

# Proposed Rules

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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-2010-0002]

RIN 0579-AD16

#### Importation of Peppers From Panama

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to allow, under certain conditions, the importation of commercial shipments of peppers from Panama into the United States without treatment. The conditions to which the proposed importation of peppers would be subject, including trapping, pre-harvest inspection, and shipping procedures, are designed to prevent the introduction of quarantine pests into the United States. This action would allow for the importation of peppers from Panama into the United States, while continuing to provide protection against the introduction of quarantine pests.

**DATES:** We will consider all comments that we receive on or before August 2, 2010.

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

- Federal eRulemaking Portal: Go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0002>) to submit or view comments and to view supporting and related materials available electronically.

- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0002, 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 Docket No. APHIS-2010-0002.

**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:** Mr. David Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-0627.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 319.56-50, 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.

In 2004, in response to a request from the Governments of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, the Animal and Plant Health Inspection Service (APHIS) prepared a pest risk assessment (PRA) to examine plant pest risks associated with the importation of fresh peppers into the United States from these countries.

Recently, the national plant protection organization (NPPO) of Panama has requested that APHIS amend the regulations to allow peppers from Panama to be imported into the United States. As part of our evaluation of Panama’s request, we have updated the 2004 PRA to include Panama as an exporting country and have prepared 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 or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room).

The updated PRA, titled “Importation of Fresh Pepper—*Capsicum annuum* L., *Capsicum baccatum* L., *Capsicum chinense* Jacq., *Capsicum frutescens* L., and *Capsicum pubescens* Ruiz & Pav.—Fruit with Stems from Central America into the United States” (April 2009), evaluates the risks associated with the importation of peppers into the continental United States. The PRA identified 12 pests of quarantine significance present in Central America, including Panama, that could be introduced into the United States via peppers, including 8 insect pests, 1 bacterium, 1 fungus, and 2 viruses.

##### Insect pests:

Mexican fruit fly (Mexfly, *Anastrepha ludens*).

Mediterranean fruit fly (Medfly, *Ceratitis capitata*).

The weevil *Faustinus ovatipennis*. Pea leafminer (*Liriomyza huidobrensis*).

Tomato fruit borer (*Neoleucinodes elegantalis*).

Lantana mealybug (*Phenacoccus parvus*).

Passionvine mealybug (*Planococcus minor*).

Melon thrips (*Thrips palmi*).

##### Bacterium:

Bacterial wilt (*Ralstonia solanacearum* race 3 biovar 2).

##### Fungus:

The rust fungus *Puccinia pampeana*.

##### Viruses:

Andean potato mottle virus.

Tomato severe leaf curl virus.

##### Pest List Changes

The updates to the PRA did not result in significant changes to the pest list established in the 2004 PRA, but there are two additional pests that have been added to the list of pests for which inspection is required: Bacterial wilt and tomato severe leaf curl virus. We added those pests to the list based on scientific analysis and interception records as detailed in the PRA. As discussed below, symptoms of these two pests are macroscopic and easily detectable via the required field inspections.

We have also removed two pests from the list of pests for which peppers from Central America must be inspected: The banana moth (*Opogona sacchari*) and

tomato yellow mosaic virus. In the 2004 PRA, peppers were determined to be a minor host for the banana moth. Since that time, there have been no interceptions of banana moth associated with shipments of peppers from Central America. Further, banana moth larvae are scavengers of dried and/or harvested vegetable material, and feed only occasionally on living material. The pest primarily attacks the plant stems and decaying pseudostems; however, since pepper stems are not woody or fleshy, and damaged fruits and tissues are likely to be culled during post-harvest processing, we find it unlikely that the pest will follow the importation pathway.

Our basis for including tomato yellow mosaic virus in the 2004 PRA was the result of its identification as a potential pest of concern in the literature. However, upon further review, tomato yellow mosaic virus is not widely reported to occur in Central America. In addition, we found no evidence that this virus affects *Capsicum* spp. For these reasons, we are proposing to remove the banana moth and tomato yellow mosaic virus from the list of pests for which peppers from Central America must be inspected.

#### Systems Approach

To mitigate the risks presented by Mexfly and Medfly, we propose to utilize the systems approach found in § 319.56-40. The regulations in § 319.56-40 contain specific phytosanitary measures that vary depending upon area freedom from Mexfly and Medfly. These measures include:

- In Medfly-free areas: Pre-harvest inspection for the pests of concern conducted by the NPPO of Panama and a phytosanitary certificate issued by the NPPO certifying the pest-free status of the growing area and the shipment.

- In areas where Medfly or Mexfly exists: Peppers must be grown in registered production sites with pest-exclusionary greenhouses, trapping for Medfly or Mexfly must take place as specified, peppers must be packed in pest-exclusionary packinghouses, and export certification with issuance of an accompanying phytosanitary certificate must be completed.

The remaining pests of concern exhibit symptoms that are macroscopic and detectable upon visual inspection in the production areas or during pre-export or port-of-entry inspections. Specifically:

- The weevil *Faustinus ovatipennis* feeds on leaves, stem, inflorescence, and fruit. Both larvae and adults are external feeders and, as a result, easily observed.

- Pea leafminers spend a majority of their life cycle in larval form, mining host leaves. These mines are easily detectable via visual inspection.

- Tomato fruit borer larvae penetrate the fruit and may cause the fruit to fall or become otherwise unmarketable. More mature larvae create large exit holes in the fruit that can be easily detected. In addition, the screen size required by the systems approach in § 319.56-40 is too small to allow the entry of adult tomato fruit borers.

- Latana mealybug and passionvine mealybug are both external pests that are white in color. They are easily detectable on the darker skin of the host. In addition, these pests may also cause deformities in the plant, making infestation obvious.

- Melon thrips cause leaves to yellow and die. Terminal bud growth may be arrested and fruits may be scarred or deformed.

- Bacterial wilt causes wilting of plant leaves without yellowing. In addition, the roots and lower part of the stem undergo visible browning.

- The rust fungus *Puccinia pampeana* causes yellow or orange rust pustules to form on the pepper fruit stem which are easily detectable via visual inspection.

- The Andean potato mottle virus is easily observable on mature plants in the field. Symptoms include mottling of the plant and other plant deformities. In many cases the fruit will not develop and the plants themselves may be dwarfed.

- The tomato severe leaf curl virus involves an initial upward cupping of the leaves, followed by an inward roll. In severe cases, the leaves roll up until the leaflets overlap. Symptomatic leaves become thickened and leathery.

#### Commercial Consignments

The commodity imports would be restricted to commercial consignments only. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56-1, are lots of fruits or vegetables that an inspector identifies as having been imported for sale and distribution.

Identification of a particular consignment as commercial is based on a variety of indicators, including, but not limited to, the quantity of produce, the type of packaging, identification of a grower or packinghouse on the

packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Commercially produced fruit in Panama are already subjected to standard cultural and post-harvest practices that reduce the risk associated with plant pests. While not specifically required by this proposal, standard cultural practices other than the twice yearly application of broad spectrum fungicides (e.g., the regular use of sanitation measures, irrigation, fertilization, and pest control) help to further ensure that the pests of concern do not follow the pathway. All export orchards are registered production sites with traceback capability. Harvested fruit is moved to the packinghouses in a manner that would preclude infestation by pests. Culling of blemished and damaged fruit occurs in the field and during the post-harvest commercial processing of the fruit.

The regulations in § 319.56-6 provide that all imported fruits and vegetables shall be inspected, and shall be subject to such disinfection at the port of first arrival as may be required by an inspector. The pre-export inspection conducted by APHIS personnel as part of preclearance activities in the country of export typically serves to satisfy the inspection requirement. Section 319.56-6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with plant pests that an inspector determines that it cannot be cleaned or treated. We believe that the proposed conditions described above, as well as all other applicable requirements in § 319.56-6, would be adequate to prevent the introduction of plant pests into the United States with peppers imported from Panama.

We therefore propose to add Panama to the list of countries in § 319.56-40, from which importations of peppers are allowed.

#### Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER**

**INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Panama exported an average of about 20 metric tons (MT) of peppers to the United States annually from 1998 to 2001. The United States has not imported peppers from Panama since 2001. We model three levels of pepper exports to the United States from Panama, of increasing magnitude: (i) 20 MT; (ii) the maximum annual quantity exported by Panama to all countries in the most recent years it had export data (29 MT); and (iii) 10 times the maximum quantity exported (290 MT). The largest assumed level of U.S. imports is less than 0.02 percent of average annual U.S. consumption. Even when assuming the largest import quantity and no displacement of imports from other countries, the welfare loss for U.S. small-entity producers would be equivalent to less than 0.05 percent of their average revenue. U.S. producers of peppers are predominantly small. Other small entities that could be affected by the rule include fresh pepper importers.

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 peppers to be imported into the United States from Panama. If this proposed rule is adopted, State and local laws and regulations regarding peppers 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

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 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 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 319.56-40 is amended by revising the introductory text of the section and paragraphs (a)(2), (b)(3)(v), and (c)(3)(v) to read as follows.

#### § 319.56-40 Peppers from certain Central American countries.

Fresh peppers (*Capsicum spp.*) may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) \* \* \*

(2) A pre-harvest inspection of the growing site must be conducted by the national plant protection organization (NPPO) of the exporting country for the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, lantana mealybug, passionvine mealybug, melon thrips, bacterial wilt, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato severe leaf curl virus, and if these pests are found to be generally infesting the growing site, the NPPO may not allow export from that production site until the NPPO has determined that risk mitigation has been achieved.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, lantana mealybug, passionvine mealybug, melon thrips, bacterial wilt, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato severe leaf curl virus. If these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, lantana mealybug, passionvine mealybug, melon thrips bacterial wilt, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato

severe leaf curl virus. If these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

\* \* \* \* \*

Done in Washington, DC, this 24<sup>th</sup> day of May 2010.

**Kevin Shea**

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

[FR Doc. 2010-13002 Filed 5-28-10: 12:33 pm]

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#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2009-0073]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Perquimans River, Hertford, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking; withdrawal.

**SUMMARY:** The Coast Guard is withdrawing its notice of proposed rulemaking concerning the proposed change to the regulations that governed the operation of the US17 Bridge, at mile 12.0, across Perquimans River at Hertford, NC. The requested change would have allowed the bridge to operate without a tender during specific times of the year on an advance notice basis.

**DATES:** The notice of proposed rulemaking is withdrawn on June 1, 2010.

**ADDRESSES:** The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2009-0073 in the "Keyword" box and then clicking "Search".

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice, call or e-mail Sandra S. Elliott, Fifth Coast Guard District; telephone (757) 398-6557, e-mail