

assisted spread of ELC to noninfested areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

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

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

Maine has expanded its intrastate ELC quarantine to include the townships of Beddington, Boothbay, South Bristol, T24 Middle Division Bingham's Penobscot Purchase, and T25 Middle Division Bingham's Penobscot Purchase. This interim rule amends our domestic ELC quarantine regulations to include additional those areas in Maine and to correct some misidentifications of previously listed regulated areas.

The only small entities in the newly federally regulated townships that may be affected are forestry operations. The number of these operations in the 5 townships has ranged between 8 and 18 over the past 5 years. It is estimated that the annual value of harvested larch sold from the newly quarantined areas averages about \$375. Any potential impact of the rule is further minimized by the opportunity for forestry operations to enter into compliance agreements with lumber mills to process larch from quarantined areas.

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 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 7 CFR part 3015, subpart V.)

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and 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 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 301**

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

Accordingly, we are amending 7 CFR part 301 as follows:

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

- 1. The authority citation for part 301 continues to read as follows:

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

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

- 2. In § 301.91–3, paragraph (c), the entry for Maine is revised to read as follows:

#### **§ 301.91–3 Regulated areas.**

\* \* \* \* \*

(c) \* \* \*

Maine

*Hancock County.* The entire townships of Gouldsboro, Sorrento, Sullivan, T7 SD, T9 SD, T10 SD, and T16 MD, and Winter Harbor.

*Knox County.* The entire townships of Appleton, Camden, Cushing, Friendship, Hope, Owls Head, Rockland, Rockport, Saint George, South Thomaston, Thomaston, Union, Warren, and Washington.

*Lincoln County.* The entire townships of Alna, Boothbay, Boothbay Harbor, Bremen, Bristol, Damariscotta, Edgecomb, Jefferson, Newcastle, Nobleboro, Somerville, South Bristol, Southport, Waldoboro, Westport Island, and Wiscasset.

*Waldo County.* The entire townships of Lincolnville and Searsport.

*Washington County.* The entire townships of Addison, Baring Plantation, Beals, Beddington, Berry Township, Calais, Cathance Township, Centerville Township, Charlotte, Cherryfield, Columbia, Columbia Falls, Cooper, Cutler, Deblois, Dennysville, East Machias, Eastport, Edmunds Township, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion Township, Marshfield, Meddybemps, Milbridge, Northfield, Pembroke, Perry, Robbinston, Roque Bluffs, Steuben, T18 MD BPP, T19 MD BPP, T24 MD BPP, T25 MD BPP, Trescott Township, Whiting, and Whitneyville.

Done in Washington, DC, this 17th day of August 2011.

**Gregory L. Parham,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–21519 Filed 8–22–11; 8:45 am]

**BILLING CODE 3410–34–P**

## **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:** Final rule.

**SUMMARY:** We are amending the regulations to allow, under certain conditions, the importation of commercial shipments of peppers from Panama into the United States without treatment. Conditions of entry to which the peppers will be subject include trapping, pre-harvest inspection, and shipping procedures. This action will allow for the importation of peppers from Panama into the United States while continuing to provide protection against the introduction of quarantine pests.

**DATES:** *Effective Date:* September 22, 2011.

**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 319.56–1

through 319.56–51, 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 June 1, 2010, we published in the **Federal Register** (75 FR 30303–30305, Docket No. APHIS–2010–0002) a proposal<sup>1</sup> to amend the regulations in § 319.56–40 by allowing, under certain conditions, the importation of commercial shipments of peppers from Panama into the United States without treatment. We also proposed to add two additional pests to the list of pests for which inspection is required: Bacterial wilt and tomato severe leaf curl virus. Finally, we proposed removing 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.

We solicited comments concerning our proposal for 60 days ending August 2, 2010. We received five comments by that date. They were from producers, representatives of State and foreign governments, and private individuals. The issues raised in those comments are discussed below by topic.

#### Pest List

Section 319.56–40 requires the national plant protection organizations (NPPOs) of Central American countries exporting peppers to the United States to inspect growing sites or greenhouses for certain pests prior to harvest. We proposed to add Panama to the list of countries eligible to export peppers under these conditions. Among the pests listed in § 319.56–40 are the weevil *Faustinus ovatipennis*, bacterial wilt, Andean potato mottle virus, Lantana mealybug, Passionvine mealybug, and the rust fungus *Puccinia pampeana*.

One commenter pointed out that there was no record of the presence of any of these pests in Panama; therefore, the NPPO of Panama should not be required to inspect for them.

Because the pest risk assessment (PRA) completed in relation to the importation of peppers from certain Central American countries was a regional PRA, the pest list includes those 12 pests of quarantine significance present in Central America, including Costa Rica, El Salvador, Guatemala,

Honduras, Panama, and Nicaragua. We recognize that not all of the pests listed in the regulations may be present in each of those countries. The systems approach for the importation of peppers from each country includes the submission of a bilateral workplan to the Animal and Plant Health Inspection Service (APHIS) by the NPPO of each exporting country. That workplan will include the specific pests of concern for which inspection will be required as listed by country in the PRA. In this final rule, we are amending paragraphs (a)(2), (b)(3)(v), and (c)(3)(v) of the regulations, which provide for the pre-harvest inspections, to reflect this process.

#### Mitigation Measures for Pea Leafminer

One of the pests of concern listed in § 319.56–40 is pea leafminer (*Liriomyza huidobrensis*). A commenter suggested that this pest is of particular concern for purposes of potential infestation and detection for several reasons: Larvae in this family are typically not identified beyond the family level, thus leaving them indistinguishable from other pests in this family during early stages of development; the 1.6 mm screening required to be placed across all openings in the pest-exclusionary greenhouses might not be sufficiently small to exclude the insect; and the pea leafminer's early larval stages and associated mines are relatively small, therefore making their potential detection via inspection at origin and destination problematic.

For those varieties of peppers that are listed in the regulations and imported from areas in which Mediterranean fruit fly (Medfly, *Ceratitis capitata*) and/or Mexican fruit fly (Mexfly, *Anastrepha ludens*) are considered to exist, production sites must consist of pest-exclusionary greenhouses, which must have double self-closing doors and have all other openings and vents covered with 1.6 mm (or less) screening. The screening requirements listed in the regulations are intended only to provide protection from infestation by Medfly or Mexfly. However, the other mitigation measures established in the systems approach provide protection against a number of pests, including pea leafminer. Those measures include pre-harvest inspection, shipping procedures, and port-of-entry inspection, which provide an appropriate cumulative level of protection.

In reference to the commenter's concern about the difficulty of detecting the presence of pea leafminer based on visual inspection, we are confident that pre-harvest inspections coupled with

port-of-entry inspections will prove effective. In addition, pea leafminer infestations principally occur in the leaves and not the fruit of the pepper plant, reducing the risk that imported peppers will be infested with pea leafminer. Finally, the systems approach was established in 2004 to allow for the importation of peppers from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. Based on our experience inspecting for pea leafminer in shipments of peppers from those countries, we are confident that we will continue to successfully prevent the entry of any infested shipments.

#### Inspection

The regulations require that pepper production sites and shipments be inspected prior to harvest by the NPPO for pests of concern. One commenter wanted to know what sort of training the inspectors in Panama were required to undergo.

APHIS has audited Panama's export program, including its inspector training, and has found it is sufficient to meet the conditions set forth in the systems approach in § 319.56–40. In addition, it should be noted that peppers from Panama will be inspected at the port of entry into the United States, providing a check on the efficacy of the inspection in Panama as well as another layer of phytosanitary protection.

Another commenter opposed the proposal, stating that, since sampling for inspection purposes will not be conducted on all of the peppers in each given shipment, the associated risk of pest entry into the United States is too great.

We disagree. The rate at which sampling is conducted has been determined to detect a 1 to 2 percent level of infestation with a 95 percent rate of confidence. Further, inspection of samples of peppers is only one element of the established systems approach. We are confident that the systems approach in § 319.56–40 will effectively mitigate the risk associated with peppers imported from Panama.

#### General Comments

One commenter asked what specific measures would be enacted to ensure that the phytosanitary requirements for shipments of peppers from Panama would be properly monitored and met.

For those areas where Medfly or Mexfly are considered to exist, the systems approach provides that APHIS will maintain oversight of the program by participating in the approval and monitoring of production sites and by reviewing the trapping records that

<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0002>.

must be maintained for each site. For shipments of peppers from those areas that are free of Medfly or Mexfly, port-of-entry inspections will be conducted. If, through trapping records, site visits, or port-of-entry inspections, we find that any of the required mitigation measures are not being properly administered, we will suspend shipments from the offending sites.

Another commenter observed that the measures established as elements of the systems approach were not individually preventative. An additional commenter stated that APHIS should not allow any commodities to enter the United States without treatment.

Under a systems approach, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified. Accordingly, each individual measure assigned under a systems approach is designed to work in concert with at least one other element of the systems approach to achieve the appropriate level of phytosanitary security. We are confident that the systems approach in § 319.56–40 will effectively mitigate the risk associated with peppers imported from Panama, as it has for peppers from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.

One commenter, from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, stated that U.S. stakeholders from those areas potentially affected by any pest or disease outbreak from imported commodities should be invited to participate in site visits prior to the proposal of any rulemakings such as the one finalized by this document.

APHIS is committed to a transparent process and an inclusive role for stakeholders in our risk analysis process. To that end, we are currently considering ways to facilitate further stakeholder involvement, including site visits, during the initial stages of the development of PRAs. However, since this comment relates to the structure of APHIS's overall risk analysis process, and not to the importation of peppers from Panama, it is outside the scope of the current rulemaking.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

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

This final 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 on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

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. In the economic analysis, 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 will not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12988**

This final rule allows peppers to be imported into the United States from Panama. State and local laws and regulations regarding peppers imported under this rule will 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 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.

#### **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 319.56–40 is amended by revising the introductory text 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 those pests listed in the bilateral workplan provided to APHIS by the NPPO of the exporting country, including any of the following pests: 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 any of the pests listed in the workplan 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 those pests listed in the bilateral workplan provided to APHIS by the NPPO of the exporting country, including any of the following pests: 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 any of pests listed in the workplan, 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 those pests listed in the bilateral workplan provided to APHIS by the NPPO of the exporting country, including any of the following pests: 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 any of the pests listed in the workplan, 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 17th day of August 2011.

**Gregory L. Parham,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011-21522 Filed 8-22-11; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 93

[Docket No. APHIS-2008-0112]

RIN 0579-AD31

#### Importation of Horses From Contagious Equine Metritis-Affected Countries

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

**ACTION:** Interim rule; delay of enforcement and reopening of comment period.

**SUMMARY:** We are reopening the comment period for an interim rule that amended the regulations regarding the testing requirements for importation of horses from countries affected with contagious equine metritis. We are also

delaying the enforcement of all provisions of the interim rule until a final rule is published and effective. This action will allow interested persons additional time to comment on the interim rule and provide the Animal and Plant Health Inspection Service with time to make adjustments to the interim rule that may be necessary in order to successfully implement it.

**DATES:** Enforcement of the interim rule amending 9 CFR part 93, published at 76 FR 16683-16686 on March 25, 2011, and delayed until July 25, 2011, in a document published at 76 FR 31220-31221 on May 31, 2011, is delayed until further notice. We will consider all comments that we receive on or before September 7, 2011. APHIS will publish a document in the **Federal Register** announcing any future action.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2008-0112-0020>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2008-0112, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0112> or

in our reading room, which 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.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ellen Buck, Senior Staff Veterinarian, Equine Imports, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 734-8364.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. "Subpart C—Horses," §§ 93.300 through 93.326, pertains to the importation of horses into the United States. Sections 93.301 and 93.304 of the regulations contain specific provisions for the importation of horses

from regions affected with contagious equine metritis (CEM), which is a highly contagious venereal disease of horses and other equines caused by an infection with the bacterium *Taylorella equigenitalis*.

On March 25, 2011, we published an interim rule in the **Federal Register** (76 FR 16683-16686, Docket No. APHIS-2008-0112) to amend the regulations regarding the importation of horses from countries affected with CEM by incorporating an additional certification requirement for imported horses 731 days of age or less and adding new testing protocols for test mares and imported stallions and mares more than 731 days of age. The provisions of the interim rule became effective upon publication.

On May 31, 2011, we published a document in the **Federal Register** (76 FR 31220-31221, Docket No. APHIS-2008-0112) to delay the enforcement of the interim rule until July 25, 2011. This action was taken after a request was made by affected entities to allow them additional time to adjust their operation procedures.

#### Delay of Enforcement

Based on comments received following the March 2011 interim rule, we are considering two changes to the interim rule. The interim rule required that three sets of cultures from imported stallions be collected for the detection of the CEM organism, with negative results obtained from at least two sets prior to test breeding. However, based on the comments received, we are considering amending the requirement so that only one set of cultures would be collected from an imported stallion with negative results prior to test breeding. The purpose of culturing a stallion prior to test breeding is to reduce the risk of infecting a test mare. Therefore, test breeding should not take place until negative culture results have been reported. Under the regulations, a stallion may be released from CEM quarantine only if all cultures and tests of specimens from the mares used for test breeding are negative for CEM and all cultures performed on specimens taken from the stallion are negative for CEM.

The interim rule also required that three sets of cultures be collected from imported mares and test mares with an additional culture sample taken from either the distal cervix or the endometrium. Based on the comments received, we are considering replacing that requirement with a provision that would require a culture to be collected from the distal cervix or the