

# Rules and Regulations

Federal Register

Vol. 73, No. 41

Friday, February 29, 2008

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2007–0116]

RIN 0579–AC64

#### Importation of Fruits and Vegetables

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations by eliminating a treatment requirement for Ya pears imported from Shandong Province, China; clarifying the conditions that apply to the importation of sand pears from the Republic of Korea and Japan; and clarifying the distinction between plant parts that would be considered plant litter or debris and those that would not. These changes eliminate a treatment requirement that we have determined is no longer necessary and clarify some existing provisions in order to make the regulations easier to understand and implement.

**DATES:** *Effective Date:* March 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operation, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–5333.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the regulations in “Subpart-Fruits and Vegetables” (7 CFR 319.56–1 to 319.56–47, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to

prevent plant pests from being introduced into and spread within the United States.

On December 11, 2007, we published in the **Federal Register** (72 FR 70237–70240, Docket No. APHIS–2007–0116), a proposal<sup>1</sup> to amend the regulations by eliminating a treatment requirement for Ya pears imported from Shandong Province, China; clarifying the conditions that apply to the importation of sand pears from the Republic of Korea and Japan; and clarifying the distinction between plant parts that would be considered plant litter or debris and those that would not.

We solicited comments concerning our proposal for 30 days ending on January 10, 2008. We received two comments by that date, both from tree fruit industry groups. The comments are discussed below by topic.

One commenter expressed frustration with what he characterized as technical barriers that are preventing the exportation to China of pears grown in the United States and stated that such barriers should be removed before we amend the regulations to benefit Chinese pear growers.

As a signatory to the International Plant Protection Convention, the United States has agreed not to prescribe or adopt phytosanitary measures concerning the importation of plants, plant products, and other regulated articles unless such measures are made necessary by phytosanitary considerations and are technically justified. Given that, we do not believe it would be appropriate to delay our removal of a treatment requirement that has been shown to be unnecessary in order to force reciprocal market access.

The other commenter stated that, while the proposed definition of *plant litter and debris* seems straightforward, the Department of Homeland Security’s Customs and Border Protection (CBP) inspectors will need to be trained to recognize the portions of plants permitted entry from those that are not permitted entry. The commenter asked whether APHIS and CBP will provide this type of training prior to implementation of the new regulation.

We work closely with CBP to ensure that inspectors at the ports of entry are

provided with the training and support they need to carry out their duties. This includes ensuring that inspectors are provided accurate and up-to-date information as to which portions of plants are approved for entry and which are not.

The same commenter also requested further clarification of the term “freedom” as it is used in § 319.56–3(a) to indicate that fruits and vegetables imported under the subpart must be free of plant litter or debris. Specifically, the commenter asked whether, as a practical matter, freedom meant zero litter or debris or would a generic tolerance be used, below which the shipment would be considered practically free of plant litter or debris.

We do not employ a generic tolerance for plant litter or debris. While some allowances may on occasion be made for litter or debris appearing in a consignment, decisions as to whether such allowances should be made are based on inspectional guidelines and depend on a number of factors, including the type of litter or debris and the pest risks known to be associated with it, the nature of the commodity, and its end use.

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.

#### Executive Order 12866 and the 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.

In this document, we are amending the regulations pertaining to the importation of fruits and vegetables to eliminate a treatment requirement for Ya pears imported from Shandong Province, China; to clarify the conditions that apply to the importation of sand pears from the Republic of Korea and Japan; and to clarify the distinction between plant parts that would be considered to be plant litter or debris and those that would not. Of these changes, only the elimination of the treatment requirement could be expected to result in any economic effects.

Removing the cold treatment requirement for Ya pears imported from Shandong Province will reduce

<sup>1</sup>To view the proposed rule and the comments we received, go to <http://www.regulations.gov/jdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0116>.

importers' shipping expenses and may also affect domestic pear growers, especially those who produce Ya and other Asian pears, and the wholesalers and distributors of these commodities. However, for both foreign and domestic pear producers, the change in requirements is expected to have a very limited effect on the supply and demand for pears overall.

China is the world's largest producer of pears and accounts for 65 percent of world pear production. According to statistics for marketing year 2005 for three varieties of Chinese pears, including the Ya variety, Hebei Province produced the largest volume of pears, accounting for about 29 percent of pear production in China. Shandong Province produced about 9 percent of China's pears during this time. Although China's Ya pear exports are not classified by the originating province, the removal of the cold treatment requirement of Ya pears produced in Shandong Province may be expected to affect about 25 percent of total U.S. imports of Ya pears from China, assuming that the quantities exported to the United States from the two provinces reflect their relative levels of production.

The shipping expenses of importers seeking to import Ya pears from Shandong Province could, under this rule, be reduced by the amount of the expense of the cold treatment. This amount is estimated to be approximately \$0.06 per kilogram of pears. Since the number of Ya pears imported from Shandong Province is estimated to be approximately one-fourth of total Ya pear imports from China, the net impact on the average price of Ya pears will likely be considerably smaller than \$0.06 per kilogram. If the cost reduction associated with the removal of the cold treatment requirement affects the retail price of Ya pears in the United States, it would be minimal.

Under the criteria established by the Small Business Administration, fruit merchant wholesalers (North American Industry Classification System code 424480) must have 100 or fewer employees to be considered small entities. In 2002, there were 5,376 fresh fruit and vegetable merchant wholesalers in the United States with a total of 110,578 paid employees, or, on the average, 21 paid employees per establishment. Therefore, domestic fruit merchant wholesalers that may be

affected by this rule are predominantly small entities.

The 2002 Census of Agriculture estimates that there are approximately 11,000 pear growers distributed throughout the United States, and that the vast majority of pear growers operate in orchards smaller than 250 acres, and with less than \$750,000 in annual receipts. The average annual sales value of pear growers is estimated to be approximately \$24,416 per grower. Based on this data, it is most likely that pear growers in the United States are predominantly small entities.

In the United States, Asian pears represent a small share of the pear industry. In California, which contains the largest number of Asian pear growers in the country, Asian pears constituted about 7 percent of the total harvested acreage in 2006. Of the Asian pear varieties produced in the United States, Ya pears are estimated to make up a very small percentage of the total number. The value of domestic Ya pears is estimated at less than \$1 million.

The expected economic effect of removing the cold treatment requirement for Ya pears from Shandong Province is minor. Therefore, this rule is expected to have little effect on importers or producers of Ya pears in the United States.

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

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State or local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This final 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 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. Section 319.56–2 is amended as follows:

■ a. By removing the definition for *plant debris*.

■ b. By adding, in alphabetical order, definitions for *plant litter and debris* and *portions of plants* to read as set forth below.

**§ 319.56–2 Definitions.**

\* \* \* \* \*

*Plant litter and debris.* Discarded or decaying organic matter; detached leaves, twigs, or stems that do not add commercial value to the product.

\* \* \* \* \*

*Portions of plants.* Stalks or stems, including the pediculus, pedicel, peduncle, raceme, or panicle, that are normally attached to fruits or vegetables.

\* \* \* \* \*

■ 3. In § 319.56–3, paragraph (a) is revised to read as follows:

**§ 319.56–3 General requirements for all imported fruits and vegetables.**

\* \* \* \* \*

(a) *Freedom from unauthorized plant parts.* All fruits and vegetables imported under this subpart, whether in commercial or noncommercial consignments, must be free from plant litter or debris and free of any portions of plants that are specifically prohibited in the regulations in this subpart.

\* \* \* \* \*

■ 4. Section 319.56–13 is amended as follows:

■ a. In the table in paragraph (a), by removing the entry for “Republic of Korea” and by adding, in alphabetical order, an entry for “Korea, Republic of” to read as set forth below:

■ b. In paragraph (b), by revising paragraph (b)(5)(ix) to read as set forth below.

**§ 319.56–13 Fruits and vegetables allowed importation subject to specified conditions.**

(a) \* \* \*

| Country/locality of origin | Common name | Botanical name  | Plant part(s) | Additional requirements |
|----------------------------|-------------|---|---------------|-------------------------|
| Korea, Republic of         | Dasheen     | <i>Colocasia</i> spp., <i>Alocasia</i> spp., and <i>Xanthosoma</i> spp. | Root          | (b)(2)(iv).             |
|                            | Sand pear   | <i>Pyrus pyrifolia</i> var. <i>culta</i>                                | Fruit         | (b)(5)(ix).             |
|                            | Strawberry  | <i>Fragaria</i> spp.  | Fruit         | (b)(5)(i).              |

(b) \* \* \*  
 (5) \* \* \*  
 (ix) Except for sand pears entering Hawaii, only precleared consignments are authorized. The consignment must be accompanied by a PPQ Form 203 signed by the APHIS inspector on site in the exporting country.  
 \* \* \* \* \*

**§ 319.56–29 [Amended]**

■ 5. Section 319.56–29 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

Done in Washington, DC, this 25th day of February 2008.

**Kevin Shea,**  
*Acting Administrator, Animal and Plant Health Inspection Service.*  
 [FR Doc. E8–3901 Filed 2–28–08; 8:45 am]  
**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 457**

**RIN 0563–AC01**

**Common Crop Insurance Regulations, Florida Citrus Fruit Crop Insurance Provisions; Correction**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains corrections to the final regulation which was published Thursday, February 7, 2008. The regulation pertains to the insurance of Florida Citrus Fruit.

**DATES:** *Effective Date:* The effective date for the final rule published February 7, 2008 (73 FR 7190), is corrected to March 15, 2008. Other corrections in this document are also effective March 15, 2008.

**FOR FURTHER INFORMATION CONTACT:** Bill Klein, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States

Department of Agriculture, Beacon Facility—Mail Stop 0812, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulation that is the subject of these corrections was intended to amend certain Florida Citrus Fruit Crop Insurance Provisions to be used in conjunction with the Common Crop Insurance Policy Basic Provisions for ease of use and consistency of terms.

**Need for Corrections**

As published at 73 FR 7190, the final regulation contained errors that may prove to be misleading and need to be clarified.

1. The first error is contained in the beginning in the Final Rule on page 7190 where it indicates the Effective Date of the amendments is March 10, 2008. This is incorrect. The text should read: *Effective Date:* March 15, 2008.

2. The second error is on page 7196 in the words of issuance. This text should have stated the amendments are effective for the 2009 and succeeding crop years. The text should read as follows:

“Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, Common Crop Insurance Regulations, for the 2009 and succeeding crop years as follows:”

3. The third error is on page 7199 in section 10(e)(2)(iv). This correction replaces the semi-colon at the end of paragraph (e)(2)(iv) with a period.

Signed in Washington, DC, on February 21, 2008.

**Eldon Gould,**  
*Manager, Federal Crop Insurance Corporation.*

[FR Doc. E8–3854 Filed 2–28–08; 8:45 am]

**BILLING CODE 3410–08–P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 959**

[Docket Nos. AO–322–A4; AMS–2006–0079; FV06–959–1]

**Onions Grown in South Texas; Order Amending Marketing Order No. 959**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends Marketing Order No. 959 (order), which regulates the handling of onions grown in South Texas. The amendments are based on those proposed by the South Texas Onion Committee (committee), which is responsible for local administration of the order, and the Department of Agriculture (USDA). The amendments will authorize interest and late payment charges on assessments not paid within a prescribed time period and require that a continuance referendum be conducted every six years to determine grower support for the order. The amendments were approved by onion growers in a mail referendum conducted from September 10 through September 28, 2007. The amendments are intended to improve the operation and functioning of the South Texas onion marketing order program. Proposed amendments that failed in referendum and are not included in this final order include authority for supplemental assessment rates, marketing promotion and paid advertising authority, and tenure limitations for committee members.

**DATES:** This rule is effective March 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, 2202 Monterey Street, #102–B, Fresno, CA 93721; telephone: (559) 487–5110, Fax: (559) 487–5906, E-mail: [Martin.Engeler@usda.gov](mailto:Martin.Engeler@usda.gov); or Kathleen