

# Proposed Rules

Federal Register

Vol. 71, No. 129

Thursday, July 6, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2006–0073]

#### Importation of Shelled Garden Peas From Kenya

**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 shelled garden peas from Kenya into the continental United States. In order to be eligible for importation, the peas would have to be shelled, washed, and inspected and accompanied by a phytosanitary certificate issued by the Kenya Plant Health Inspectorate Service. This action would allow for the importation of shelled peas from Kenya into the continental United States while continuing to protect against the introduction of quarantine pests.

**DATES:** We will consider all comments that we receive on or before September 5, 2006.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the lower “Search Regulations and Federal Actions” box, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column, select APHIS–2006–0073 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

- Postal Mail/Commercial Delivery: Please send four copies of your

comment (an original and three copies) to APHIS–2006–0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to APHIS–2006–0073.

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

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharon Porsche, 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.

The Kenya Plant Health Inspectorate Service (KEPHIS) has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow shelled garden peas from Kenya to be imported into the United States. As part of our evaluation of Kenya’s request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instruction for accessing Regulations.gov).

The PRA, titled “Importation of Garden Peas, Shelled *Pisum sativum* L.

from Kenya into the Continental United States, a Qualitative Pathway-Initiated Risk Assessment” (May 2006), evaluates the risks associated with the importation of shelled garden peas into the continental United States (the lower 48 States and Alaska) from Kenya. The PRA identified 13 pests of quarantine significance present in garden peas (*Pisum sativum*) in Kenya: The weevils *Callosobruchus analis*, *C. chinensis*, *C. maculatus*, and *C. phaseoli*; the borers *Crociosema aporema*, *Leucinodes orbonalis*, and *Maruca vitrata*; the grasshopper *Diablocatantops axillaris*; the bollworm *Helicoverpa armigera*; the caterpillar *Lampides boeticus*; the leafworm *Spodoptera littoralis*; the flower thrips *Thrips flavus*; and the looper *Thysanoplusia orichalcea*.

However, the assessment took into account the post-harvest handling that the peas would be subjected to in Kenya and further determined that none of the 13 quarantine significant pests identified may be reasonably expected to follow the pathway of shelled garden pea shipments from Kenya. As a result of these findings, the 13 pests of quarantine significance were listed as not following the pathway, and, therefore, were not analyzed further.

The specific post-harvest processing procedures suggested by KEPHIS that were considered in the PRA and that would be required under this proposed rule are described in the following paragraphs.

The imports of garden peas would be limited to peas that have been removed from their shell. Shelling allows for visual inspection and removes most of the larval pests that may be feeding on the pods and exposes pests that feed on the pea. These pests are highly visible and easily detected during the shelling process.

The shelled peas would then have to be washed in a disinfectant wash in water at 3 to 5 °C containing 50 ppm of chlorine. The washing of the shelled peas further aids in the removal of any insects that might feed on individual peas.

In addition, we would require that KEPHIS inspect the shelled peas and issue a phytosanitary certificate for each consignment of peas. The phytosanitary certificate would have to bear an additional declaration confirming that the required post-harvest shelling and washing procedures have been

followed, as well as a statement confirming that the peas have been inspected and found free of pests.

We have determined that these proposed measures would prevent the introduction of plant pests into the United States. The proposed conditions described above for the importation of shelled garden peas from Kenya into the United States would be added to the fruits and vegetables regulations as a new § 319.56–2ss.

#### **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 shelled garden peas from Kenya into the continental United States. In order to be eligible for importation, the peas would have to be shelled, washed, and inspected and accompanied by a phytosanitary certificate issued by KEPHIS. This action would allow for the importation of shelled peas from Kenya into the continental United States while continuing to protect against the introduction of quarantine pests.

The Regulatory Flexibility Act requires agencies to consider the economic impact of their regulations on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between differently sized entities. In accordance with the Act, APHIS has performed an initial regulatory flexibility analysis regarding the economic effects of this proposed rule on small entities. We do not have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities that may incur benefits or costs from the implementation of this proposed rule. However, based on the information we do have, we believe that most, if not all, of the businesses affected by the proposed rule would be small, and there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities.

The United States is the third largest producer of garden peas after India and China. However, less than 1 percent of U.S. production goes into the fresh market, the reason being that fresh garden peas require harvesting by hand, whereas peas destined for processing can be machine-harvested. The cost of

farm labor is considerably higher in the United States than in many other countries.

According to industry sources, fresh garden peas grown in the United States are mainly produced in California (more than 85 percent), with the rest grown mainly in Florida. Published data on domestic production of fresh garden peas exist only for two counties in California, San Luis Obispo County and Santa Barbara County.<sup>1</sup> Based on the 2000–2004 data for these two counties, California snow pea production declined over that 5-year period, while green pea production has expanded. The value of pea production in those two counties in 2004 was \$29 million.

The United States is a net importer of fresh/chilled peas, and our major foreign supplier of fresh garden peas in 2005 was Guatemala, with a 45 percent share (by value) of U.S. imports, followed by Peru (29 percent) and Mexico (24 percent). Nearly all U.S. fresh pea exports go to Canada.

Our reported domestic supply of fresh garden peas (California production plus net U.S. imports) in 2004 totaled about 39,700 metric tons, valued at \$42.7 million. These totals exclude U.S. production that may have taken place outside of San Luis Obispo and Santa Barbara Counties.

If we include the 15 percent of unreported U.S. production of fresh garden peas thought to occur outside of the two California counties, then the 2004 domestic supply would total about 42,800 metric tons, with roughly 65 percent imported and 35 percent supplied by U.S. producers.

U.S. entities that could be affected by the proposed rule are domestic producers of fresh garden peas and wholesalers who import fresh garden peas. Businesses producing green peas and snow peas are classified in the North American Industry Classification System (NAICS) within the category of Other Vegetable (except Potato) and Melon Farming (NAICS code 111219). The Small Business Administration's (SBA) small entity definition for these producers is annual receipts of not more than \$750,000. Firms that would import fresh, shelled garden peas from Kenya are defined as small entities if they have 100 or fewer employees (NAICS code 424480, Fresh Fruit and Vegetable Merchant Wholesalers).<sup>2</sup>

<sup>1</sup>Annual County Agricultural Commissioner Report Data (Sacramento: California Department of Food and Agriculture, 2000–2004).

<sup>2</sup>The wholesale sector comprises two types of wholesalers: Those that sell goods on their own account and those that arrange sales and purchases for others for a commission or fee. Importers are included in both cases.

In general, firms engaged in production or importation of agricultural commodities are predominantly small. We believe that most if not all of the businesses affected by the proposed rule would be small.

We do not know the number of U.S. producers of fresh garden peas. According to the 2002 Census of Agriculture for California Counties, there were 327 vegetable farms in San Luis Obispo and Santa Barbara Counties, the two counties for which there are published fresh garden pea production data. We do not know how many of these vegetable farms produce fresh garden peas. Also, we do not know their size, but in general, such entities are predominantly small. We welcome information that the fresh vegetable industry or general public may provide on the number and size of entities that could be affected by the proposed rule.

#### **Alternatives**

An alternative to the proposed rule would be to require that a different set of phytosanitary measures be satisfied. Risk assessment and risk management documents prepared by APHIS identify 13 quarantine pests for fresh garden peas from Kenya. For the current proposed rule, the commodity would be subject to certain risk mitigations, including removal of the seeds from the pod, washing of the shelled peas in water at 3 to 5 °C containing 50 ppm chlorine, phytosanitary certification by KEPHIS, and U.S. port-of-entry inspection. These conditions are expected to successfully mitigate risks posed to U.S. agriculture. Import requirements less or more stringent than those proposed would, respectively, either not provide an appropriate level of phytosanitary protection or impose unduly burdensome measures.

We would appreciate any comments on the potential economic effects of allowing the importation into the continental United States of garden peas from Kenya, and on how the proposed rule could be modified to reduce expected costs or burdens for small entities consistent with its objectives.

This proposed rule contains certain reporting and recordkeeping requirements (see “Paperwork Reduction Act” below).

#### **Executive Order 12988**

This proposed rule would allow shelled garden peas to be imported into the continental United States from Kenya. If this proposed rule is adopted, State and local laws and regulations regarding shelled garden peas imported under this rule would be preempted while the fruit is in foreign commerce.

Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and 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 APHIS-2006-0073. Please send a copy of your comments to: (1) APHIS-2006-0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the fruits and vegetables regulations to allow the importation of shelled garden peas from Kenya into the continental United States. In order to be eligible for importation, the peas would have to be shelled, washed, and inspected and accompanied by a phytosanitary certificate issued by KEPHIS. The phytosanitary certificate would have to bear an additional declaration stating that the peas had been shelled and washed in accordance with the proposed requirements and had been inspected and found free of 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 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 0.15 hour per response.

*Respondents:* Importers of peas, KEPHIS.

*Estimated annual number of respondents:* 2.

*Estimated annual number of responses per respondent:* 20.

*Estimated annual number of responses:* 40.

*Estimated total annual burden on respondents:* 6 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

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

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

#### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue 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 § 319.56-2ss would be added to read as follows:

#### § 319.56-2ss Conditions governing the entry of shelled garden peas from Kenya.

Garden peas (*Pisum sativum*) may be imported into the continental United States from Kenya only under the following conditions:

(a) The peas must be shelled from the pod.

(b) The peas must be washed in disinfectant water at 3 to 5 °C containing 50 ppm chlorine.

(c) Each shipment of peas must be accompanied by a phytosanitary certificate of inspection issued by the national plant protection organization of Kenya bearing the following additional declaration: "These peas have been shelled and washed in accordance with 7 CFR 319.56-2ss and have been inspected and found free of pests."

Done in Washington, DC, this 29th day of June 2006.

**Kevin Shea,**

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

[FR Doc. E6-10551 Filed 7-5-06; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-20351; Directorate Identifier 2003-NM-269-AD]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 767 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** The FAA is revising an earlier proposed airworthiness directive (AD) for all Boeing Model 767 airplanes. The original NPRM would have required an inspection of each main tank fuel boost pump for the presence of a pump shaft flame arrester, and if the flame arrester is missing, replacement of that pump with a pump having a pump shaft flame arrester. The original NPRM would also have required repetitive measurements of the flame arrester's position in the pump, and corrective actions if necessary. The original NPRM resulted from reports that certain fuel boost pumps may not have flame arrestors installed in the pump shaft and reports