

# 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-2016-0094]

RIN 0579-AE44

#### Importation of Peppers From the Republic of Korea; Mesh Screening Size

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations that allow the importation of peppers from the Republic of Korea to increase the mesh size of the screening over vent openings from 0.6 mm to 1.6 mm, and to require the use of colored sticky traps as an additional measure for pest monitoring. We have determined that, when used alongside other mitigations in the regulations, there is no additional pest risk related to the change in mesh size. This action would modify the conditions under which peppers from the Republic of Korea may be imported into the continental United States while continuing to protect against the introduction of quarantine pests.

**DATES:** We will consider all comments that we receive on or before June 19, 2018.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0094>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2016-0094, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments that we receive on this docket may be viewed at <http://www.regulations.gov/#!docket>

*Detail;D=APHIS-2016-0094* 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) 799-7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol Kreger, Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851-2356, email: [Carol.M.Kreger@aphis.usda.gov](mailto:Carol.M.Kreger@aphis.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–82, 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 or dissemination of plant pests within the United States.

The regulations in § 319.56–42 allow the importation of peppers (*Capsicum annuum* L. var. *annuum*) into the continental United States from the Republic of Korea if the peppers are grown in insect-proof greenhouses approved by and registered with the Korean National Plant Quarantine Service (NPQS). The greenhouses must be equipped with double self-closing doors, and any openings other than the doors must be covered with 0.6 mm screening to prevent the entry of pests into the structure. Additionally, greenhouses must undergo monthly inspections by NPQS throughout the growing season, and pepper consignments must follow strict post-harvest and packinghouse procedures to ensure phytosanitary protection at all stages of production and shipment.

NPQS has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations in § 319.56–42 to increase the mesh size of screenings that cover all openings, other than double doors, in greenhouse production facilities where peppers are grown for export to the continental United States. NPQS indicated that the 0.6 mm screens required under current regulations, while effective in preventing pests from entering the structures, lead to reduced air flow that

can cause increased heat, humidity, and fungal issues that impact fruit quality.

As part of our evaluation of Korea’s request, we prepared a commodity import evaluation document (CIED). The CIED documents our review of data from other APHIS-approved fruits and vegetables that are grown in pest exclusionary structures using the larger 1.6 mm screening size, in conjunction with additional pest survey and control measures, as they are produced and prepared for export to the United States and other countries. Copies of the CIED may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. The CIED also may be viewed on the internet on the [Regulations.gov](http://Regulations.gov) website or in our reading room (see **ADDRESSES** above for a link to [Regulations.gov](http://Regulations.gov) and information on the location and hours of the reading room).

As noted in the CIED, fruits and vegetables approved by APHIS for importation into the United States that are grown in pest exclusionary structures with 1.6 mm screening to prevent the entry of pests include: Peppers from certain Central American countries, tomatoes from Chile, female squash flowers from Israel, eggplants from Israel, and tomatoes from the Republic of Korea. Additionally, the CIED notes that the Republic of Korea already exports peppers grown in pest exclusionary structures using 1.6 mm screening to countries such as Australia, Peru, and the Philippines. Based on our review of available evidence, the CIED concludes that the use of 1.6 mm screening in pest exclusionary structures, when combined with appropriate pest survey and control techniques including the use of sticky traps and insecticidal sprays, is adequate to manage pest risks associated with the importation of peppers to the continental United States from the Republic of Korea. Therefore, we propose to amend the regulations to change the size of the required mesh screening in greenhouses used to grow peppers bound for export to the continental United States from 0.6 mm to 1.6 mm, and to require that yellow and blue sticky traps, at a density agreed upon by APHIS and NPQS, be present in each greenhouse to monitor for levels of thrip activity. If such levels of activity are above the threshold agreed upon by APHIS and NPQS, exports from the greenhouse would be suspended until

remedial measures are applied and APHIS and NPQS agree that the pest risk has been mitigated. The number of traps, threshold for action, and remedial measures would be specified in the operational workplan between APHIS and NPQS.

#### **Executive Orders 12866 and 13771 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. This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

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* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The proposed rule would amend the import requirements for peppers (*Capsicum annuum*) from the Republic of Korea (Korea) into the continental United States. The amended requirements, in response to requests made by Korea's national plant protection organization, would enable Korea to reestablish pepper exports to the United States.

Korea last exported peppers to the United States in 2008, when APHIS approved their import if grown in greenhouses with vents or openings (other than the self-closing doors) covered with 0.6 mm mesh screening to prevent the entry of pests into the greenhouse. However, this size of mesh reduces air flow, resulting in increased heat and fungal problems. The proposed rule would allow for a larger screen mesh size that APHIS has determined will not increase pest risks but would address the heat and fungal issues that currently constrain Korea's production of peppers for export to the United States.

Information on pepper exports by Korea are only available for an aggregated pepper category that includes the *Pimenta* genus. Over the 3-year period, 2014–2016, Korea's *Capsicum* and *Pimenta* exports averaged 28,130 metric tons (MT) per year, valued at nearly \$89 million. Over 99 percent of Korea's pepper exports were received by Japan.

U.S. imports of *Capsicum* and *Pimenta* peppers, 2014–2016, averaged over 1 million MT per year, valued at \$1.43 billion. However, the proposed rule covers only one pepper species, *Capsicum annuum* (principally sweet bell peppers). Imports of this type of pepper by the United States over the same 3-year period averaged 242,177 MT per year, valued at about \$611 million. Three percent (4 percent by value) were certified organic. Eighty-eight percent (83 percent, by value) were imported from Mexico and Canada.

Annual U.S. commercial production of bell peppers for 2014 and 2015 averaged 726,073 MT, and had a farmgate value of \$731 million. Because U.S. export statistics include *Pimenta* peppers, we are limited in describing the size of the U.S. market for *Capsicum* peppers. We do note that for 2014 and 2015, the average annual quantity of *Capsicum* peppers imported, 225,720 MT, was equivalent to about 30 percent of U.S. domestic production.

The proposed rule would enable Korea to compete in the U.S. bell pepper market. However, given the established dominance of neighboring Mexico and Canada as foreign suppliers of peppers to the United States and Japan as the foreign buyer of peppers from Korea, the quantity of bell peppers imported from Korea by the United States, especially in the near-term, is expected to be limited. Imports that do take place would help meet the expanding U.S. demand for sweet bell peppers. It is unlikely the rule would have more than a modest impact on U.S. bell pepper producers or the U.S. bell pepper industry generally.

In the United States, there were 11,568 bell pepper farms in 2012, the latest year for which Census of Agriculture data are available. These farms are classified within NAICS 111219, Other Vegetable (except Potato) and Melon Farming, for which the Small Business Administration (SBA) small-entity standard is \$750,000. The average value of production per farm for NAICS 111219 was approximately \$63,600 in 2012, well below the SBA standard. Clearly, bell pepper growers are predominantly small entities, but as described, this proposed rule, if promulgated, will not have a significant economic impact on those growers.

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 amend the screening and pest monitoring requirements in greenhouses in the Republic of Korea where peppers are grown in preparation for import to the continental United States. If this proposed rule is adopted, State and local laws and regulations regarding all varieties of *Capsicum annuum* L. var. *annuum* peppers imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the burden requirements included in this proposed rule are approved by the Office of Management and Budget (OMB) under OMB control number 0579–0282.

#### **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 proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

#### **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 319.56–42 is amended as follows:

■ a. In paragraph (b), by replacing the words “0.6 mm” with the words “1.6 mm (or less)”;

■ b. By redesignating paragraphs (c) through (f) as paragraphs (d) through (g); and

■ c. By adding a new paragraph (c).

The addition reads as follows:

**§ 319.56–42 Peppers from the Republic of Korea.**

\* \* \* \* \*

(c) Yellow and blue sticky traps must be present in each greenhouse at a density agreed upon by APHIS and NPQS to monitor the population of thrips. When such monitoring indicates levels of thrip activity above the threshold agreed upon by APHIS and NPQS, exports from the greenhouse will be suspended until remedial measures are applied and APHIS and NPQS agree that the pest risk has been mitigated.

\* \* \* \* \*

Done in Washington, DC, this 16th day of April 2018.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2018–08250 Filed 4–19–18; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 319**

[Docket No. APHIS–2016–0009]

**RIN 0579–AE32**

**Importation of Fresh Cape Gooseberry Fruit From Ecuador to the Continental United States**

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the fruits and vegetables regulations to allow the importation of fresh cape gooseberry fruit from Ecuador into the continental United States. As a condition of entry, fresh cape gooseberry fruit from Ecuador would be subject to a systems approach that would include requirements for establishment of pest-free places of production and the labeling of boxes prior to shipping. Fresh cape gooseberry fruit from non pest-free places of production would have to undergo approved cold treatment or irradiation. The fresh cape gooseberry fruit would

also have to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Ecuador certifying that the fruit has been produced in accordance with the systems approach. Fresh cape gooseberry fruit that does not meet the conditions of the systems approach would be allowed to be imported into the continental United States subject to treatment. This action would allow for the importation of fresh cape gooseberry fruit from Ecuador into the continental United States while continuing to provide protection against the introduction of plant pests.

**DATES:** We will consider all comments that we receive on or before June 19, 2018.

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

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0009>.

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0009, 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-2016-0009> 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) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2352.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–82, 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 or dissemination of plant pests within the United States.

The Animal and Plant Health Inspection Service (APHIS) received a request from the national plant protection organization (NPPO) of

Ecuador to amend the regulations to allow the importation of commercially produced fresh cape gooseberry fruit (*Physalis peruviana*) from Ecuador into the continental United States. In evaluating Ecuador’s request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the [Regulations.gov](http://Regulations.gov) website (see **ADDRESSES** above for instructions for accessing [Regulations.gov](http://Regulations.gov)).

The PRA, titled “Importation of Fresh Cape Gooseberry Fruit (*Physalis peruviana* L.) into the Continental United States from Ecuador” (October 2011), analyzes the potential pest risk associated with the importation of fresh cape gooseberries into the continental United States from Ecuador.

The PRA identifies *Ceratitis capitata* (Medfly) as the one quarantine pest that could be introduced into the United States in consignments of fresh cape gooseberry fruit from Ecuador. A quarantine pest is defined in § 319.56–2 as “a pest of potential economic importance to the area endangered by it and not yet present there, or present but not widely distributed there and being officially controlled.” In the PRA, the likelihood and consequences of introducing this pest to the United States are considered, and Medfly is rated as having a high pest risk potential. Pests receiving a rating within this range may necessitate specific phytosanitary measures in addition to standard port-of-entry inspection of the commodity being imported into the continental United States.

Based on the findings of the PRA, APHIS has determined that measures beyond standard port-of-entry inspection would mitigate the risks posed by this pest. These measures are listed in the RMD and are used as the basis for the requirements included in this proposed rule. We are therefore proposing to allow the importation of fresh cape gooseberry fruit from Ecuador into the continental United States if it is produced under a systems approach or subject to cold treatment or irradiation in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual<sup>1</sup> and 7 CFR part 305. If shipments are treated with irradiation in Ecuador, they would have to be accompanied by documentation to validate foreign site preclearance

<sup>1</sup> The PPQ Treatment Manual may be found on the internet at [https://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment.pdf](https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf).