

# Rules and Regulations

Federal Register

Vol. 79, No. 58

Wednesday, March 26, 2014

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2013–0037]

RIN 0579–AD78

#### Importation of Potatoes From Mexico

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning the importation of fruits and vegetables to allow the importation of fresh potatoes (*Solanum tuberosum* L.) from Mexico into the United States. As a condition of entry, the potatoes must be produced in accordance with a systems approach employing a combination of mitigation measures to prevent the introduction and dissemination of plant pests into the United States. The potatoes must be imported in commercial consignments, must be produced by a grower who is registered in a certification program, must be packed in registered packinghouses, must be washed, cleaned, and treated with a sprout inhibitor, and must be inspected after packing for quarantine pests. The potatoes must also be accompanied by a phytosanitary certificate that declares that the conditions for importation have been met. Finally, the national plant protection organization (NPPO) of Mexico must provide a bilateral workplan to the Animal and Plant Health Inspection Service (APHIS) that details the activities that the NPPO of Mexico will carry out to meet these requirements, subject to APHIS' approval. This action allows the importation of potatoes from Mexico while continuing to protect against the

introduction of plant pests into the United States.

**DATES:** *Effective Date:* April 25, 2014.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Lamb, Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2018.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–64, 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.

The national plant protection organization (NPPO) of Mexico requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh potatoes from Mexico (*Solanum tuberosum* L.) to be imported into the United States.

In response to that request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Based on the conclusions of the PRA and the RMD, on September 27, 2013, we published in the **Federal Register** (78 FR 59628–59632, Docket No. APHIS–2013–0037) a proposed rule<sup>1</sup> to amend the regulations to authorize the importation of fresh potatoes from Mexico into the United States, provided that the potatoes were produced in accordance with a systems approach consisting of the following requirements: Production by a grower who is part of a certification program administered by the NPPO of Mexico; packing in packinghouses that are registered with the NPPO; post-harvest washing, cleaning, and treatment of the potatoes with a sprout inhibitor; inspection after packing for quarantine pests; issuance of a phytosanitary certificate; importation in commercial consignments only; and transport of the potatoes in a sealed means of conveyance from the packinghouse to the port of first arrival in the United States.

We solicited comments concerning our proposal for 60 days ending

<sup>1</sup>To view the proposed rule, its supporting documents, or the comments that we received, go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2013-0037>.

November 26, 2013. We received eight comments by that date. They were from a national organization that represents U.S. potato producers, a State organization that represents potato producers, a domestic potato producer, and private citizens. The comments that we received are discussed below, by topic.

#### General Comments on the Proposed Rule

One commenter stated that APHIS should prohibit all fruits and vegetables from other countries from being imported into the United States.

Another commenter stated that we should prohibit all potato imports.

Such prohibitions would be beyond the scope of APHIS' statutory authority under the Plant Protection Act (7 U.S.C. 7701 *et seq.*, referred to below as the PPA). Under the PPA, APHIS may prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States.

Additionally, as a signatory to the World Trade Organization's Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), the United States has agreed that any prohibitions it places on the importation of fruits and vegetables will be based on scientific evidence, and will not be maintained without sufficient scientific evidence. The blanket prohibitions requested by the commenters would not be in keeping with this agreement.

A commenter stated that the NPPO of Mexico cannot be trusted to abide by the provisions of the proposed rule.

Like the United States, Mexico is also a signatory to the SPS Agreement. As such, it has agreed to respect the phytosanitary measures the United States imposes on the importation of plants and plant products from Mexico when the United States demonstrates the need to impose these measures in order to protect plant health within the United States. The PRA that accompanied the proposed rule provided evidence of such a need.

A commenter expressed concern that the importation of potatoes from Mexico poses a high risk of introducing quarantine pests into the United States.

For the reasons explained in the proposed rule, the RMD, and this final

rule, we consider the provisions of this final rule to adequately mitigate the risk associated with the importation of potatoes from Mexico.

A commenter expressed concern that APHIS would not be able to enforce the provisions of the proposed rule.

We are confident that we have sufficient personnel and resources to do so.

#### Comments Regarding the Pest Risk Assessment

As we mentioned above, we prepared a PRA in response to the NPPO of Mexico's request that we authorize the importation of fresh potatoes from Mexico into the United States. The PRA listed all pests of potatoes known to exist in Mexico. The PRA also identified eight quarantine pests present in Mexico that could be introduced into the United States through the importation of fresh potatoes:

- *Copitarsia decolora* (Guenée), a moth.
- *Epicaerus cognatus* Sharp, potato weevil.
- *Nacobbus aberrans* (Thorne) Thorne & Allen, false root-knot nematode.
- *Ralstonia solanacearum* race 3 biovar 2 (Smith) Yabuuchi *et al.*, a bacterium that causes brown rot of potato.
- *Rosellinia bunodes* (Berk. & Broome) Sacc., a pathogenic fungus.
- *R. pepo* Pat., a pathogenic fungus.
- *Synchytrium endobioticum* (Schilb.) Percival, a pathogenic fungus that causes potato wart disease.
- *Thecaphora solani* (Thurum. & M. O'Brien) Mordue, a pathogenic fungus that causes potato smut.

The PRA determined that three of these eight pests—*N. aberrans*, *R. solanacearum* race 3 biovar 2, and *S. endobioticum*—pose a high risk of following the pathway of fresh potatoes from Mexico into the United States and having negative effects on U.S. agriculture. The remaining five pests—*C. decolora*, *E. cognatus*, *R. bunodes*, *R. pepo*, and *T. solani*—were rated as having a medium risk potential.

A commenter stated that, because of the great number of pests of potatoes known to exist in Mexico, it is likely that there is a pest of potatoes in Mexico that APHIS is not aware of. Because of this possibility, the commenter suggested APHIS not finalize the proposed rule.

The PRA that accompanied the proposed rule provided a list of all pests of potatoes known to exist in Mexico. This list was prepared using multiple data sources to ensure its completeness.

For this same reason, we are confident it is accurate.

If, however, a new pest of potatoes is detected in Mexico, APHIS will evaluate the pest to determine whether it is a quarantine pest, and whether it is likely to follow the pathway of potatoes from Mexico that are imported into the United States. If we determine that the pest is a quarantine pest and is likely to follow the pathway, we will take appropriate measures to prevent its introduction into the United States.

A commenter stated that, in assigning a medium or high risk potential to the eight pests present in Mexico that could be introduced into the United States through the importation of potatoes from Mexico, the PRA had implied that potatoes from Mexico are a unique pathway for these pests, and that no other commodities from Mexico that are currently authorized importation into the United States are also hosts of any of the pests. The commenter stated that this is not the case, and the PRA was therefore in error.

In assigning a medium or high risk potential to the pests, the PRA did not make such claims. Indeed, as we discuss later in this document, the PRA took into consideration that certain commodities already authorized importation into the United States from Mexico have similar pest lists.

The same commenter stated that, since we already authorize the importation of Mexican commodities that are hosts of the quarantine pests identified by the PRA, and importation of these commodities has yet to result in the introduction of the pests into the United States, the PRA should not have evaluated those pests.

It appears the commenter assumed that, if the pest list for one commodity from a foreign region is similar to the pest list for another commodity from that region, the risk associated with the importation of those commodities must likewise be similar. This is not the case. The former commodity may be the preferred host of the pests, while the latter is an alternate host; or the former commodity may be more likely to be imported into regions of the United States where the plant pests could become established or where the effects of such establishment on domestic agriculture would be more pronounced. Additionally, it appears that the commenter failed to take into consideration that many of the commodities from Mexico that are currently authorized importation into the United States may only be imported subject to certain mitigations, and that these mitigations may account for the

absence of pest detections on those commodities.

Accordingly, while we did take the absence of pest detections on commodities that are currently imported into the United States from Mexico into consideration in preparing the PRA, we disagree with the commenter's assertion that this absence should have precluded us from evaluating the eight quarantine pests that the PRA determined could be introduced into the United States through the importation of potatoes from Mexico.

The same commenter suggested that, in assigning risk ratings to the eight quarantine pests, we did not take into consideration that all of the pests other than *C. decolora* were unlikely to survive if they accompanied a shipment of potatoes from Mexico to the United States, and that *C. decolora* infestations would be easy to detect at a port of entry.

As we discussed in the PRA, we took those facts into consideration in assigning the ratings.

The commenter also asserted that *N. aberrans* and *R. solanacearum* race 3 already are widely prevalent within the United States.

The biotype of *N. aberrans* that is known to exist in the western United States parasitizes sugarbeets but does not parasitize potatoes. This biotype differs from the Central and South American biotype, which parasitizes potatoes and is a high-risk pest for that commodity. The biotype that the PRA examined is the latter, which is not known to exist in the United States.

Additionally, while we agree that *R. solanacearum* race 3 does exist in the United States, the especially virulent biovar of *R. solanacearum* race 3, biovar 2, does not.

#### Comments Regarding Importation in Commercial Consignments

We proposed that potatoes from Mexico must be imported in commercial consignments only.

One commenter stated that this provision effectively precludes small-scale Mexican potato producers from exporting potatoes to the United States. The commenter asserted that large-scale producers were more likely to use pesticides, herbicides, and fertilizers on their crops, and pointed out that pesticide, herbicides, and fertilizers that are banned for use in the United States may be allowed in Mexico. The commenter expressed concern that potatoes that are imported from Mexico into the United States could contain residues of such pesticides, herbicides, or fertilizers, that these residues could present a human health risk to U.S.

consumers, and, if the residues entered a water reservoir, a plant health risk to domestic fruits and vegetables. The commenter suggested that, if we maintained the requirement that potatoes from Mexico must be imported in commercial consignments only, we needed to add an additional requirement stipulating that only herbicides, pesticides, and fertilizers that are approved by APHIS may be used on potatoes from Mexico that are exported to the United States.

We do not agree with the commenter that the provision effectively precludes small-scale Mexican potato producers from exporting potatoes to the United States. As we mentioned in the preamble of the proposed rule, commercial consignments are defined in § 319.56–2 of the regulations as consignments that an inspector identifies as having been imported for sale and distribution. This identification may be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Thus, a small-scale Mexican potato producer who packages, labels, or manifests shipments of potatoes to the United States in a manner that indicates the potatoes are for commercial sale would meet this provision.

With respect to the commenter's concern regarding the use of unregulated pesticides, herbicides, or fertilizers, we note that the Food and Drug Administration of the Department of Health and Human Services regulates the pesticide, herbicide, and fertilizer residues that may be present on imported fruits and vegetables intended for human consumption.

#### Comments Regarding Producer Certification Program

We proposed that potatoes from Mexico would have to be produced by a grower who is registered in a certification program administered by the NPPO of Mexico. We stated that the program would have to require the producer to use only seed that has been certified by the NPPO of Mexico as free of *R. solanacearum* race 3 biovar 2, *R. bunodes*, *R. pepo*, *S. endobioticum*, and *T. solani* to produce the potatoes. We also stated that the certification program would have to require the potatoes to be grown in an enclosed environment or alternatively would have to require the field in which the potatoes are grown to be surveyed for quarantine pests and tested for *R. solanacearum* race 3 biovar 2 at regular intervals.

One commenter stated that, by requiring producers to use only seed that has been certified by the NPPO of Mexico as free of *R. solanacearum* race 3 biovar 2, *R. bunodes*, *R. pepo*, *S. endobioticum*, and *T. solani* to produce the potatoes, we were effectively precluding crossbreeding of potatoes destined for export to the United States. The commenter contended that crossbreeding potatoes is necessary in order to prevent potatoes from becoming more susceptible to emerging plant pests and pathogenic fungi.

The commenter provided no evidence suggesting that crossbreeding potatoes has such a prophylactic effect. In contrast, the evidence APHIS examined in preparing the RMD and the proposed rule suggested that *R. solanacearum* race 3 biovar 2, *R. bunodes*, *R. pepo*, *S. endobioticum*, and *T. solani* can all be borne by seed, and that this requirement is necessary in order to prevent the use of infected seed to produce potatoes destined for export to the United States.

Another commenter stated that civil or political unrest in Mexico could preclude the NPPO from surveying a field for quarantine pests or testing it for *R. solanacearum* race 3 biovar 2.

Such surveying and testing is a necessary component of the systems approach for potatoes that are not grown in an enclosed environment. If this surveying and testing does not occur, for whatever reason, potatoes from that field are not eligible for export to the United States until the surveying and testing resumes.

#### Comment Regarding Registered Packinghouses

We proposed that potatoes from Mexico would have to be packed in packinghouses that are registered with the NPPO and to which the NPPO of Mexico has assigned a unique identifying number.

A commenter asked whether a registered packinghouse could receive and pack potatoes from multiple producers at once, and to what degree APHIS would allow the packinghouse to commingle potatoes in such a manner.

A packinghouse may receive and pack potatoes from multiple registered producers at once, nor does this rule place any restrictions on the degree to which the packinghouse may engage in such a practice.

However, each consignment of potatoes from Mexico must be accompanied by a phytosanitary certificate issued by the NPPO of Mexico that specifies the number of the packinghouse in which the potatoes were packed. Additionally, if quarantine pests are discovered on potatoes from

Mexico at a port of first arrival into the United States, the potatoes will be traced back to the packinghouse in which they were packed using the packinghouse number specified on the phytosanitary certificate. If the packinghouse cannot identify the grower from which the potatoes originated, the packinghouse will be suspended from the export program for potatoes to the United States for at least the remainder of the shipping season, and will continue to be suspended in subsequent seasons until APHIS and the NPPO of Mexico jointly agree that the plant pest risk at the packinghouse has been mitigated. We believe these provisions will deter packinghouses from indiscriminate commingling of potatoes.

#### Comment Regarding Post-Harvest Processing

We proposed that, after harvest but prior to packing, the potatoes would have to be washed, cleaned of soil and debris, and treated with a sprout inhibitor. In the preamble of the proposed rule, we said that treatment with a sprout inhibitor was necessary because, once a potato has begun to sprout, it is propagative material that then can easily be used as a plant for planting.

Two commenters asserted that the proposed rule suggested that any evidence of sprouting whatsoever makes a potato propagative material that can easily be used as a plant for planting. While agreeing that a sprouting potato is potentially a plant for planting, and, therefore, that treatment with a sprout inhibitor is a necessary mitigation, they also stated that such diversion is significantly more difficult than the proposed rule suggested it was.

We agree that such diversion is not easy, and acknowledge that the proposed rule should not have suggested it is. As the commenters acknowledged, however, diversion is possible, especially if the potatoes are not treated with a sprout inhibitor.

#### Comments Regarding Post-Harvest Inspection

We proposed that, after harvest but before packing, a biometric sample would have to be taken from each consignment of potatoes destined for export to the United States. We proposed that the sample would have to be visually inspected for evidence of sprouting, as well as evidence of *C. decolora*, *E. cognatus*, *N. aberrans*, *R. bunodes*, *R. pepo*, and *T. solani*. We also proposed to require a portion of the potatoes in the sample to be cut open, inspected for evidence of *E. cognatus*,

*N. aberrans*, *R. solanacearum* race 3 biovar 2, and *T. solani*, and submitted to a laboratory approved by the NPPO of Mexico for testing for *R. solanacearum* race 3 biovar 2. The potatoes could not be shipped to the United States until the results of this testing are obtained. If any of the potatoes are found to be sprouting, or any evidence of these quarantine pests is found, or any potatoes have non-negative test results for *R. solanacearum* race 3 biovar 2, we proposed that the entire consignment of potatoes would be prohibited from importation into the United States.

Two commenters requested that a potato that exhibits only “peeps” should not be considered to be sprouting. The commenters stated that “peeps” are non-propagative, and that treatment with sprout inhibitors precludes their further development into propagative material.

“Peeps” are potato buds that either lack sprouts, or that have nascent sprouts that have not yet become elongated. We consider a potato to be sprouting when it exhibits green sprouts, regardless of degree of elongation. Thus, a potato that exhibits only buds would not be considered to be sprouting, while a potato that exhibits both buds and green sprouts would.

One commenter asked how many potatoes would be sampled from each consignment. The commenter expressed concern that some of the quarantine pests that could follow the pathway of potatoes into the United States could be difficult to detect if the sample size was small.

The sample will be a biometric sample. In biometric sampling, a confidence level for pest freedom in a particular consignment is established, and the consignment is sampled at the rate needed to provide that level of confidence; in other words, the sample size has to be statistically relevant for purposes of claiming pest freedom for that particular consignment. As a result, in biometric sampling, lot size and sampling size are directly correlated.

#### **Comment Regarding Sealed Means of Conveyance**

We proposed that each consignment of potatoes from Mexico would have to be shipped to the United States in a means of conveyance sealed with an agricultural seal affixed by an individual authorized by the NPPO of Mexico to do so.

If the seal is broken en route, we proposed that an inspector at the port of first arrival would take remedial measures jointly agreed to by APHIS

and the NPPO of Mexico and specified in the bilateral workplan. The proposed rule stated that the measures specified in the workplan would depend on whether the inspector determines the integrity of the consignment itself to have been compromised; if so, whether this compromise has resulted in the introduction of plant pests into the consignment during transit; and, if so, whether any of these pests are quarantine pests.

One commenter stated that, if the agricultural seal for the means of conveyance is broken early on during transit to the United States, there could be a prolonged period of time where the means of conveyance is not adequately safeguarded and quarantine pests could be introduced into it. The commenter stated that, in such instances, there is a possibility that the means of conveyance could become so heavily infested with quarantine pests that it functions as a pathway for the dissemination of quarantine pests itself, regardless of whether the consignment of potatoes within the vehicle has become infested. The commenter asked what measures APHIS would take at a port of first arrival if the integrity of the consignment of potatoes is not compromised, but the vehicle carrying the potatoes is infested with quarantine pests.

Pursuant to Section 7714 of the PPA, an inspector at a port of first arrival could hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of such a means of conveyance.

#### **Comments Regarding Traceback Procedures**

We proposed traceback procedures if quarantine pests were discovered on potatoes from Mexico at a port of first arrival into the United States.

In the event that this occurs, we stated that the potatoes would be traced back to the packinghouse in which they were packed using the packinghouse number specified on the phytosanitary certificate.

The packinghouse would be required to identify the grower from which the potatoes originated, and the grower would be required to identify the place of production in which the potatoes were grown. That place of production would be suspended from the export program for potatoes to the United States for the remainder of the shipping season.

If the grower is unable to identify the place of production in which the potatoes were grown, that grower would be suspended from the export program

for the remainder of the shipping season.

Finally, if the packinghouse is unable to identify the grower from which the potatoes originated, that packinghouse would be suspended from the export program for potatoes to the United States for the remainder of the shipping season.

One commenter stated that these traceback procedures presuppose a highly integrated production system in which a packinghouses and producers work in conjunction and keep accurate records regarding potato production and incoming and outgoing shipments, and that this sort of integrated production system is unlikely to exist in Mexico.

We agree with the comment that the traceback procedures presuppose that producers and packinghouses work in conjunction and keep accurate records regarding potato production and incoming and outgoing shipments. However, we disagree with the commenter's assertion that this sort of integrated production system is impracticable in Mexico. We believe that producers and packinghouses that assume the costs to participate in the export program for potatoes to the United States will be sufficiently motivated to keep records and share information to reduce the impact on their operations should a quarantine pest be detected on potatoes from Mexico at a port of first arrival in the United States.

A commenter expressed concern that suspending a place of production, grower, or packinghouse from the export program for the remainder of a shipping season would not address the plant pest risk that led the grower or packinghouse to ship infested potatoes to the United States.

We agree with the commenter. In this final rule, the place of production, grower, or packinghouse will be suspended from the export program for at least the remainder of the shipping season, and will continue to be suspended from the program in subsequent seasons until APHIS and the NPPO of Mexico jointly agree that the plant pest risk at the place of production, grower, or packinghouse has been adequately mitigated.

#### **Miscellaneous**

In the proposed rule, we proposed to add the conditions governing the importation of potatoes from Mexico as § 319.56–62. In this final rule, they are added as § 319.56–66.

In the proposed rule, we proposed that each consignment of potatoes shipped from Mexico to the United States would have to be accompanied by

a phytosanitary certificate, issued by the NPPO of Mexico, that states that the potatoes do not come from an area of Mexico regulated by the NPPO of Mexico for *G. rostochiensis*; have been produced from seed certified free of *R. solanacearum* race 3 biovar 2, *R. bunodes*, *R. pepo*, *S. endobioticum*, and *T. solani*; have been inspected for *C. decolora*, *E. cognatus*, *N. aberrans*, *R. solanacearum* race 3 biovar 2, *R. bunodes*, *R. pepo*, and *T. solani*; have been tested for *R. solanacearum* race 3 biovar 2; and based on this inspection and testing, have been found free of those pests.

In reviewing our proposed rule in light of other sections of the regulations, we concluded that our proposed phytosanitary certificate requirement was significantly more prescriptive than most other phytosanitary certificate requirements for fruits and vegetables authorized importation into the United States. Typically, we require the phytosanitary certificate to state that the commodity has been produced in accordance with the regulations in that section, and has been inspected and found free of quarantine pests.

For the sake of consistency with those other sections of the regulations, in this final rule, we are requiring that each consignment of potatoes shipped from Mexico to the United States be accompanied by a phytosanitary certificate, issued by the NPPO of Mexico, that states that the potatoes have been produced in accordance with § 319.56–66 and have been tested and inspected and found free of the quarantine pests listed in the introduction of the section.

This change pertains merely to the statement on the phytosanitary certificate. It does not modify any of the other requirements of § 319.56–66. Nor does it affect a separate requirement that requires the phytosanitary certificate to specify the number of the packinghouse in which the potatoes were packed. As we mentioned earlier in this document, we consider that requirement to be necessary for the traceback procedures specified in the regulations to be effective.

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**.

This analysis examines the expected economic impact for U.S. small entities of a final rule that will allow the importation of potato tubers for consumption from Mexico into the United States. The Small Business Administration's small-entity standard for U.S. farms that produce potato tubers is annual receipts of not more than \$750,000. In 2007, the average market value of sales by the 15,014 U.S. farms that produced potatoes was about \$222,000, well below the small-entity standard.

In recent years, the United States has shifted from being a net importer to being a net exporter of fresh or chilled table potatoes. U.S. average annual domestic supply from 2008 to 2010 (marketed production plus imports minus exports) was about 16.6 million metric tons (MT). Mexico's average annual exports for the same years totaled about 1,500 MT. Even if all of Mexico's exports were diverted to the United States as a result of this final rule, they would be equivalent to less than one-hundredth of 1 percent of U.S. domestic supply.

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 fresh potatoes for consumption to be imported into the United States from Mexico. State and local laws and regulations regarding potatoes imported under this rule will be preempted while the potatoes are in foreign commerce. Fresh potatoes 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. 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 final rule, which were filed under 0579–0413, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

#### **E-Government Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

#### **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 319.56–66 is added to read as follows:

#### **§ 319.56–66 Potatoes from Mexico.**

Fresh potatoes (*Solanum tuberosum* L.) may be imported into the United States from Mexico only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Copitarsia decolora* (Guenée), a moth; *Epicaerus cognatus* Sharp, potato weevil; *Globodera rostochiensis*, golden cyst nematode; *Nacobbus aberrans* (Thorne) Thorne & Allen, false root-knot nematode; *Ralstonia solanacearum* race 3 biovar 2 (Smith) Yabuuchi *et al.*, a bacterium that causes brown rot of potato; *Rosellinia bunodes* (Berk. & Broome) Sacc., a pathogenic fungus; *R.*

*pepo* Pat., a pathogenic fungus; *Synchytrium endobioticum* (Schilb.) Percival, a pathogenic fungus that causes potato wart disease; and *Thecaphora solani* (Thurum. & M. O'Brien) Mordue, a pathogenic fungus that causes potato smut.

(a) The national plant protection organization (NPPO) of Mexico must provide a bilateral workplan to APHIS that details the activities that the NPPO of Mexico will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The bilateral workplan must include and describe the quarantine pest survey intervals and other specific requirements as set forth in this section.

(b) The potatoes may be imported in commercial consignments only.

(c) The potatoes must be produced by a grower who is registered in a certification program administered by the NPPO of Mexico. The program must require the producer to use only seed that has been certified by the NPPO of Mexico as free of *R. solanacearum* race 3 biovar 2, *R. bunodes*, *R. pepo*, *S. endobioticum*, and *T. solani* to produce the potatoes. The program must also require the potatoes to be grown in an enclosed environment or alternatively must require the field in which the potatoes are grown to be surveyed for quarantine pests and tested for *R. solanacearum* race 3 biovar 2 at regular intervals in accordance with the bilateral workplan.

(d) The potatoes must be packed for export in packinghouses that are registered with the NPPO of Mexico and to which the NPPO of Mexico has assigned a unique identifying number.

(e) After harvest but prior to packing, the potatoes must be washed, cleaned of soil and debris, and treated with a sprout inhibitor in accordance with the bilateral workplan.

(f) A biometric sample of potatoes must be taken from each consignment of potatoes destined for export to the United States in accordance with a protocol jointly agreed upon by APHIS and the NPPO of Mexico and specified within the bilateral workplan. The sample must be visually inspected for evidence of sprouting, as well as evidence of *C. decolora*, *E. cognatus*, *N. aberrans*, *R. bunodes*, *R. pepo*, and *T. solani*. A portion of the potatoes must then be cut open, inspected for evidence of *E. cognatus*, *N. aberrans*, *R. solanacearum* race 3 biovar 2, and *T. solani*, and submitted to a laboratory approved by the NPPO of Mexico for testing for *R. solanacearum* race 3 biovar 2. Potatoes may not be shipped to the United States until the results of this testing are obtained. If any potatoes

are found to be sprouting, or any evidence of these quarantine pests is found, or any potatoes have non-negative test results for *R. solanacearum* race 3 biovar 2, the entire consignment of potatoes will be prohibited from importation into the United States. For purposes of this section, a potato is considered to be sprouting when it exhibits green sprouts, regardless of the degree of elongation of the sprout.

(g) Each consignment of potatoes shipped from Mexico to the United States must be transported following inspection from the packinghouse to the port of first arrival into the United States in a means of conveyance sealed with an agricultural seal affixed by an individual authorized by the NPPO of Mexico to do so. If the seal is broken en route, an inspector at the port of first arrival will take remedial measures jointly agreed to by APHIS and the NPPO of Mexico and specified in the bilateral workplan.

(h) Each consignment of potatoes shipped from Mexico to the United States must be accompanied by a phytosanitary certificate, issued by the NPPO of Mexico, that states that the potatoes have been produced in accordance with this section, and have been inspected and tested and found free of the quarantine pests listed in the introduction to this section. The phytosanitary certificate must also specify the number of the packinghouse in which the potatoes were packed.

(i) If quarantine pests are discovered on potatoes from Mexico at a port of first arrival into the United States, the potatoes will be traced back to the packinghouse in which they were packed using the packinghouse number specified on the phytosanitary certificate.

(1) The packinghouse must identify the grower from which the potatoes originated, and the grower must identify the place of production in which the potatoes were grown. That place of production will be suspended from the export program for potatoes to the United States for at least the remainder of the shipping season. The suspension will continue into subsequent shipping seasons until APHIS and the NPPO of Mexico jointly agree that the plant pest risk at the place of production is adequately mitigated.

(2) If the grower is unable to identify the place of production in which the potatoes were grown, that grower will be suspended from the export program for potatoes to the United States for at least the remainder of the shipping season. The suspension will continue into subsequent shipping seasons until the APHIS and the NPPO of Mexico

jointly agree that the plant pest risk at the grower is adequately mitigated.

(3) If the packinghouse is unable to identify the grower from which the potatoes originated, that packinghouse will be suspended from the export program for potatoes to the United States for at least the remainder of the shipping season. The suspension will continue into subsequent shipping seasons until the APHIS and the NPPO of Mexico jointly agree that the plant pest risk at the packinghouse is adequately mitigated.

(Approved by the Office of Management and Budget under control number 0579-0413)

Done in Washington, DC, this 20th day of March 2014.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014-06619 Filed 3-25-14; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Part 381

[Docket No. FSIS-2012-0019]

RIN 0583-AD49

#### Eligibility of the Republic of Korea To Export Poultry Products to the United States

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal poultry products inspection regulations to add the Republic of Korea (Korea) to the list of countries eligible to export poultry products to the United States. FSIS has reviewed Korea's poultry laws, regulations, and inspection system, as implemented, and has determined that they are equivalent to the Poultry Products Inspection Act (PPIA), the regulations implementing this statute, and the U.S. food safety system for poultry.

Under this final rule, slaughtered poultry or parts or other products thereof processed in certified Korean establishments will be eligible for export to the United States. All such products will be subject to re-inspection at United States ports of entry by FSIS inspectors.

**DATES:** *Effective Date:* May 27, 2014.

**FOR FURTHER INFORMATION CONTACT:** Dr. Andreas Keller, Director, International Equivalence Staff, Office of Policy and