Proposed Rules

Federal Register
Vol. 62, No. 57
Tuesday, March 25, 1997

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 Parts 300 and 319

[Docket No. 96–046–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow 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, would 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 would be required to meet other special conditions. The removal of these prohibitions would 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.

We are also proposing to extend the production area in Arava, Israel, where peppers may be grown for importation into the United States; to eliminate the distribution restrictions for peppers from Arava, Israel; to eliminate the trust fund provisions for papayas from Costa Rica; to declare all Provinces in Chile free of the Mediterranean fruit fly; and to make several nonsubstantive editorial changes to the regulations. These actions would relieve restrictions while continuing to prevent the introduction of plant pests into the United States.

DATES: Consideration will be given only to comments received on or before May 27, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–046–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–046–1. Comments received may be inspected 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. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Campbell, Staff Officer, Import/Export, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as ''the regulations'') prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within and throughout the United States.

We are proposing to amend the regulations to allow 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 has been prohibited because of the risk that the fruits and vegetables could introduce fruit flies or other injurious plant pests into the United States. We are proposing to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses [1] that indicate the fruits or vegetables can be imported under certain conditions without significant pest risk.

All of the fruits and vegetables included in this document would be subject to the requirements in § 319.56–6 of the regulations. Section 319.56–6 provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection, disinfection, or both, at the port of first arrival, as may be required by a U.S. Department of Agriculture (USDA) inspector to detect and eliminate plant pests. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other injurious plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment.

Some of the fruits and vegetables proposed for importation would be required to meet other special conditions. The proposed conditions of entry, which are discussed in greater detail below, appear adequate to prevent the introduction and dissemination of fruit flies and other injurious plant pests by the importation of fruits and vegetables from certain foreign countries and localities into the United States.

Subject to Inspection and Treatment Upon Arrival

We are proposing to allow the following fruits and vegetables to be imported into the United States from the country or locality indicated in accordance with § 319.56–6 and all other applicable requirements of the regulations:

Country/Locality	Common Name	Botanical Name	Plant Part(s)
Ecuador	Radicchio	*Cichorium* spp	Above ground parts.
El Salvador	Eggplant	*Solanum melongena*	Fruit.
Guatemala	Basil	*Ocimum basilicum*	Above ground parts.
Guatemala	Dill	*Anethum graveolens*	Above ground parts.
Japan	Mioga Ginger	*Zingiber mioga*	Above ground parts.
Nicaragua	Eggplant	*Solanum melongena*	Fruit.

[1] Information on these pest risk analyses and any other pest risk analysis referred to in this document may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT** or by calling the Plant Protection and Quarantine (PPQ) fax vault at 301–734–3560.

Country/Locality	Common Name	Botanical Name	Plant Part(s)
Nicaragua	Radicchio	*Cichorium* spp	Above ground parts.

Pest risk analyses conducted by the Animal and Plant Health Inspection Service (APHIS) have shown that the fruit and vegetables listed above are not attacked by fruit flies or other injurious plant pests, either because they are not hosts to the pests or because the pests are not present in the country or locality of origin. In addition, we have determined that any other injurious plant pests that might be carried by any of the listed fruit or vegetables would be readily detectable by a USDA inspector. Therefore, the provisions in § 319.56–6 concerning inspection, disinfection, or both, at the port of first arrival, appear adequate to prevent the introduction into the United States of fruit flies or other injurious plant pests by the importation of these fruits and vegetables.

Subject to Inspection and Treatment Upon Arrival; Additional Conditions

We would allow the following fruits and vegetables to be imported into the United States from the countries indicated subject to the prescribed conditions and in accordance with § 319.56–6 and all other applicable requirements of the regulations:

Leeks From Belgium and the Netherlands

We are proposing to allow leeks (*Allium* spp.) from Belgium and The Netherlands to be imported into the United States if the leeks are accompanied by a phytosanitary certificate issued by the Ministry of Agriculture of the country of production (either Belgium or The Netherlands). The phytosanitary certificate must state that the leeks are apparently free from *Acrolepiopsis assectella*, commonly known as leek moth. This certification would ensure that, prior to departure for the United States, a thorough phytosanitary inspection of the leeks was performed and no leek moths were found in the shipment.

Papaya From Brazil

We are proposing to allow solo type papayas (*Carica papaya*) from Brazil to be imported into the United States if the fruit is grown in the State of Espirito Santo and if the fruit has been grown, packed, and shipped in accordance with certain phytosanitary conditions.

Because papayas can be hosts of several serious plant pests, including the Mediterranean fruit fly (*Ceritatis capitata*) (Medfly) and the South American fruit fly (*Anastrepha fraterculus*), we would require that papayas intended for importation into the United States from the State of Espirito Santo, Brazil, be subject to certain special conditions. The proposed special conditions outlined below for the importation of papaya from Brazil are based on the provisions in § 319.56–2w of the regulations for papaya from Costa Rica and on the proposed changes to those provisions located under the heading ''Papaya from Costa Rica'' in this document. The conditions would read as follows:

1. The papayas were grown and packed for shipment to the United States in the State of Espirito Santo.

This condition would ensure that papayas intended for the United States would only be grown and packed in Espirito Santo. The State of Espirito Santo is currently the only papaya production and packing area in Brazil where fruit fly traps are maintained and where the other elements of the systems approach described below are in place.

2. Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the area where the papayas were grown were kept free of papayas that were one-half or more ripe (more than one-quarter of shell surface yellow), and all culled and fallen fruit were removed from the field at least twice a week.

Papayas that are one-half or more ripe, as well as culled or fallen papayas, could serve as host material for Medfly and South American fruit fly. Therefore, this condition would greatly reduce the risk that Medfly or South American fruit fly would be attracted to the fields where papayas intended for importation into the United States are grown.

3. When packed, the papayas were less than one-half ripe (shell surface no more than one-quarter yellow, surrounded by light green) and appeared to be free of all injurious plant pests.

This condition would also reduce the risk of introduction of Medfly or South American fruit fly, as well as other injurious plant pests, into the United States. Papayas themselves are not a preferred host for these fruit flies, and papayas that are less than one-half ripe pose very little risk of attracting Medfly or South American fruit fly.

4. The papayas were packaged so as to prevent access by fruit flies or other injurious plant pests, and the package does not contain any other fruit, including papayas not qualified for importation into the United States.

This condition would ensure that papayas that have already been inspected and packaged for shipment to the United States would not be at risk for fruit fly infestation.

5. All activities described in provisions 1 through 4 above were carried out under the general supervision and direction of plant health officials of the national Ministry of Agriculture.

The supervision of the Brazilian Ministry of Agriculture would help ensure that all of the activities required by the regulations were properly carried out.

6. Beginning at least 1 year before harvest began 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 the rate of 1 trap per hectare and were checked for fruit flies at least once a week by plant health officials of the national Ministry of Agriculture. Fifty percent of the traps were of the McPhail type, and 50 percent of the traps were of the Jackson type. The national Ministry of Agriculture kept records of the fruit fly finds for each trap, updating the records each time the traps were checked, and made the records available to APHIS upon request. The records were maintained for at least 1 year.

This condition would ensure that the earliest possible detection of the presence of fruit flies in and around fields where papayas are grown can be made. If a fruit fly is trapped, the Brazilian Ministry of Agriculture would increase the trap density in the area and, if more fruit flies are found, begin malathion bait sprays. This condition would also allow APHIS to monitor the trapping records of the area for a 1-year period.

7. All shipments of papayas 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.

This condition would help ensure that the provisions of the regulations have been met.

We believe that the provisions of § 319.56–6 and all other applicable requirements, as well as the proposed special conditions, would be sufficient

to prevent the introduction of leek moths and fruit flies into the United States. Pest risk analyses conducted by APHIS have determined that injurious plant pests other than those mentioned that might be carried by the leek or papaya would be readily detectable by a USDA inspector. As noted, the leek and papaya would be subject to inspection, disinfection, or both, at the port of first arrival, in accordance with § 319.56–6.

Garlic From Romania

Section 319.56–2g lists countries from which garlic may be imported into the United States. We are proposing to amend § 319.56–2g to allow garlic to be imported from Romania into the United States if it has been fumigated with methyl bromide, according to the treatment schedule set forth below. Garlic is attacked by the garlic borer (*Brachycerus* spp.) and the garlic moth (*Dyspessa ulula* [Bkh.]) in Romania. Visual inspection cannot be relied upon to detect these insects. However, the garlic can be treated as follows to destroy these injurious plant pests:

32 g/m^3 (2 lbs/1000 ft^3) for 1½ hours at 37 °C or above (90 °F or above); or
32 g/m^3 (2 lbs/1000 ft^3) for 2 hours at 26.5–31.5 °C (80–89 °F); or
40 g/m^3 (2 lbs/1000 ft^3) for 2 hours at 21–26 °C (70–79 °F); or
48 g/m^3 (3 lbs/1000 ft^3) for 2 hours at 15.5–20.5 °C (60–69 °F); or
48 g/m^3 (3 lbs/1000 ft^3) for 3 hours at 10–15 °C (50–59 °F); or
48 g/m^3 (3 lbs/1000 ft^3) for 4 hours at 4.5–9.5 °C (40–49 °F)

The treatments described above have been determined to be effective against the specified insects. This determination is based on research evaluated and approved by the Department. A bibliography and additional information on this research may be obtained from APHIS by writing to the Oxford Methods Development Center, 901 Hillsboro St., Oxford, NC 27555.

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the garlic would be readily detectable by a USDA inspector. As noted, the garlic would be subject to inspection, disinfection, or both, at the port of first arrival, in accordance with § 319.56–6.

Currently, § 319.56–2g sets out the treatment schedule shown above. We are proposing to remove this schedule from the regulations, and, instead refer readers to the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual), which is incorporated into the regulations by reference at 7 CFR 300.1. This will eliminate unnecessary duplication of treatment provisions. We would also update the PPQ Treatment Manual to show that the treatment schedule shown above is approved for garlic from Romania.

Peppers From Israel

The regulations at § 319.56–2u(b) allow peppers from the Paran region of the Arava Valley in Israel to be imported into the United States under certain conditions. Based on trapping data [2] from the agricultural production areas of the Arava Valley, we are proposing to extend the production area where peppers may be grown for importation into the United States to include all of the Arava Valley. All of the current conditions for importation under § 319.56–2u(b) for peppers from the Paran region would apply to the entire Arava Valley; the peppers, among other things, would have to be grown in insect-proof plastic screenhouses, sorted and packed in insect-proof screenhouses, and transported in fruit fly-proof containers. Additionally, malathion bait spray treatments would have to be applied to residential areas in the Arava Valley at 6- to 10-day intervals beginning not less than 30 days before the harvest of backyard fruit fly host material in residential areas and continuing through the harvest. The Israeli Department of Plant Protection and Inspection would also conduct trapping for Medfly throughout the agricultural production areas of the Arava Valley, Israel, and if a single Medfly is captured in a screenhouse, exports from that screenhouse would immediately be cancelled until the source of the infestation is delimited, trap density is increased, pesticide sprays are applied, or other measures acceptable to APHIS are taken to prevent further occurrences. Further, signs in English and Hebrew must be posted along Arava Highway 90 stating that discarding fruits and vegetables from passing vehicles is prohibited. Accordingly, we propose to amend § 319.56–2u(b) to extend the production area in the Arava Valley, Israel, where peppers may be grown for importation into the United States to include all of the Arava Valley.

In accordance with § 319.56–2u(b)(6), peppers imported into the United States from the Paran region of the Arava Valley, Israel, may not be distributed outside of the following States: Connecticut, the District of Columbia, Delaware, Iowa, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin, or West Virginia. We are proposing to amend § 319.56–2u(b)(6) to eliminate the distribution restrictions on peppers from the Arava Valley, Israel. As peppers from the Arava Valley must be grown, harvested, and packed under the conditions described in the preceding paragraph, the distribution restrictions were imposed as an additional, final precaution against the introduction of Medfly into the United States. We are proposing to eliminate these distribution requirements because there have been no Medfly interceptions in the area of production in the Arava Valley. We believe that this demonstrates that the growing, harvesting, and packing conditions imposed on the importation into the United States of peppers from the Arava Valley, Israel, are dependable in preventing the introduction of Medfly into the United States. Therefore, we conclude that restricting the distribution of peppers from the Arava Valley in the United States is unnecessary.

Papayas From Costa Rica

The regulations at § 319.56–2w allow papayas from Costa Rica to be imported into the United States under certain conditions. One of the conditions is that an APHIS inspector in Costa Rica certify that specified growing, packing, and trapping requirements have been met. We are proposing to allow the Costa Rican Ministry of Agriculture (MAG) to make this certification. We are proposing this change because of the success of the joint effort between the Costa Rican MAG and APHIS in the Costa Rican papaya program. Since the inception of the papaya program in Costa Rica, no fruit fly larvae or adult flies have been intercepted in either the preclearance program in Costa Rica or at the port of entry in the United States. We believe that this demonstrates that the growing, harvesting, and trapping conditions governing the entry into the United States of the papayas (see § 319.56–2w) are dependable in preventing the introduction of fruit flies into the United States and that the Costa Rican MAG is committed to, familiar with, and capable of sole oversight of the papaya program in Costa Rica. Therefore, we are proposing that the Costa Rican MAG would oversee the program as stated in § 319.56–2w. All shipments of papayas from Costa Rica would have to be accompanied by a phytosanitary certificate signed by a

[2] Information on this trapping data may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

MAG official stating that the conditions of 7 CFR 319.56–2w have been met.

In conjunction with this change, we are proposing to eliminate the trust fund agreement requirements contained in § 319.56–2w(a) of the regulations. Currently a trust fund must be mainatined to pay for services that APHIS provides in the inspection and certification of shipments of Costa Rican papayas bound for the United States.

Medfly-Free Areas of Chile

The regulations at § 319.56–2(j) provide that all of the provinces of Chile, except for the Provinces of Arica, Iquique, and Parinacota, have been determined to be free of Medfly. We are proposing to declare all of the provinces of Chile, including Arica, Iquique, and Parinacota, free of Medfly. Recently, Chile provided APHIS with the trapping data, including the protocol and results of fruit sampling, sterile fly release, and bait spray applications, that demonstrates that the provinces of Arica, Iquique, and Parinacota meet the criteria for a Medfly-free area. Accordingly, we would amend § 319.56–2(j) to state that all of the provinces of Chile are considered free of Medfly.

Lastly, we are proposing to make minor editorial changes to § 319.56–2r(a)(1) and § 319.56–2g(a)(1) to correct out-of-date references to countries or locations.

Use of Methyl Bromide

Methyl bromide is currently in widespread use as a fumigant. It is presented in this proposal as an alternative to a phytosanitary inspection that determines that shipments of garlic from Romania are apparently free of living stages of *Brachycerus* spp. and *Dyspessa ulula* (Bkh.). The environmental effects of using methyl bromide, however, are being scrutinized by international, Federal, and State agencies. The U.S. Environmental Protection Agency (EPA), based on its evaluation of data concerning the ozone depletion potential of methyl bromide, published a notice of final rulemaking in the **Federal Register** on December 10, 1993 (58 FR 65018–65082). That rulemaking freezes methyl bromide production in the United States at 1991 levels and requires the phasing out of domestic use of methyl bromide by the year 2001. APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the eventual unavailability of methyl bromide fumigation. Our current proposal assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years.

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.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that adoption of this proposed rule would result in any significant economic impact on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Federal Plant Pest Act and the Plant Quarantine Act (7 U.S.C. 150dd, 150ee, 150ff, 151–165, and 167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This proposed rule would amend 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 has been prohibited because of the risk that they could introduce injurious plant pests into the United States.

Our proposal is 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 proposed rule could, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, would 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 would be required to undergo mandatory treatment for injurious plant pests as a condition of entry, or to meet other special conditions. This action would 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.

Availability of Data

For many of the commodities proposed for importation into the United States in this document, data on the levels of production and the anticipated import volume is unavailable for a number of reasons. First, many of these commodities are not produced in significant quantities either in the United States or in the country that would be exporting the commodity to the United States; generally, less statistical data is collected— and therefore available —for commodities produced in small quantities when compared to a country's more heavily-produced commodities. Second, some of these commodities do not appear to be produced in the United States at all; therefore, data on the U.S. production and export levels for those commodities does not exist. Finally, estimates of potential exports of commodities from foreign countries to the United States are often difficult to obtain, due in part to the uncertainty surrounding the cost and availability of transportation and the demand for the commodity in the United States.

Leeks From Belgium

No information is available on U.S. production of leeks. Data is available, however, on U.S. exports and imports of the commodity. In 1995, the United States imported 2,764 metric tons of leeks, an increase over the 1993 and 1994 levels (2,328 metric tons and 2,042 metric tons, respectively). In 1995, the United States exported 3,279 metric tons of leeks, also an increase over the 1993 and 1994 levels (2,519 metric tons and 2,708 metric tons, respectively).

The fact that the United States exports leeks suggests that the commodity is produced in the United States. However, the volume of exports suggests that the level of production is low relative to other, more popular vegetables.

Data on the number or size of leek producers in the United States is not available. However, since most U.S. vegetable and melon farms are small by Small Business Administration (SBA) standards, it is very likely that the U.S. farms that produce leeks are also small.

Data on the volume of potential exports of leeks from Belgium to the United States is not available.

Papaya From Brazil

In 1995, the United States produced 23,042 metric tons (fresh equivalent) of papaya for human consumption, valued at $18.5 million. In 1993 and 1994, the United States produced 28,939 metric tons and 28,123 metric tons, respectively, of papaya for human consumption.

Imports into the United States of fresh papaya have grown rapidly, to the point where imports now exceed U.S. production levels of papaya for human consumption. In 1995, the United States imported 33,288 metric tons of fresh papaya, a significant increase over the 1993 and 1994 levels (14,198 metric tons and 18,677 metric tons, respectively). The increase in U.S. imports of fresh papaya since 1993 is due almost entirely to increased shipments from Mexico, the source of most U.S. papaya imports. The United States is a net importer of fresh papaya, as exports of the commodity from the United States did not exceed 8,293 metric tons in any of the years between 1993 and 1995.

In 1992, papaya was produced at 519 farms in the United States. It is not known how many of those farms are considered small entities under SBA standards, since information on their sizes is not available. However, most are probably small, since most U.S. farms whose revenues are derived primarily from the sale of fruits and tree nuts are considered small.

In 1993, Brazil was the world's largest producer of papaya. In that year, Brazil produced an estimated 1,750,000 metric tons of papaya, 30.1 percent of the world's total. No data is available, however, on the volume of potential exports of this commodity from Brazil to the United States.

Radicchio From Ecuador

Data on radicchio production for the entire United States is not available. However, production data is available for the State of California, where most, if not all, of U.S. radicchio is produced. In 1994, California produced 7,040 metric tons of radicchio, an increase over the State's 1993 volume of 6,387 metric tons. California's 1994 production had a value of $7.7 million. No information on U.S. (or California) trade in radicchio is available.

Data on the number or size of radicchio producers in the United States (or California) is not available. However, since most U.S. vegetable and melon farms are considered small by SBA standards, it is very likely that the U.S. farms that produce radicchio are also small.

Information on Ecuador's production and export of radicchio, including potential exports to the United States, is not available.

Eggplant From El Salvador

In 1995, the United States produced 28,710 metric tons of eggplant, with a value of $16.2 million. In 1993 and 1994, domestic production levels were 34,160 metric tons and 35,380 metric tons, respectively. U.S. production has been supplemented by a steadily growing level of eggplant imports, 18,154 metric tons in 1993, 21,302 metric tons in 1994, and 24,946 metric tons in 1995. The United States is a net importer of eggplant, as exports of the commodity from the United States did not exceed 9,090 metric tons in any of the years between 1993 and 1995.

In 1992, the latest year for which data is available, eggplant was produced at 2,203 farms in the United States. It is not known how many of these farms are considered small entities under SBA standards, since information as to their size is not available. However, most are probably small, since most vegetable and melon farms in the United States are small.

Data on the volume of eggplant production in El Salvador is not available. Data on the volume of potential exports of eggplant from El Salvador to the United States is also not available.

Basil and Dill From Guatemala

Information on U.S. production and exportation of basil is not available, but indicators suggest that basil is not grown commercially in significant quantities in the United States. In 1995, the United States imported 3,404 metric tons of basil with a value of $4.9 million. U.S. basil imports in 1994 and 1993 were 3,216 metric tons and 2,449 metric tons, respectively.

Information on U.S. production and exportation of dill is not available, but indicators suggest that dill, like basil, is not grown commercially in significant quantities in the United States. In 1995, the United States imported 766 metric tons of dill with a value of $1.0 million. U.S. dill imports in 1994 and 1993 were 949 metric tons and 828 metric tons, respectively.

Guatemala currently produces basil and dill for its local market only. No data is available on the exact level of basil or dill production in Guatemala, but the volume is believed to be very small. Data on the volume of potential exports of these commodities from Guatemala to the United States is not available.

Mioga Ginger From Japan

No information is available on U.S. production or exportation of the flowers, leaves, and stems of mioga ginger. The absence of such data suggests that commercial production of mioga ginger in the United States is negligible, at most. Mioga ginger is a spice, and most spices are not grown commercially in significant quantities in the United States. Data on U.S. imports of mioga ginger is also not available.

Japan produced 6,638 metric tons of mioga ginger in 1994. No information is available on the potential volume of exports of this commodity from Japan to the United States. At the present time, all mioga ginger produced in Japan is consumed locally; none is exported.

Leek From The Netherlands

Data on U.S. production and trade of leeks is discussed above under the heading ''Leeks from Belgium.''

In 1994, The Netherlands produced 102,727 metric tons of leeks, and its exports of leeks that year totaled 43,764 metric tons. In 1995, the Netherlands exported 51,062 metric tons of leeks, with just over 50 percent of those exports directed to Germany. Potential exports of leeks from The Netherlands to the United States could reach 1,000 metric tons annually, depending on such factors as the cost and availability of air transportation and demand in the United States. However, as the United States is a net exporter of leeks, it is doubtful that consumer demand in the United States will encourage a substantial volume of leek imports from The Netherlands.

Eggplant From Nicaragua

Data on U.S. production and trade of eggplant is discussed above under the heading ''Eggplant from El Salvador.''

To date, all of the eggplant produced commercially in Nicaragua has been consumed locally. No data is available, however, on the volume of eggplant production in Nicaragua. In addition, no data on the volume of potential exports of eggplant from Nicaragua to the United States is available. However, relatively small quantities are likely to be imported. In 1993, for example, Nicaragua produced little or no eggplant, and its production of all vegetables and melons that year totaled only 59,000 metric tons. By comparison, U.S. supply (domestically produced and imported) of eggplant alone in 1993 totaled 52,314 metric tons, just slightly less than Nicaragua's entire vegetable and melon production that year.

Radicchio From Nicaragua

Data on the production of radicchio in California is discussed above under the heading ''Radicchio from Ecuador.''

Nicaragua currently produces radicchio for its local market. No data is available on the exact volume of radicchio production in Nicaragua, but the volume is believed to be very small. Data on the volume of potential exports of radicchio from Nicaragua to the United States is also not available.

Garlic From Romania

In 1995, the United States produced 232,010 metric tons of fresh garlic, valued at $179.8 million. In 1993 and 1994, domestic production levels were 188,690 metric tons and 208,200 metric tons, respectively. While U.S. production has been growing rapidly, U.S. imports of garlic have steadily declined, 39,381 metric tons in 1993, 21,705 metric tons in 1994, and 18,594 metric tons in 1995. U.S. exports of the commodity have also steadily declined, from 11,274 metric tons in 1993 to 7,659 metric tons in 1995.

In 1992, garlic was produced at 619 U.S. farms. It is not known how many of these farms are considered small entities under SBA standards, since information as to their size is not available. However, most are probably small, since most vegetable and melon farms in the United States are small.

In 1995, Romania produced 58,000 metric tons of garlic, an increase over the country's 1994 and 1993 production levels (56,400 metric tons and 48,900 metric tons, respectively). In 1996, Romanian garlic production is estimated to have fallen to approximately 50,000 metric tons, due to unfavorable weather conditions. Data on the volume of potential exports of garlic from Romania to the United States is not available. However, trade sources within Romania indicate that the prospects for future exports to the United States are reduced, owing to both the high price and low quality of Romanian garlic.

The alternative to this proposed rule was to make no changes in the regulations. After consideration, we rejected this alternative because there is no biological reason to prohibit the importation into the United States of the fruits and vegetables listed in this document.

Executive Order 12988

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables 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 challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this 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. 96–046–1. Please send a copy of your comments to: (1) Docket No. 96–046–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, 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.

The paperwork associated with the importation of the fruits and vegetables named in this document would include the completion of phytosanitary certificates and fruit fly monitoring records. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. We need this outside input to 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 1.31 hours per response.

Respondents: Foreign plant health protection authorities.

Estimated number of respondents: 50.

Estimated number of responses per respondent: 10.

Estimated total annual burden on respondents: 656 hours.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, Room 404-W, 14th Street and Independence Ave., SW, Washington, DC 20250.

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 proposed to be amended as follows:

PART 300—INCORPORATION BY REFERENCE

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

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a), the introductory text would be 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 _____, 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 would continue 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).

§ 319.56–2 [Amended]

4. In § 319.56–2, paragraph (j) would be amended by removing the words ''except Arica, Iquique, and Parinacota'.

5. In § 319.56–2g, paragraph (a) would be revised to read as follows:

§ 319.56–2g Adminstrative instructions prescribing method of treatment of garlic from specified countries.

(a) Except as otherwise provided in these administrative instructions, fumigation with methyl bromide in vacuum fumigation chambers, in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter, is a condition of entry under permit for all shipments of garlic (*Allium sativum*) from Algeria, Armenia, Austria, Azerbaijan, Czech Republic, Egypt, Estonia, France, Georgia, Germany, Greece, Hungary, Iran, Israel, Italy, Latvia, Lithuania, Moldova, Morocco, Portugal, Romania, the area of the Russian Federation west of the Ural Mountains, Slovakia, South Africa (Republic of), Spain, Switzerland, Syria, Turkey, Ukraine, and the area of the former Yugoslavia. Fumigation is to be carried out under the supervision of a plant quarantine inspector and at the expense of the importer. While it is believed that the garlic will be unaffected by the fumigation, the treatment will be at the importer's risk. Such entry will be limited to ports named in the permits, where approved facilities for vacuum fumigation with methyl bromide are available.

* * * * *

§ 319.56–2r [Amended]

6. In § 319.56–2r, paragraph (a)(1) would be amended by removing the words '', and West Germany'', by adding the word ''Germany,'' immediately following the word ''France'', and by adding the word ''and'' immediately following the word ''Sweden,''.

7. In § 319.56–2t, the table would be amended by adding, in alphabetical order, the following entries:

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

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	*
Belgium	Leek	*Allium* spp.	Whole plant. (Must be accompanied by a phytosanitary certificate issued by the Ministry of Agriculture of Belgium stating that the leek is apparently free of *Acrolepiopsis assectella*.)
*	*	*	*
Ecuador			
*	*	*	*
	Radicchio	*Cichorium* spp.	Above ground parts.
El Salvador			
*	*	*	*
	Eggplant	*Solanum melongena*	Fruit.
*	*	*	*
Guatemala			
*	*	*	*
	Basil	*Ocimum* spp.	Above ground parts.
	Dill	*Anethum graveolens*	Above ground parts.
*	*	*	*
Japan	Mioga Ginger	*Zingiber mioga*	Above ground parts.
*	*	*	*
Netherlands	Leek	*Allium* spp.	Whole plant. (Must be accompanied by a phytosanitary certificate issued by the Ministry of Agriculture of The Netherlands stating that the leek is apparently free of *Acrolepiopsis assectella*.)
*	*	*	*
Nicaragua			
*	*	*	*
	Eggplant	*Solanum melongena*	Fruit.
	Radicchio	*Cichorium* spp.	Above ground parts.
*	*	*	*

§ 319.56–2u [Amended]

8. Section 319.56–2u would be amended as follows:

a. In paragraph (b)(1), by removing the words ''in the Paran region of''.

b. In paragraph (b)(2), by removing the word ''Paran'' and by adding in its place the words ''the Arava Valley''.

c. By removing paragraph (b)(6) and redesignating paragraphs (b)(7) through (b)(9) as paragraphs (b)(6) through (b)(8), respectively.

d. In newly designated paragraph (b)(6), by removing the word ''Paran''

and by adding in its place the words ''the Arava Valley'.

e. In newly designated paragraph (b)(7), by removing the word ''Paran'' and by adding in its place the words ''the Arava Valley''.

9. Section 319.56–2w would be revised to read as follows:

§ 319.56–2w Administrative instruction; conditions governing the entry of papayas from Brazil and 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 State of Espirito Santo, Brazil, and 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 State of Espirito Santo, Brazil, or 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 ½ or more ripe (more than ¼ 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 ½ ripe (the shell surface was no more than ¼ yellow, surrounded by light green), and appeared to be free of all injurious insect pests.

(d) The papayas were packaged so as to prevent access by fruit flies and other injurious insect pests, and the package does not contain 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 19th day of March 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–7455 Filed 3–24–97; 8:45 am]

BILLING CODE 3410–34–P

---

9 CFR Parts 1 and 3

[Docket No. 97–018–1]

Animal Welfare; Petition for Rulemaking

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of petition and request for comments.

SUMMARY: We are notifying the public of our receipt of a petition for rulemaking, and we are soliciting public comment on that petition. The petition, sponsored by the Doris Day Animal League, requests that we amend the Animal Welfare regulations by redefining the term ''retail pet store'' and by including dealers of dogs intended for hunting, security, and breeding in the regulations.

DATES: Consideration will be given only to comments received on or before May 27, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–018–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–018–1. Anyone wishing to see copies of comments received, or the petition, including appendices, may do so by coming to 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. Please call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Bettye Walters, Veterinary Medical Officer, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3. 9 CFR part 1 contains definitions for terms used in 9 CFR parts 2 and 3. Subpart A of 9 CFR part 3 contains specific standards for the humane handling, care, treatment, and transportation of dogs and cats.

A petition for rulemaking, sponsored by the Doris Day Animal League, requests two changes to the regulations at 9 CFR parts 1 and 3. The requested changes are: (1) to redefine the term ''retail pet store'' in 9 CFR part 1; and (2) to regulate dealers of dogs intended for hunting, security, and breeding under the provisions applicable to other dealers of dogs in 9 CFR part 3. The petition is printed below. A brief description of the appendices referred to in the petition appears at the end of the petition.

Comments are invited on the proposed changes discussed in the petition. In particular, we are soliciting comments addressing the following questions:

1. Should the definition of ''retail pet store'' in 9 CFR part 1 be revised to read ''a non-residential business establishment used primarily for the sale of pets to the ultimate customer'?

2. Should dealers of dogs intended for hunting, security, and breeding be subject to the applicable regulations at 9 CFR part 3, subchapter A''?

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 19th day of March 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

Petition Before the U.S. Department of Agriculture

Petition for Rulemaking and Collateral Relief; Doris Day Animal League, 227 Massachusetts Avenue, NE, Suite 100, Washington, DC 20002

June 22, 1995.

I. Introduction

Pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e), the Doris Day Animal League, a national animal protection organization, petitions the Department of Agriculture