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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 05–068–2]

#### Importation of Peppers From the Republic of Korea

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations to allow the importation into the continental United States of peppers from the Republic of Korea under certain conditions. As a condition of entry, the peppers will have to be grown in approved insect-proof, pest-free greenhouses and packed in pest-exclusionary packinghouses. In addition, the peppers will have to be safeguarded against pest infestation during their movement from the production site to the packinghouse and from the packinghouse to the continental United States. This action will allow for the importation of peppers from the Republic of Korea into the continental United States while continuing to provide protection against the introduction of quarantine pests.

**DATES:** *Effective Date:* June 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart–Fruits and Vegetables” (7 CFR 319.56 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.

On December 29, 2005, we published in the **Federal Register** (70 FR 77069–77073, Docket No. 05–068–1) a proposal<sup>1</sup> to amend the regulations to allow the importation of peppers from the Republic of Korea into the continental United States under certain conditions. As a condition of entry, we proposed that the peppers would have to be grown in approved insect-proof, pest-free greenhouses and packed in pest-exclusionary packinghouses. In addition, we proposed that the peppers would have to be safeguarded against pest infestation during their movement from the production site to the packinghouse and from the packinghouse to the continental United States.

We solicited comments concerning our proposal for 60 days ending February 27, 2006. We received two comments by that date. One comment was from a private citizen who questioned the need to import peppers from the Republic of Korea. The commenter stated generally that the United States should rely on its own pepper production, but did not otherwise address any issues germane to the proposal. The second commenter, from a State department of agriculture, expressed concern that *Pepino mosaic virus* could be transported into the United States on peppers from the Republic of Korea. *Pepino mosaic virus* has a narrow host range which includes tomato. As the commenter stated, it is not known for certain whether *Capsicum* species serve as hosts for the virus. In addition, the virus is reported to occur within the United States, including Florida, and is not under official control. APHIS regards fruit for consumption as an unlikely pathway for the establishment of *Pepino mosaic virus* and does not, therefore, restrict the interstate movement of U.S. tomatoes, even though tomato is an established host of the virus. Pepper is not a known

host for *Pepino mosaic virus*; therefore, we believe pepper fruit for consumption is even less likely to serve as a pathway.

The commenter also expressed concern that the pest risk assessment does not discuss the fungus *Monilinia fructicola* in any depth, given that the brown rot symptoms caused by *M. fructicola* are difficult to distinguish from the symptoms caused by *M. fructigena*, which is identified as a quarantine pest of concern in the pest risk assessment. *M. fructicola* is common within the United States and is not considered a quarantine pest. Fruit infected with *M. fructicola* exhibits symptoms of brown rot that would be visible upon inspection. Since, as the commenter notes, brown rot is also a symptom of *M. fructigena*, which is a quarantine pest addressed by this rule, peppers would not be accepted from any greenhouse where brown rot symptoms had been detected unless it is determined that the causal fungus is the nonquarantine species.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

**Note:** In our December 2005 proposed rule, we proposed to add the conditions governing the importation of peppers from the Republic of Korea as § 319.56–200. In this final rule, those conditions are added as § 319.56–200.

#### Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the fruits and vegetables regulations to allow the importation into the continental United States of peppers from the Republic of Korea (South Korea) under certain conditions. As a condition of entry, the peppers will have to be grown in approved insect-proof, pest-free greenhouses and packed in pest-exclusionary packinghouses. In addition, the peppers will have to be safeguarded against pest infestation during their movement from the production site to the packinghouse and from the packinghouse to the continental United States. This action will allow for the importation of peppers from South Korea into the

<sup>1</sup>To view the proposed rule and the comments we received, go to <http://www.regulations.gov>, click on the “Advanced Search” tab, and select “Docket Search.” In the Docket ID field, enter APHIS–2005–0112, then click on “Submit.” Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

continental United States while continuing to provide protection against the introduction of quarantine pests.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. In accordance with section 604 of the RFA, we have prepared a final regulatory flexibility analysis describing the expected impact of the changes in this rule on small entities. During the comment period for our proposed rule, we did not receive any comments pertaining to the initial regulatory flexibility analysis presented in that document.

The peppers to be imported into the United States are greenhouse-grown throughout South Korea. Based on information provided by the National Plant Quarantine Service (NPQS) of South Korea, we expect that red varieties or cultivars ('Spirit,' 'Special,' 'Jubilee') will comprise 60–70 percent of the peppers that will be exported to the United States from South Korea. Yellow pepper cultivars or varieties ('Fiesta,' 'Romeca') will comprise 20–25 percent of exports, and orange ('Nassau,' 'Emily,' 'Boogie') pepper cultivars will comprise 5–10 percent of the peppers shipped to the United States. The Netherlands is the seed source for the peppers grown in South Korea.

The harvesting of the peppers will occur between November and July. The pepper fruits ready for export to the United States will be packed in standard boxes (usually 5kg/carton package) and stored under low temperature conditions. During distribution, temperatures will be maintained at 8–10 °C. The peppers will then be transported from South Korea by ship, using refrigerated containers, to western parts of the United States, and via air containers to eastern parts of the United States.

South Korea expects to export 250 metric tons of peppers per month, amounting to 3,000,000 kg annually. At 5 kg per carton, that will comprise 600,000 cartons per year, or about 600 40-foot container loads (assuming that each holds 1,000 cartons). This level of imports is small compared to current levels of production and imports into the United States.

In 2004, a volume of 446,006,999 kg of peppers, valued at \$663.6 million, was imported into the United States. These imports included fresh or chilled fruits of the genus *Capsicum* or *Pimenta*. Mexico, Canada, the Netherlands, and Israel were the major exporting countries.

Regarding commercial pepper production in the United States, the National Agricultural Statistics Service (NASS) (2005) reports the production of bell and chili peppers separately. In 2004, the production of bell peppers for fresh market and processing amounted to 16,803,000 cwt<sup>2</sup> (762,171,259 kg), and was valued at \$576,375,000. California and Florida are the major producing States. The production of chili peppers in 2004 was 4,753,000 cwt (215,592,453 kg), valued at \$123,615,000. Chili peppers are defined as all peppers excluding bell peppers, and the estimates include both fresh and dry products. New Mexico and California are the major producing States.

#### Effects on Small Entities

The Regulatory Flexibility Act requires agencies to specifically consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has established size criteria based on the North American Industry Classification System (NAICS) to determine which economic entities meet the definition of a small firm. This rule may affect producers and wholesalers of peppers in the United States.

Pepper producers are classified into two categories: Other Vegetable (except Potato) and Melon Farming (NAICS 111219) and Food Crops Grown Under Cover (NAICS 11141). The small entity size standard for these producers is \$750,000 or less in annual receipts. According to the 2002 Census of Agriculture, there were 31,550 farms classified under NAICS 111219 in 2002. The total market value of the agricultural products sold from these farms amounted to \$10,159,518,000 with \$10,093,575,000 accruing to sales of crops, and \$65,943,000 to sales of livestock, poultry, and their products. Similarly, there were 1,778 farms classified under NAICS 11141 in 2002. The total value of the agricultural products sold from these farms amounted to \$1,215,760,000, with \$1,214,474,000 accruing to sales of crops and \$1,286,000 to sales of livestock, poultry, and their products.

However, APHIS does not have information on the distribution of these farms by sales value of their products. We also do not have information for pepper producers specifically. Nevertheless, the 2002 Agricultural Census data indicated that the bell

peppers harvested for sale in 2002 were harvested from 8,484 farms; and that the harvested areas were smaller than 5 acres on 90 percent of these farms. Though lack of data thus precludes more definitive conclusions regarding the potential economic impacts on small entities, the above data indicate that the majority of pepper farms that may be affected by this rule would likely qualify as small.

Fruit and vegetable wholesalers are classified under NAICS 424480, and those with not more than 100 employees are considered small by SBA standards. There were 5,376 fresh fruit and vegetable merchant wholesalers in the United States in 2002, which employed a total of 110,578 employees. APHIS does not have information on the distribution of the wholesalers by numbers of employees. We also do not have data on the wholesale trade for peppers specifically. However, the above data indicate that the majority of fruit and vegetable wholesalers that may be affected by this rule would likely qualify as small entities.

Thus, APHIS expects that the producers and wholesalers in the United States that may be affected by the importation of peppers from South Korea will predominantly be small entities. Nevertheless, the economic effects are not expected to be significant. It has been estimated that about 3,000 tons of peppers would be imported annually from South Korea. In an economic analysis prepared by APHIS for a recent proposed rule,<sup>3</sup> it was estimated that annual imports of about 31,040 tons of peppers from the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua would lead to a price decrease of approximately \$0.01 to \$0.02 per pound at the retail level. Since the volume imported from South Korea is expected to be significantly smaller, effects on domestic prices that may result from the importation of peppers from South Korea should be even lower. Thus, the price changes that may result from this level of increase in the supply of peppers are expected to be negligible.

On the other hand, importers and consumers in the United States may benefit from this rule. Importers will have more import opportunities available due to the alternative sources of peppers. Consumers will benefit from an increased availability of the product. Nevertheless, changes of the magnitude presented here are not likely to have large repercussions for either of the categories of entities discussed above.

<sup>2</sup> "cwt" is an abbreviation for "hundredweight," the standard unit of production for certain agricultural products. One hundredweight equals 100 pounds.

<sup>3</sup> See 70 FR 59283–59290, Docket 05–003–1, published October 12, 2005.

## Alternatives

APHIS does not expect there to be any significant economic impact of this rule on small entities. There is therefore no basis for setting forth alternatives that would minimize significant impacts.

Two alternatives to this rule that would not meet stated objectives would be to either not change current regulations regarding the importation of peppers from South Korea or to allow their importation without the required risk mitigations.

The first alternative would maintain current safeguards against the entry of exotic pests. However, this option would also mean that both countries would forgo economic benefits expected to be afforded by the trade. Furthermore, APHIS has concluded that the pest risks associated with the importation of peppers from South Korea can be effectively mitigated by the phytosanitary requirements; given that conclusion, it would be contrary to our obligations under international trade agreements to maintain a prohibition on the importation of peppers from South Korea.

Allowing the importation of fresh peppers from South Korea under phytosanitary requirements less restrictive than those described in this rule could potentially lead to the introduction of pests not currently found in the United States. This option could result in losses and costs to domestic production and is, thus, not desirable.

This rule contains information collection or recordkeeping requirements (see "Paperwork Reduction Act" below).

## Executive Order 12988

This final rule allows peppers to be imported into the United States from South Korea. State and local laws and regulations regarding peppers imported under this rule will be preempted while the fruit is in foreign commerce. Fresh peppers are generally imported for immediate distribution and sale to the consuming public, and 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 final rule. The

environmental assessment provides a basis for the conclusion that the importation of peppers under the conditions specified in this rule 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), as amended (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).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.<sup>4</sup> Copies of the environmental assessment and finding of no significant impact are also 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. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under

## FOR FURTHER INFORMATION CONTACT.

## Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0282.

## 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 rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

## List of Subjects in 7 CFR Part 319

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

■ Accordingly, we are amending 7 CFR part 319 as follows:

## PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–2qq is added to read as follows:

### § 319.56–2qq Administrative instructions; conditions governing the entry of peppers from the Republic of Korea.

Peppers (*Capsicum annuum* L. var. *annuum*) from the Republic of Korea may be imported into the continental United States only under the following conditions:

(a) The peppers must be grown in the Republic of Korea in insect-proof greenhouses approved by and registered with the National Plant Quarantine Service (NPQS).

(b) The greenhouses must be equipped with double self-closing doors, and any vents or openings in the greenhouses (other than the double self-closing doors) must be covered with 0.6 mm screening in order to prevent the entry of pests into the greenhouse.

(c) The greenhouses must be inspected monthly throughout the growing season by NPQS to ensure phytosanitary procedures are employed to exclude plant pests and diseases, and that the screens are intact.

(d) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. During the time the packinghouse is in use for exporting peppers to the continental United States, the packinghouse can accept peppers only from registered approved production sites. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing. The peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the continental United States. These

<sup>4</sup> Go to <http://www.regulations.gov>, click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS–2005–0112, click on "Submit," then click on the Docket ID link in the search results page. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

safeguards must remain intact until the arrival of the peppers in the United States or the shipment will not be allowed to enter the United States.

(e) Each shipment of peppers must be accompanied by a phytosanitary certificate of inspection issued by NPQS bearing the following additional declaration: "These peppers were grown in greenhouses in accordance with the conditions in 7 CFR 319.56-2qq and were inspected and found free from *Agrotis segetum*, *Helicoverpa armigera*, *Helicoverpa assulta*, *Mamestra brassicae*, *Monilinia fructigena*, *Ostrinia furnacalis*, *Scirtothrips dorsalis*, *Spodoptera litura*, and *Thrips palmi*."

(f) The peppers must be imported in commercial shipments only.

(Approved by the Office of Management and Budget under control number 0579-0282)

Done in Washington, DC, this 17th day of May 2006.

**Kevin Shea,**

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

[FR Doc. 06-4718 Filed 5-19-06; 8:45 am]

**BILLING CODE 3410-34-P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 50 and 72

RIN 3150-AH39

#### Submission of Annual Financial Reports: Elimination of Requirement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations so that licensees who file financial reports with the Securities and Exchange Commission (SEC) or the Federal Energy Regulatory Commission (FERC), need not submit annual financial reports, including the certified financial statements, to the Commission. The Commission is also amending its regulations so that Independent Spent Fuel Storage Installation (ISFSI) licensees who file financial reports with the SEC or the FERC, need not submit annual financial reports, including the certified financial statements, to the Commission.

**DATES:** *Effective Date:* The final rule is effective August 7, 2006, unless significant adverse comments are received by June 21, 2006. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying

premise or approach, or would be ineffective or unacceptable without change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number RIN 3150-AH39 in the subject line of your comments. Comments on rulemakings or petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

E-mail comments to: [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 p.m. on Federal workdays. (Telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking or petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's

public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3224, e-mail [MTJ1@nrc.gov](mailto:MTJ1@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

In accordance with section 553(b)(3)(B) of the Administrative Procedures Act, the NRC is using the direct final rule process for this rule because the NRC considers this action to be noncontroversial, and does not anticipate significant adverse comments. The Commission considers this rulemaking action noncontroversial because the annual reports and the certified financial statements currently required by § 50.71 (b) and 72.80 (b), are typically written for the shareholders, and contain information pertaining to financial qualifications, that may be outdated by the time it is published. The reports can be found posted on the company's Web site as well as on the SEC or FERC Web sites. The NRC has concluded that for licensees that are required to file financial reports with the SEC or the FERC, licensee financial information can be collected in a more cost-effective way than requiring licensees to submit the reports to the Commission, as required by 10 CFR 50.71(b) and 10 CFR 72.80 (b). The NRC has access to other more current sources of information than the annual financial reports to assess the licensees' financial condition, making the submittal of the annual financial report to the NRC unnecessary. Additionally, NRC has the authority to request licensees to submit additional or more detailed information regarding their financial status if the Commission considers this information appropriate.

The amendments in this rule will become effective on August 7, 2006. However, if the NRC receives significant adverse comments on this direct final rule by June 21, 2006, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.