came from Mexico (66.6 percent), Jamaica (14.4 percent), and Belize (13.7 percent). The United States exported 16.7 million pounds of fresh papayas, worth $14,245,000, in 1993. The major importers were Japan (73.4 percent) and Canada (24.6 percent). Almost all exports of domestically grown papayas are from Hawaii, while all imports of foreign-origin papayas come into the continental United States.

The total annual production of papayas in Belize is approximately 4.5 million pounds. Its current exports account for about 4.2 million pounds. The additional amount expected to be exported to the United States will be approximately 300,000 pounds of fresh papayas. Even if all the available supply were exported to the United States, it will increase the U.S. supply of papayas by only about 0.34 percent. A 0.34 percent increase in supply is unlikely to have any impact on prices or on producers or consumers.

Cantaloupes From Brazil

The United States produced about 1,910 million pounds of cantaloupes, with a total value of $310 million, in 1993. Cantaloupes are produced commercially on about 7,500 farms, nearly 97 percent of which are considered to be small entities, according to SBA size standards. The United States is a net importer of cantaloupes. Imports totaled approximately 458 million pounds of cantaloupes. The major sources of imported cantaloupes include Mexico (32.8 percent), Honduras (26 percent), Costa Rica (17.5 percent), Guatemala (16 percent), and the Dominican Republic (2.8 percent). There were 116 million pounds of cantaloupes exported from the United States in 1993, of which nearly 95 percent went to Canada, while about 4 percent went to Mexico.

The commercial production of cantaloupe is in the infant stage in Brazil. Most of the Brazilian production is concentrated in the states of Rio Grande do Norte and São Paulo. Production occurs mainly during the months of October through March, while U.S. production occurs during the months of May through September. Thus, any export from Brazil will be supplementary to, rather than competitive with, the U.S. supply. Total production of cantaloupes in Brazil was about 5,000 metric tons, or 11 million pounds, in 1994. Currently all cantaloupe production in Brazil is for domestic consumption. However, even if all Brazilian production were to be exported to the United States, the U.S. cantaloupe supply will increase by less than 0.5 percent. Because this final rule will allow the importation of cantaloupe from only part of Brazil—that area considered by APHIS to be free of the South American cucurbit fly—any increase in the U.S. cantaloupe supply will be even smaller. Such an increase will not be expected to impact U.S. producer prices.

Ya Pear From the Peoples Republic of China

The United States produced 860,000 metric tons (1,895 million pounds) of pears in 1993. The United States is a net exporter of pears, having exported 244 million pounds and imported 143 million pounds in 1993. Most of the pears imported into the United States came from Chile (57.3 percent), Argentina (30.4 percent), South Africa (6.1 percent), and New Zealand (3.9 percent). The main importers of U.S. pears are Canada (32.9 percent) and Mexico (34.9 percent), with the remaining quantities distributed among 45 destinations. There are approximately 9,800 farms producing pears in the United States, about 98 percent of which are considered to be small entities, according to SBA size standards.

China produced about 30,000 metric tons (or 66 million pounds) of Ya pears in 1993. It exported about 5,700 metric tons (or 12,562,800 pounds). Exports are to several countries in Europe, the Middle East, and Southeast Asia. The Ya pears that will be imported from the Peoples Republic of China are of a different variety than pears produced in the United States; because they are considered to be different products, they are not expected to be competitive with domestically grown pears.

Litchi From the Peoples Republic of China

The U.S. produced about 700,000 pounds of Litchi in 1993. There are 205 farms that produced litchi, most of which are considered to be small entities according to SBA criteria.

China produced approximately 27,000 metric tons (or 59.5 million pounds) of litchi in 1994, exporting about 25 percent (about 15 million pounds) of its production. Most of China's litchi exports went to several countries in Western Europe, the Middle East, and Southeast Asia, as well as to Canada. What proportion of China's domestic litchi production will be exported to the United States is not clear. In the event that a significant proportion of China's production is exported to the United States, U.S. producers will most likely be negatively impacted in the short run, since the increased supply will drive the market price of litchi down. U.S. consumers, on the other hand, will benefit from the lower price as well as the increased choice. In the long run, as a result of foreign competition in the U.S. litchi market, more competitive and cost-effective producers may emerge. Lower prices may also result in an increased demand for litchi. Which of these effects will outweigh the other cannot be stated definitely.

Basil From Ecuador and El Salvador

The United States imported 5,397,091 pounds of fresh or dried basil in 1993 (the ratio of fresh to dried cannot be ascertained). The major sources of import were Egypt (77.7 percent), Mexico (16.1 percent), France (2.2 percent), and Taiwan (1.2 percent). No information was obtained on potential production and imports of basil from Ecuador and El Salvador.

Pak Choi From Jamaica

There are no published data on the U.S. production of pak choi and no record of trade. Jamaica's current production of pak choi is estimated to be 3,825 metric tons (8.43 million pounds). Most production takes place between January and April. Although the exact amount that will be shipped to the United States is not known, approximately 50–75 percent of total production is expected to be exported to the United States. This is expected to expand the variety of choices available to vegetable consumers.

Chives From Israel

Israel produces approximately 100 metric tons of chives. Production takes place mainly from October to the end of March. Currently about 95 percent of production is exported to Europe. About 20 to 40 metric tons is expected to be exporter to the United States. Both producer prices and consumer prices will likely be unaffected by the importation of chives from Israel.

Dill From Israel

The United States imported 1,828,359 pounds of dill in 1993 (trade records do not clearly indicate whether the dill was fresh or dried). The major sources were India (68 percent), Pakistan (13.2 percent), Egypt (10 percent), Sweden (3.2 percent), and Turkey (2.5 percent). The United States is a net importer of dill. Israel produced about 520 metric tons (1,146,000 pounds) of dill in 1994 and exported about 46 metric tons of dill during the same period. Israel expects that it will export about 30 metric tons of dill to the United States within the next 3 to 5 years. Both producer prices and consumer prices will likely be unaffected by the importation of dill from Israel.

Lettuce From Israel

Total U.S. production of head, leaf, and romaine lettuce in 1993 was 3,756,350 metric tons (or 8,279 million pounds). There are approximately 2,660 producers of lettuce in the United States, about 97 percent of which are considered to be small entities according to SBA size standards.

The United States is a net exporter of lettuce. It imported 32,738,000 pounds of lettuce in 1993, mainly from Mexico and Canada, which together accounted for 99.2 percent of the imports. The United States exported 693,354,000 pounds of lettuce in 1993. Canada received approximately 82 percent of those exports, while the remaining destinations were highly varied.

Israel produced about 10 million pounds of insect-free lettuce, which is grown inside insect-proof screenhouses, during 1993. About 10 percent of the production is exported to Europe and the rest is consumed domestically. The amount of lettuce that will be exported to the United States is expected to be about 1,600,000 pounds, which represents less than 0.02 percent of U.S. production. This amount will not have a significant impact upon U.S. market supply. Additionally, the marketing target for this lettuce, both in Israel's domestic market as well as in the export market, is the ultra-orthodox religious community, members of which will not consume lettuce produced in any other way. Importation of this specialty product is not expected to compete with domestic production. Both producer prices and consumer prices will likely be unaffected by the importation of insect-free lettuce from Israel.

Radishes From The Netherlands

The United States produced about 122.4 million pounds of radishes in 1993. Radishes are produced on about 760 farms, all of which are considered to be small entities. The United States is a net importer of radishes and it imported 35,121,976 pounds of fresh and chilled (the proportion of fresh to chilled cannot be ascertained) radishes in 1993. Over 94 percent of these imported radishes came from Mexico and 5.5 percent from Canada.

The Netherlands currently produces about 68 million pounds of radishes. Exports are expected to increase in stages, from 1.1 million pounds in the first year, to 2.2 million pounds during the second year, to about 4.4 million pounds (about 3 percent of U.S. supply) the third year and thereafter. Exports of radishes are expected to be spread equally over a 12-month period, with no significant peak period.

Oca From New Zealand

There is no known commercial production of oca in the United States. Additionally, there is no record of oca imports into the United States. Oca is a specialty crop and only minor production is carried on in New Zealand. Most production occurs between the months of March and October. Annual production is about 110,000 pounds. Current oca exports from New Zealand to the rest of the world equal about 440 pounds. Allowing the importation of oca from New Zealand into the United States will provide additional choice to vegetable consumers.

Apricots, Peaches, Plums, and Nectarines From Zimbabwe

In 1993 the United States produced 87,430 metric tons (192.7 million pounds) of apricots on 3,353 farms; 1,130,00 metric tons (2,490.6 million pounds) of peaches on 19,106 farms; 182,395 metric tons (402 million pounds) of nectarines on 2,488 farms; and 176,710 metric tons (390 million pounds) of plums on 8,006 farms. About 98 percent of these farms are considered to be small entities according to SBA size standards.

The United States is a net exporter of all four of these commodities. Imports of these four commodities into the United States are largely from Chile, while most of the U.S. exports are destined for Canada, Mexico, Taiwan, Hong Kong, and the United Kingdom. Although relevant volume data is not available, the addition of Zimbabwe as a new trading partner in apricots, peaches, plums, and nectarines is unlikely to shift the favorable balance of trade that the United States currently enjoys for these four commodities.

Summary

The United States produces large amounts of grapes, cantaloupes, pears, papayas and radishes. The importations of these and other listed commodities will likely increase supply. However, since potential imports will represent a very small proportion of the total domestic production of each product, no significant negative impact on U.S. producers is expected from such importations. Although increased supply generally results in lower prices, no information is currently available about the magnitude of price responses to changes in supply. Overall, the benefits to consumers of any resulting price decline will likely outweigh the small losses to producers. Additionally, importation of oca and pak choi will increase the availability of new products. Both oca and pak choi have a limited market and are unlikely to compete with other products. Similarly, the Ya pears and cantaloupes for importation are also unlikely to compete with other products. Ya pears are a different variety than any domestically produced pear, while cantaloupes from Brazil will be imported during the off season for U.S. cantaloupes. Other products such as basil and dill are very minor products. Some of these products are grown to supplement other farm income.

The aggregate economic impact of this rule is expected to be positive. U.S. consumers will benefit from a greater availability of fruits and vegetables. U.S. importers will also benefit from a greater availability of fruits and vegetables to import.

The alternative to this final rule was to make no changes in the fruits and vegetables regulations. After consideration, we rejected this alternative since there was no pest risk reason to maintain the prohibitions on the affected produce.

In the course of rulemaking, we came across evidence that indicated that the importation of grapes from India posed a significant risk of plant pest introduction, and, therefore, we are continuing to prohibit the importation of grapes from India. If we had come across evidence indicating that the importation of any of the other concerned fruits or vegetables would pose a significant risk of plant pest introduction, we would have considered either developing alternative requirements regarding that importation or continuing to prohibit the importation of that fruit or vegetable. However, our pest risk assessments and our review of public comments on the proposal indicated that importation of

any of the concerned fruits and vegetables other than grapes from India would not pose a significant risk of introducing or disseminating plant pests.

Executive Order 12778

This rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the importation of fruits and vegetables under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and will 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.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of fruits and vegetables under the conditions specified in this rule will not present a significant risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individuals listed under **FOR FURTHER INFORMATION CONTACT.**

The regulations of the Council on Environmental Quality that implement NEPA require preparation of environmental documentation for all actions that are not categorically excluded by agencies in accordance with 40 CFR 1501.4(b). In a final rule published by APHIS on February 1, 1995, and effective March 3, 1995, APHIS categorically excluded a number of actions for the purposes of NEPA. This rule meets the criteria for categorical exclusion. Accordingly, this rule (initiated prior to the effective date of the agency's NEPA procedures), as well as future amendments in this regulatory series, are categorically excluded.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

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.

Accordingly, 7 CFR parts 300 and 319 are amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference; availability.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through September 1995, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. 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 2.17, 2.51, and 371.2(c).

4. In § 319.56–2t, the table is amended by adding, in alphabetical order, the following:

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	*
Belize			
*	*	*	*
	Papaya	*Carica papaya*	Fruit (Must be accompanied by a phytosanitary certificate issued by the Belizean department of agriculture stating that the fruit originated in the district of Cayo, Corozal, or Orange Walk. Papayas from other districts enterable only with treatment—see § 319.56–2x). Prohibited entry into Hawaii due to *Toxotrypana curvicauda.* Cartons in which fruit is packed must be stamped ''Not for importation into or distribution within HI.''
*	*	*	*
Ecuador			

Country/locality	Common name	Botanical name	Plant part(s)
*	* *	* *	* *
	Basil	*Ocimum* spp.	Above ground parts.
*	* *	* *	* *
El Salvador	Basil	*Ocimum* spp.	Above ground parts.
*	* *	* *	* *
Israel			
*	* *	* *	* *
	Chives	*Allium schoenoprasum*	Leaf.
	Dill	*Anethum graveolens*	Above ground parts.
*	* *	* *	* *
Jamaica			
*	* *	* *	* *
	Pak choi	*Brassica chinensis*	Leaf and stem.
*	* *	* *	* *
Netherlands New Zealand	Radish	*Raphanus sativus*	Root.
*	* *	* *	* *
	Oca	*Oxalis tuberosa*	Tuber.
*	* *	* *	* *

5. In § 319.56–2u, the section heading is revised and paragraph (a) is added to read as follows:

§ 319.56–2u Conditions governing the entry of lettuce and peppers from Israel.

(a) Lettuce may be imported into the United States from Israel without fumigation for leafminers, thrips, and *Sminthuris viridis* only under the following conditions:

(1) *Growing conditions.* (i) The lettuce must be grown in insect-proof houses covered with 50 mesh screens, double self-closing doors, and hard walks (no soil) between the beds;

(ii) The lettuce must be grown in growing media that has been sterilized by steam or chemical means;

(iii) The lettuce must be inspected during its active growth phase and the inspection must be monitored by a representative of the Israeli Ministry of Agriculture;

(iv) The crop must be protected with sticky traps and prophylactic sprays approved for the crop by Israel;

(v) The lettuce must be moved to an insect-proof packing house at night in plastic containers covered by 50 mesh screens;

(vi) The lettuce must be packed in an insect-proof packing house, individually packed in transparent plastic bags, packed in cartons, placed on pallets, and then covered with shrink wrapping; and

(vii) The lettuce must be transported to the airport in a closed refrigerated truck for shipment to the United States.

(2) Each shipment of lettuce must be accompanied by a phytosanitary certificate issued by the Israeli Ministry of Agriculture stating that the conditions of paragraph (a)(1) of this section have been met.

* * * * *

6. In § 319.56–2x, paragraph (a) is amended as follows:

a. In the table, in the entry for Israel, the entry for lettuce is amended in the fourth column under the heading *Plant part(s)* by adding the words ''(Treatment for leafminers, thrips, and *Sminthuris viridis* not required if the lettuce is imported in accordance with § 319.56–2u(a))'' after the word ''Leaf''.

b. The table is amended by adding, in alphabetical order, the following:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
*	* *	* *	* *
Belize	Papaya	*Carica papaya*	Fruit (Treatment for Medfly not required for fruit grown in the districts of Cayo, Corozal, and Orange Walk - see § 319.56–2t). Papayas prohibited entry into Hawaii due to *Toxotrypana curvicauda.* Cartons in which fruit is packed must be stamped ''Not for importation into or distribution in HI''.
*	* *	* *	* *
China	Litchi	*Litchi chinensis*	Fruit (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped ''Not for importation into or distribution in FL'').

Country/locality	Common name	Botanical name	Plant part(s)
*	* *	* *	* *
India	Litchi	*Litchi chinensis*	Fruit (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped ''Not for importation into or distribution in FL'').
*	* *	* *	* *
Zimbabwe			
*	* *	* *	* *
	Apricot	*Prunus armeniaca*	Fruit.
*	* *	* *	* *
	Nectarine	*Prunus persica*	Fruit.
	Peach	*Prunus persica*	Fruit.
*	* *	* *	* *
	Plum	*Prunus domestica*	Fruit.

§ 319.56–2aa [Amended]

7. In § 319.56–2aa, the section heading and the introductory text are amended by adding the words ''and cantaloupe'' after the word ''melons''.

8. Section 319.56–2aa is amended by adding the words ''or cantaloupe'' after the word ''melons'' in the following places:

(a) In paragraph (a) in the first sentence and both times it appears in the second sentence.

(b) In paragraph (b).

(c) In paragraph (c).

9. A new § 319.56–2ee is added to read as follows:

§ 319.56–2ee Administrative instructions: conditions governing the entry of Ya variety pears from China.

Ya variety pears may be imported into the United States from China only under the following conditions:

(a) *Growing and harvest conditions.* (1) The pears must have been grown by growers registered with the Chinese Ministry of Agriculture in an APHIS-approved export growing area in Hebei Province.

(2) Field inspections for signs of pest infestation must be conducted by the Chinese Ministry of Agriculture during the growing season.

(3) The registered growers shall be responsible for following the phytosanitary measures agreed upon by APHIS and the Chinese Ministry of Agriculture, including applying pesticides to reduce the pest population and bagging the pears on the trees to reduce the opportunity for pests to attack the fruit during the growing season. The bags must remain on the pears through the harvest and during their movement to the packing house.

(4) The packing houses in which the pears are prepared for exportation shall not be used for any fruit other than Ya variety pears from registered growers during the pear export season. The packing houses shall accept only those pears that are in intact bags as required by paragraph (a)(3) of this section. The pears must be loaded into containers at the packing house and the containers then sealed before movement to the port of export.

(b) *Treatment.* The pears must be cold treated for *Bactrocera dorsalis* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(c) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions of paragraphs (a) and (b) of this section have been met.

Done in Washington, DC, this 26th day of September 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–24332 Filed 9–28–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 235, 286 and 299

[INS No. 1675–94]

RIN 1115–AD82

Collection of Fees Under the Dedicated Commuter Lane Program; Port Passenger Accelerated Service System (PORTPASS) Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations: To allow for implementation of additional land border inspection fee projects designed to facilitate the entry of identified, low-risk, legitimate border crossers on the northern border; to allow for the implementation of a pilot dedicated commuter lane (DCL) to facilitate the entry of identified, low-risk, legitimate border crossers on the California-Mexico border; to incorporate into 8 CFR 235.13 those provisions currently set forth in 8 CFR 286.8 pertaining to port designations and inspections of persons applying for admission to the United States; to increase the pool of eligible participants in pilot projects; and to clarify fee and application requirements of project participants. This rule is necessary to enhance inspection services at land border Ports-of-Entry (POEs) on the northern border and on the California-Mexico border, while still safeguarding those borders.

DATES: This interim rule is effective September 29, 1995. Written comments must be received on or before November 28, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference INS No. 1675–94 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange for an appointment.