

unmanufactured wood regulations, requiring certification or treatment prior to importation rather than at the port of first arrival, we do not believe that they will have a significant economic impact. In addition, we could not find any data on the importation of bark or bark products into the United States from Canada, which indicates that there is not a high volume of trade in these articles.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

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

#### **List of Subjects**

##### **7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

#### **List of Subjects**

##### **7 CFR Part 319**

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 301 and 319 would be amended as follows:

#### **PART 301—DOMESTIC QUARANTINE NOTICES**

1. The authority citation for part 301 would continue to read as follows:

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

#### **§ 301.45–1 [Amended]**

2. In § 301.45–1, in the definition of *regulated articles*, paragraph (2) would be amended by removing the words “wood chips” and adding in their place the words “bark and bark products”.

#### **§ 301.45–4 [Amended]**

3. In § 301.45–4, paragraph (b) would be amended by removing the word “June” and adding in its place the word “August”, and paragraph (c)(2) would be amended by removing the words “wood chips” and adding in their place the words “bark and bark products”.

#### **PART 319—FOREIGN QUARANTINE NOTICES**

4. The authority citation for part 319 would continue to read as follows:

**Authority:** 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, 7751–7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

#### **§ 319.40–2 [Amended]**

5. In § 319.40–2, paragraph (f) would be amended by adding the words “bark and bark products and” before the word “logs”.

6. Section 319.77–2 would be amended by redesignating paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and by adding a new paragraph (f) to read as follows:

#### **§ 319.77–2 Regulated articles.**

\* \* \* \* \*

(f) Bark and bark products;

\* \* \* \* \*

7. In § 319.77–4, the introductory text of paragraph (b), including footnote 2; paragraph (b)(1); the introductory text of paragraph (b)(2); the introductory text of paragraph (b)(2)(i); and paragraph (b)(2)(ii) would be revised to read as follows:

#### **§ 319.77–4 Conditions for the importation of regulated articles.**

\* \* \* \* \*

(b) *Bark and bark products and logs and pulpwood with bark attached.*<sup>2</sup> (1) Bark and bark products or logs or pulpwood with bark attached that are destined for a U.S. infested area and that will not be moved through any U.S. noninfested area other than noninfested areas in the counties of Aroostock, Franklin, Oxford, Piscataquis, Penobscot, and Somerset, ME (*i.e.*, areas in those counties that are not listed in 7 CFR 301.45–3) may be imported from any area of Canada without restriction under this subpart.

<sup>2</sup> Bark, bark products, and logs from Canada are also subject to restrictions under “Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles” (§§ 319.40 through 319.40–11 of this part).

(2) Bark and bark products or logs or pulpwood with bark attached that are destined for a U.S. noninfested area or will be moved through a U.S. noninfested area may be imported into the United States from Canada only under the following conditions:

(i) If the bark, bark products, logs, or pulpwood originated in a Canadian infested area, they must be either:

\* \* \* \* \*

(ii) If the bark, bark products, logs, or pulpwood originated in a Canadian noninfested area, they must be accompanied by a certification of origin stating that they were produced in an area of Canada where gypsy moth is not known to occur.

\* \* \* \* \*

Done in Washington, DC, this 16th day of May 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–12985 Filed 5–22–03; 8:45 am]

**BILLING CODE 3410–34–P**

#### **DEPARTMENT OF AGRICULTURE**

#### **Animal and Plant Health Inspection Service**

#### **7 CFR Part 319**

##### **[Docket No. 02–049–1]**

#### **Importation of Fragrant Pears From China**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the fruits and vegetables regulations to allow the importation of fragrant pears from China under certain conditions. As a condition of entry, fragrant pears from China would have to be grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization of China. The fragrant pears would be subject to inspection. In addition, the pears would have to be packed in insect-proof containers that are labeled in accordance with the regulations and safeguarded from pest infestation during transport to the United States. This action would allow fragrant pears to be imported from China while continuing to provide protection against the introduction of plant pests into the United States.

**DATES:** We will consider all comments that we receive on or before July 22, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-049-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-049-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-049-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Inder P. Gadh, Import Specialist, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1231; (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 plant pests that are new to or not widely distributed within the United States.

Currently, the regulations do not allow the importation of fragrant pears from China. However, the national plant protection organization of China has requested that the Animal and Plant Health Inspection Service (APHIS) allow fragrant pears from the Korla region of Xinjiang Province in China to be imported into the United States.

Under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant product if the Secretary determines that

the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

The Secretary has determined that it is not necessary to prohibit the importation of fragrant pears from the Korla region of Xinjiang Province in China in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. This determination is based on the finding that the application of the remedial measures contained in this proposed rule will provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States. The factors considered in arriving at this determination include the conclusions of a pest risk assessment,<sup>1</sup> program analysis, and site visits.

The pest risk assessment and supporting documents identified 13 pests of quarantine significance present in China that could be introduced in the United States via fragrant pears. However, the climatic conditions and production practices in the Korla region of Xinjiang Province do not favor the establishment of any of these pests. The production area is west of the Gobi Desert and just north of the Taklamakan Desert. The area experiences extremely hot summers, cold winters, and very little rainfall.

Furthermore, the production area is geographically as well as culturally isolated. Although agricultural commodities are exported from the region, there is little, if any, incoming trade. As a result, the potential for pests of quarantine significance being introduced into the area is extremely low. In the unlikely event a pest was introduced, climatic conditions and production practices would significantly reduce the likelihood of establishment.

Therefore, we are proposing to allow fragrant pears to be imported from the Korla region of Xinjiang Province in China under certain conditions. The provisions for the importation of fragrant pears from China would be set out in a new section, § 319.56-2kk.

We would require that the fragrant pears be grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization of China. All propagative material introduced into a registered production site would have to

be certified free of specified quarantine pests by the national plant protection organization of China.

The fragrant pears would be subject to both pre-harvest and post-harvest inspections. Each year, within 30 days prior to harvest, the national plant protection organization of China or officials authorized by the national plant protection organization of China would have to inspect the registered production site for signs of pest infestation and would have to allow APHIS to monitor the inspections. The national plant protection organization of China would have to provide APHIS with information on pest detections and pest detection practices, and APHIS would have to approve the pest detection practices. The national plant protection organization of China would be responsible for immediately notifying APHIS of any quarantine pests found during inspection of the registered production site or at any other time.

Upon detection of Oriental fruit fly (*Bactrocera dorsalis*) during the pre-harvest inspection or at any other time, APHIS could prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

APHIS could prohibit the importation into the United States of fragrant pears from a production site for the season if any of the following pests are detected on that production site during the pre-harvest inspection or at any other time: Peach fruit borer (*Carposina sasakii*), yellow peach moth (*Conogethes punctiferalis*), apple fruit moth (*Cydia inopinata*), Hawthorn spider mite (*Tetranychus viennensis*), red plum maggot (*Cydia funebrana*), brown rot (*Munilinia fructigena*), Asian pear scab (*Venturia nashicola*), pear trellis rust (*Gymnosporangium fuscum*), and Asian pear black spot (*Alternaria spp.*). The exportation to the United States of fragrant pears from the production site could resume in the next growing season if an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken. Furthermore, if any of these pests is detected in more than one registered production site, APHIS could prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

<sup>1</sup> The pest risk assessment and supporting documents may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

After harvest, the national plant protection organization of China or officials authorized by the national plant protection organization of China would have to inspect the pears for signs of pest infestation and would have to allow APHIS to monitor the inspections. The national plant protection organization of China would be responsible for immediately notifying APHIS of any quarantine pests found during the post-harvest inspection or at any other time.

If any of the quarantine pests listed above are detected during the post-harvest inspection, APHIS could reject the lot or consignment and could prohibit the importation of fragrant pears into the United States, as described above.

In addition, APHIS could reject an individual lot or consignment upon detection of large pear borer (*Numonias pivivorella*), pear curculio (*Rhynchites fovepessin*), and Japanese apple curculio (*R. heros*). These pests are readily identifiable as they cause significant and characteristic damage to infested fruit. Therefore, post-harvest inspection is adequate mitigation for these pests.

The fragrant pears would have to be packed in insect-proof containers that are labeled in accordance with § 319.56-2(g), which requires that each box of fruit imported into the United States be clearly labeled with: (1) The name of the orchard or grove of origin, or the name of the grower; (2) the name of the municipality and State in which it was produced; and (3) the type and amount of fruit it contains. The fragrant pears would have to be held in a cold storage facility while awaiting export. In order to prevent fragrant pears intended for export to the United States from being commingled with any other fruit, we would require that if fruit from unregistered production sites are stored in the same facility, the fragrant pears would have to be isolated from that other fruit.

In addition, fragrant pears would have to be safeguarded to prevent pest infestation during transport to the United States. To facilitate compliance with the regulations, fragrant pears could only be imported under a permit issued by APHIS. In addition, each shipment of pears would have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of China stating that the conditions of the regulations

have been met and that the shipment has been inspected and found free of quarantine pests.

We believe that the proposed requirements described above are sufficient and necessary to prevent the introduction into the United States and the dissemination within the United States of a plant pest or noxious weed.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the fruits and vegetables regulations to allow the importation of fragrant pears from China under certain conditions. This action would allow fragrant pears to be imported from China while continuing to provide protection against the introduction of plant pests into the United States.

This analysis examines whether the regulations might have a significant economic impact on a substantial number of small entities, as required by the Regulatory Flexibility Act. There are three reasons why we believe this will not be the case. First, the risk of quarantine pests being introduced into the United States via this pathway is extremely low. Second, fragrant pears are not produced in the United States and fragrant pear import levels are expected to be low relative to domestic availability. In addition, our analysis suggests that Ya pear (*Pyrus bretschneideri*) imports from China do not substitute for domestically produced pears; therefore, profit losses, if any, for domestic pear producers are expected to be extremely low, at least over the next several years. Third, allowing the importation of a pear variety that is not produced domestically will lead to gains for small importers and pear consumers in the United States.

#### **Pear Production and Pest Risks**

Fragrant pears are grown in an area surrounding Korla, a city in Xinjiang Province, which makes up the northwest corner of China, and are not grown anywhere else in the world. The production area, which is west of the Gobi Desert and just north of the Taklamakan Desert, experiences extremely hot summers, cold winters,

and very little rainfall, and is geographically as well as culturally isolated. In addition, while agricultural commodities are exported from the region, there is little if any incoming trade. As a result, the potential for pests of quarantine significance being introduced into the area is extremely low. Furthermore, in the unlikely event a pest was introduced, climatic conditions and production practices would significantly reduce the likelihood of establishment.

Approximately 15,000 hectares are devoted to fragrant pear production in Xinjiang Province, yielding roughly 90,718 metric tons per year, of which 10 percent is exported. We expect that exports to the United States would come mainly from the farm units known as Regiments 28, 29, 30, 33, and Shayi Dong Farms, although additional quantities could come from Regiments 31 and 32. The land belongs to the government, and the proper maintenance of every orchard is under the direct supervision of China's Administration of Plant Quarantine (AQSIQ), which stations one supervisor to each regiment in the export area. The AQSIQ supervisor is in contact with the growers on a weekly basis and directs the work of several survey teams.<sup>2</sup> The survey teams are in the orchards every day and are responsible for maintaining traps, extension work, fruit cutting and inspection, checking to see that orchards are maintained properly, participating in annual pest surveys, and checking on other crops. If it is determined that an orchard is not being managed properly, AQSIQ assigns it to another grower.

#### **Benefits and Costs**

Because pest risks associated with this pathway are extremely low, we expect regulatory costs associated with quarantine pest introductions to be negligible. In addition, because fragrant pears are not produced in the United States and because quantities designated for export are expected to be low, at least during the next several years, we do not expect fragrant pears to compete with domestically produced pears over the short run. However, imports of fragrant pears from China may increase over time, as has been the case for U.S. Ya pear imports and Canadian Ya and fragrant pear imports from China (table 1).

<sup>2</sup>There are approximately 5,166 hectares of agricultural production, 3,000 growers, and 66 survey teams in Regiments 28, 29, 30, 33, and Shayi

Dong Farms, for an average 1.72 hectares per grower and 79 hectares per survey team. Most of Regiment 30, however, is devoted to wheat and rice

production. Each fragrant pear grower manages about 1 hectare.

TABLE 1.—YA PEARS FROM CHINA AND DOMESTICALLY PRODUCED FRESH PEARS, QUANTITIES, AND PRICES

| Year       | YA pear imports <sup>1</sup><br>(1,000 kg) | Import prices <sup>1</sup><br>(\$/kg) | Domestic production fresh pears <sup>2</sup><br>(1,000 kg) | Domestic prices <sup>2</sup> <sup>2</sup><br>(\$/kg) | Chinese pear exports to Canada <sup>3</sup><br>(1,000 kg) |
|------------|--|---------------------------------------|--|--|---|
| 1996 ..... | NA   | NA                                    | 416,897  | \$0.62   | 321   |
| 1997 ..... | NA   | NA                                    | 519,191  | 0.41   | 182   |
| 1998 ..... | 329  | \$1.48                                | 466,107  | 0.44   | 909   |
| 1999 ..... | 2,058                                      | 1.26                                  | 486,410  | 0.43   | 1,899   |
| 2000 ..... | 5,264                                      | 0.73                                  | 496,348  | 0.36   | 4,663   |
| 2001 ..... | 6,654                                      | 0.54                                  | 494,588  | 0.43   | NA  |

NA = not available.

<sup>1</sup> Data for 1998–2002 are from FAS (2002), and data for 2001 are from the World Trade Atlas, which obtains its data from the U.S. Bureau of the Census.

<sup>2</sup> The nominal price data during 1996–1998 are from NASS (1999), and data for 1999–2001 are from NASS (2002).

<sup>3</sup> China currently exports fragrant pears (and possibly Ya pears) to Canada. These data are from (FAS 2002).

We used time-series data on U.S. Ya pear imports from China, domestic fresh pear production and prices, and total domestic expenditures on fruit during 1996–2001 to estimate the rate of substitution between Ya pears and domestically produced pears in order to glean information about the potential rate of substitution between fragrant pear imports and domestic pears.<sup>3</sup> In particular, we estimated a linear relationship between fresh domestic pear prices and a constant, fresh domestic production, and Ya pear imports from China. Prices and expenditures were converted to 2001 dollars using a fresh fruit consumer price index. The constant, Ya pear imports, real expenditures on fruit, and total pear production were used as instruments in the instrumental variables estimation procedure. The constant and the coefficient estimate on utilized fresh pear production are statistically different from zero, at a 5 percent significant level, and the

coefficient estimate on production has the appropriate sign (table 2). The coefficient estimate on Ya pear imports is negative but not statistically different from zero, indicating that Ya pears did not substitute for domestically produced pears during 1998–2001.

During 1998–2001, U.S. imports of Ya pears from China increased an average 236 percent per year, mainly due to a 526 percent increase between 1998 and 1999 (table 1). More recently, imports increased 26 percent between 2000 and 2001. Import restrictions on Ya and fragrant pear imports from China imposed by the Canadian Food Inspection Agency are somewhat similar to those APHIS would impose and, as a result, Canadian imports of Chinese Ya and fragrant pears provide additional information regarding potential future U.S. imports of these commodities. During 1996–2000, Canadian imports increased an average 153 percent per year, increasing 146 percent between 1999 and 2000. There are no data to

indicate directly whether U.S. imports of fragrant pears from China may compete with domestically produced pears. However, if the relationship between Ya pears and domestic pears is similar to the relationship between fragrant pears and domestic pears, then the estimation results in table 2 indicate that U.S. imports of fragrant pears from China will not compete with domestically produced pears during the next several years. If U.S. imports of fragrant pears from China increase rapidly over time, however, fragrant pears may eventually compete with some varieties of domestic pears over the long run. Be that as it may, all of the available data indicate that Chinese fragrant pears will not compete with domestic pears in the short run and, therefore, that allowing the importation of fragrant pears from China would likely not adversely impact U.S. pear producers in the short run.

TABLE 2.—INSTRUMENTAL VARIABLES ESTIMATION RESULTS FOR INVERSE FRESH DOMESTIC PEAR DEMAND \*

| Variable                             | Coefficient estimate | Standard error | T-statistic | P-value |
|--------------------------------------|----------------------|----------------|-------------|---------|
| Constant .....                       | 1.30–                | 0.36           | 3.62        | 0.000   |
| Utilized fresh pear production ..... | -1.75e-09            | 7.65e-10       | -2.29       | 0.022   |
| Ya pear imports .....                | -6.63e-09            | 8.30e-09       | -0.80       | 0.425   |

Dependent variable: Fresh pear prices.

Instruments: Constant, Ya pear imports, fruit expenditures, domestic pear production.

Observations: 6 [1996–2001].

Standard error of the regression: 0.05.

Coefficient of determination: 0.83.

F-Stat (over-identifying restrictions): 0.46 [0.55].

\* Sources for the 1996–2001 data are reported in the text (See Benefits and Costs) and in table 1. Estimates were obtained using the TSP statistical analysis software package.

Allowing the importation of fragrant pears from China would, however, likely provide benefits to U.S. importers of Chinese fragrant pears, as well as

domestic pear consumers. The U.S. Small Business Administration defines a small pear importer (NAICS 42248, Fresh Fruit and Vegetable Wholesalers)

as one with annual sales receipts of \$100 million or less. There are no data to indicate directly the level of benefits that may accrue to small pear importers

<sup>3</sup> Data on U.S. Ya pear imports from China begin in the year 1998. As a result, Ya pear imports are

zero for 1996 and 1997. Quantity data are in

kilograms, and expenditure data are in billions of dollars.

in the United States. Instead, we used data on Ya pears to estimate an inverse import demand curve for Ya pears and, under the assumption that U.S. import demand for Ya and fragrant pears would be similar, estimated benefits using the import demand curve for Ya pears. We used time-series data on Ya pear imports and prices and total domestic expenditures on fruit during 1998–2001 to estimate a linear relationship between import price, a constant, and import

quantity. Prices and expenditures were converted to 2001 dollars using a fresh fruit consumer price index. The constant, real expenditures on fruit, and a time index were used as instruments. Both the constant and the coefficient estimate on U.S. Ya pear imports from China are statistically significant, and the coefficient estimate on imports has the appropriate sign (table 3). Assuming import demand for Ya and fragrant pears have a similar structure, and

assuming Chinese export supply is perfectly inelastic at 256.88 metric tons for the first shipping season, then expected gross revenues less payments to Chinese exporters accruing to U.S. small pear importers for the first marketing season are \$5,014 in 2001 dollars.<sup>4</sup> (This figure does not include additional costs associated with unloading, storing, and transporting fragrant pears to market.)

TABLE 3.—INSTRUMENTAL VARIABLES ESTIMATION RESULTS FOR INVERSE DOMESTIC YA PEAR IMPORT DEMAND \*

| Variable              | Coefficient estimate | Standard error | T-statistic | P-value |
|-----------------------|----------------------|----------------|-------------|---------|
| Constant .....        | 1.55                 | 0.02           | 69.17       | 0.000   |
| Ya pear imports ..... | –1.52e–07            | 5.12e–09       | –29.65      | 0.000   |

*Dependent variable:* Ya pear import price.

*Instruments:* Constant, fruit expenditures, time index.

*Observations:* 4 [1998–2001].

*Standard error of the regression:* 0.03.

*Coefficient of determination:* 1.00.

*F-Stat (over-identifying restrictions):* 1.99 [0.29].

\* Sources for the 1996–2001 data are reported in the text (See Benefits and Costs) and in table 1. Estimates were obtained using the TSP statistical analysis software package.

### Conclusion

We expect that allowing the importation of fragrant pears from China would likely not have a significant negative economic impact on a substantial number of small entities in the short run. If imports of fragrant pears increase over time, as has been the case for U.S. Ya pear imports and Canadian Ya and fragrant pear imports, it is possible that fragrant pears could compete with some varieties of domestically produced pears, leading to profit losses for small pear producers in the United States. However, under these circumstances, profit losses for small pear producers would be offset by profit gains for small pear importers. That is, even if fragrant pear imports compete with domestic pears in the long run, the proposed rule may have positive net welfare impacts on small entities in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

### Executive Order 12988

This proposed rule would allow fragrant pears to be imported into the United States from the Korla region of Xinjiang Province in China. If this proposed rule is adopted, State and local laws and regulations regarding

fragrant pears imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court 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. 02–049–1. Please send a copy of your comments to: (1) Docket No. 02–049–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW.,

Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would allow the importation of fragrant pears from China under certain conditions. As a condition of entry, fragrant pears from China would have to be grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization of China. The fragrant pears would be subject to inspection. In addition, the pears would have to be packed in insect-proof containers that are labeled in accordance with the regulations and safeguarded from pest infestation during transport to the United States. Finally, fragrant pears could only be imported under a permit issued by APHIS and each shipment of pears would have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of China stating that the conditions of the regulations have been met and that the shipment has been inspected and found free of quarantine pests.

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

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's

<sup>4</sup> This figure is an estimate based on information provided by Chinese officials.

functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

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

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.4294 hours per response.

*Respondents:* Exporters, Producers, State and Regulatory Officials.

*Estimated annual number of respondents:* 130.

*Estimated annual number of responses per respondent:* 1.3076.

*Estimated annual number of responses:* 170.

*Estimated total annual burden on respondents:* 73 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

**Authority:** 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, 7751–7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56–2kk would be added to read as follows:

##### § 319.56–2kk Administrative instructions: Conditions governing the entry of fragrant pears from China.

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

(a) *Origin, growing, and harvest conditions.* (1) The pears must have been grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization of China.

(2) All propagative material introduced into a registered production site must be certified free of the pests listed in this section by the national plant protection organization of China.

(3) Within 30 days prior to harvest, the national plant protection organization of China or officials authorized by the national plant protection organization of China must inspect the registered production site for signs of pest infestation and allow APHIS to monitor the inspections. The national plant protection organization of China must provide APHIS with information on pest detections and pest detection practices, and APHIS must approve the pest detection practices.

(4) If any of the quarantine pests listed in this section are found during the pre-harvest inspection or at any other time, the national plant protection organization of China must notify APHIS immediately.

(i) Upon detection of Oriental fruit fly (*Bactrocera dorsalis*), APHIS may reject the lot or consignment and may prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

(ii) Upon detection of peach fruit borer (*Carposina sasaki*), yellow peach moth (*Conogethes punctiferalis*), apple fruit moth (*Cydia inopinata*), Hawthorn spider mite (*Tetranychus viennensis*), red plum maggot (*Cydia funebrana*), brown rot (*Munilinia fructigena*), Asian pear scab (*Venturia nashicola*), pear trellis rust (*Gymnosporangium fuscum*), or Asian pear black spot (*Alternaria* spp.), APHIS may reject the lot or consignment and may prohibit the

importation into the United States of fragrant pears from the production site for the season. The exportation to the United States of fragrant pears from the production site may resume in the next growing season if an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken. If any of these pests is detected in more than one registered production site, APHIS may prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

(5) After harvest, the national plant protection organization of China or officials authorized by the national plant protection organization of China must inspect the pears for signs of pest infestation and allow APHIS to monitor the inspections.

(6) Upon detection of large pear borer (*Numonia pivivorella*), pear curculio (*Rhynchites fovepessin*), or Japanese apple curculio (*R. heros*), APHIS may reject the lot or consignment.

(b) *Packing requirements.* (1) The fragrant pears must be packed in insect-proof containers that are labeled in accordance with § 319.56–2(g).

(2) The fragrant pears must be held in a cold storage facility while awaiting export. If fruit from unregistered production sites are stored in the same facility, the fragrant pears must be isolated from that other fruit.

(c) *Shipping requirements.* (1) All pears must be safeguarded during transport to the United States in a manner that will prevent pest infestation.

(2) Fragrant pears may only be imported under a permit issued by APHIS in accordance with § 319.56–4.

(3) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the national plant protection organization of China stating that the conditions of this section have been met and that the shipment has been inspected and found free of the pests listed in this section.

Done in Washington, DC, this 16th day of May 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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