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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2006–0009]

Importation of Tomatoes From Certain Central American Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables in order to allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States. The conditions to which the importation of tomatoes will 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 will allow for the importation of pink and red tomatoes from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

DATES: *Effective Date:* August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1228; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 though 319.56–8, 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.

Section 319.56–2dd of the regulations contains administrative instructions allowing the importation of tomatoes from various countries where the Mediterranean fruit fly (Medfly, *Ceratitis capitata*) is present. In this document, we are amending that section by adding a new paragraph (f) that sets forth administrative instructions concerning the importation of pink and red tomatoes from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

On February 6, 2006, we published in the **Federal Register** (71 FR 6011–6016, Docket No. APHIS–2006–0009) a proposal [1] to amend the regulations to allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States under certain conditions.

We solicited comments concerning our proposal for 60 days ending April 7, 2006. We received 15 comments by that date. They were from representatives of State and foreign agricultural departments, industry organizations, importers and exporters, producers, farmers, and individuals. Eight of these commenters supported the proposed rule. The others expressed reservations, which are discussed below.

General Comments

In our proposal, we explained that the proposed conditions to which tomatoes from Central America would be subject were very similar to current requirements for importing tomatoes from France, Morocco and Western Sahara, and Spain. We also stated that since the start of the tomato systems approach in France and Spain, the number of pest interceptions has been very low, with an approximate shipment infestation rate of 0.005 percent in Spain and 0.06 percent in France. With respect to those numbers, one commenter asked if the pest interception rates were for Medfly or for some other pest.

The interceptions on tomatoes from France and Spain were leafminers, not Medfly.

One commenter questioned why the pea leafminer (*Liriomyza huidobrensis*) was included in the list of quarantine pests of concern in the risk management document. The commenter said it would be unlikely for the pea leafminer to be introduced on tomato fruit, as that pest is commonly associated with only foliage or leaf litter, and asked if those plant parts will be allowed entry.

The commenter is correct in that the pea leafminer feeds on foliage and not fruit. While foliage and leaf litter will not be permitted entry with tomato fruit, leafminer pupae may fall from tomato foliage onto the fruit during harvesting, packing, etc. These pupae are easy to detect and inspectors should readily detect any that may end up on fruit.

Two commenters expressed concern that allowing more imports of tomatoes from foreign markets would result in negative economic impacts on small family farms in the United States. Two additional commenters stated that the Florida tomato industry has already experienced disasters such as freezes and hurricanes and that the entry of Medfly into Florida could devastate an already struggling industry.

Our proposed rule was prepared in response to requests from several Central American countries that we allow the importation of pink and red tomatoes grown under a systems approach. Our scientific review of pests, similar programs, and other available documents led us to conclude that pest risk would be mitigated under the systems approach. The Plant Protection Act authorizes the Secretary to prohibit or restrict importations only when necessary to prevent the introduction of plant pests.

One commenter stated that any imports of pink and red tomatoes from the Central American countries as proposed will increase the risk of the Medfly entering the United States and noted that the proposed rule claims only that the risk of Medfly introduction will be mitigated, not eliminated.

This rule is designed to prevent the introduction and dissemination of quarantine pests into the United States. We recognize that there is no such thing as ''zero risk'' with respect to the

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0009, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

importation of agricultural commodities, so we cannot claim that required phytosanitary measures will entirely eliminate all risk. With regard to pink and red tomatoes from Central America, we have determined that the requirements and mitigation measures set forth in this rule are effective and provide the appropriate level of protection to prevent the introduction and dissemination of the pests of concern in the United States. Further, pink and red tomatoes are not a preferred host of Medfly and Medfly has never been intercepted in commercial shipments of tomatoes grown under similar systems approaches in other countries.

One commenter stated that we did not clearly explain how the risks presented by tomatoes from Central America were similar to the risks presented by tomatoes from other countries. The commenter asked that we explain this conclusion. In addition, the commenter stated that we did not provide an explanation as to how the systems approach itself was very similar to the current requirements for importing tomatoes from France, Morocco and Western Sahara, and Spain, nor did we provide any documentation that the enforcement regimes in Europe are similar or equivalent to those in Central America.

With regard to risks presented by Central American tomatoes, we did not state that the risks associated with tomatoes from Central America and other countries were the same, merely that the systems approach we were proposing to add has been successful at mitigating the risk of Medfly introduction into the United States when applied to tomatoes produced in those other countries. With regard to the specific similarities of the systems approaches, tomatoes from Spain, France, and Morocco and Western Sahara are imported under conditions similar to those which will be applied to Central American tomatoes. The use of pest-exclusionary greenhouses, trapping/triggering programs, and inspection are similar in all of the programs. The requirements pertaining to the importation of pink and red tomatoes from Spain and France are contained in § 319.56–2dd, paragraphs (a) and (b), and requirements for Morocco and Western Sahara are contained in paragraph (c), and may be compared to the provisions of § 319.56–2dd, paragraph (f) in this rule.

With regard to growing conditions, the proposed rule did not make any claims as to the similarity of the growing conditions and practices in France, Morocco and Western Sahara, and Spain, thus we have not prepared any documentation on that subject. The enforcement regimes of those countries with respect to their tomato export programs would equate to compliance with the relevant regulations in § 319.56–2dd, thus any similarities in their respective enforcement regimes would be in line with the similarities among the respective paragraphs in those regulations.

One commenter stated that in a draft report titled, ''Exotic Fruit Fly Strategic Plan, FY 2006–2010,'' APHIS acknowledged that the fruit fly populations in Central America and in Mexico are a significant threat to U.S. agriculture due to the large numbers of people migrating north from fruit fly infested areas. The commenter stated that APHIS did not acknowledge this risk in the proposed rule.

The proposed rule pertains to the importation of commercial shipments of tomatoes from the specified Central American countries. Therefore, the risk documentation prepared for the proposed rule, as well as the proposed rule itself, focus on the commercial fruit pathway and do not examine or seek to address the risks associated with individuals migrating from fruit fly infested areas in those countries to the United States.

Alternatives Considered

One commenter stated that APHIS should consider requiring the use of aerial spraying of spinosad in the areas where Medfly exists and/or a program releasing sterile fruit flies in the Medfly areas of these countries to reduce the risk of exporting Medfly on pink and red tomatoes to the United States.

The measures suggested by the commenter would be undertaken by a country seeking to eradicate a fruit fly or to establish areas of pest freedom or low prevalence. They are not phytosanitary measures APHIS can require with respect to a particular imported commodity.

One commenter requested that we limit distribution of pink and red tomatoes to States with crops that are not susceptible to Medfly or other quarantine pests from Central American countries. The commenter stated that at a minimum, Central American tomatoes should not be allowed to be distributed in the southern United States.

Based on our experience with similar programs in France, Spain, and Morocco and Western Sahara, we believe that limiting distribution of tomatoes in the United States would be beyond what is necessary to ensure pest mitigation is achieved. As stated previously, the Plant Protection Act authorizes the Secretary to prohibit or restrict importations only when necessary to prevent the introduction of plant pests.

One commenter stated that APHIS did not consider the use of ethylene gas on green tomatoes to ripen them. The commenter added that using ethylene gas will not increase the risk of Medfly introduction because it would involve importing green tomatoes only.

Ethylene gas is not a phytosanitary measure; therefore, we would not require the use of it in our regulations. Further, green tomatoes from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama are currently enterable into the United States and importers are free to use ethylene gas to color tomatoes if they desire.

One commenter stated that we did not consider irradiation as an alternative.

As stated previously, we evaluated the risks associated with pink and red tomatoes from Central America and determined that the risks could be mitigated through the application of the measures described in the proposed rule and in this document. If we had determined that the designated measures were insufficient to provide an appropriate level of quarantine security, it is possible that we would have considered requiring the application of phytosanitary treatments such as irradiation. That was not necessary, however.

Central American National Plant Protection Organizations

One commenter asked if APHIS will provide oversight to ensure compliance with the program.

APHIS will provide oversight of the programs by monitoring, conducting inspections, reviewing reports, and removing from the program any participating sites that are not in compliance with the mitigation measures.

A second commenter stated that he requested specific information regarding the participating national plant protection organizations (NPPOs) from APHIS and was provided with contact information for each NPPO instead of the specific information. The commenter questioned our ability to trust the individual Central American NPPOs to provide sufficient oversight if we do not have specific information on their workforces and capacities. One commenter raised similar concerns stating that a systems approach is complicated and assumes that the necessary technical, inspection, and other resources are available to the exporting countries and are effective.

The NPPO of each of the countries covered by the rule, like the NPPO of

any country, is necessarily concerned with, among other things, the detection and management of quarantine pests, including fruit flies, and thus administers programs to prevent the introduction and spread of quarantine pests and promote appropriate measures for their control. Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama are all parties to the International Plant Protection Convention (IPPC), which is an international treaty to secure action to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate measures for their control.

We do not routinely request that our trading partners provide us with specific information concerning the number and experience level of the individual employees of their NPPOs, nor do our trading partners normally ask that information of APHIS. We have full confidence in the Central American NPPOs to oversee the prescribed mitigation measures. Further, it is in the best interest of the participating Central American countries to succeed with this program and doing so will require they meet our phytosanitary standards.

One commenter asked that APHIS include provisions for conducting compliance audits during the active shipping and growing season to ensure full compliance with the systems approach. The commenter added that results of these compliance audits should be made available for review by all stakeholders in the United States.

As described in the proposed rule and in this document, APHIS would be directly involved in the approval of production sites and determinations as to whether risk mitigation has been achieved following pest detections. In addition, each exporting country's NPPO will have to maintain an APHIS-approved quality control program to monitor or audit its fruit fly trapping program, and the trapping records will have to be maintained for APHIS review. We believe that these measures will be adequate to provide the compliance assurance sought by the commenter.

Economic Analysis

One commenter took issue with the statement in the economic analysis that, ''[b]etween 1997 and 2002 there is not likely to have been substantial changes in the [domestic] industry.'' The commenter said this statement is unsupportable and not relevant to the potential economic impacts on U.S. tomato growers in 2006.

Our statement that ''Between 1997 and 2002, there is not likely to have been substantial changes in the industry'' followed three sentences describing fruit and vegetable wholesale trade firms (*i.e.*, potential importers) and was intended to indicate that we believe the majority of those firms would still be small entities in 2002, as they were in 1997. The statement was not intended to apply to tomato growers.

One commenter took issue with a statement in the economic analysis that the proposed rule would provide importers with alternative sources of tomatoes at a more advanced stage of ripeness. The commenter said that while this is technically true, it is meaningless because importers have not requested an alternative source for pink and red tomatoes and there is no indication that there are insufficient supplies of green, pink, or red tomatoes available in the United States.

The availability of alternative sources of tomatoes at a more advanced stage of ripeness was cited as a potential result of the proposed action, not as an initiating factor behind it.

One commenter took issue with the statement that the effects on small businesses would not be significant. The commenter noted that APHIS indicates it does not have information on the size distribution of domestic tomato producers and makes assumptions, for example, that the subject imports will ''compete with all fresh tomatoes produced domestically.'' The commenter claimed that this statement was inaccurate based solely on the cost of transportation from Central America to all parts of the United States. The commenter stated that APHIS also notes that the domestic price would fall by as much as $0.50 per cwt. The commenter stated that even if the price decline was ''only'' 1.4 percent, this does not render the decline insubstantial, and that the answer depends on the marketplace at the time the imports enter the United States because we are dealing with a perishable commodity, and with pink and red tomatoes we are dealing with a most perishable commodity. In such cases, the commenter stated, a small decline in price can and has had a profound negative effect on the price of tomatoes, and that if these tomatoes were to enter the United States during the winter months, then only the tomato producers in Florida would be harmed and the harm could be much greater than that suggested in the economic analysis.

The economic analysis did not quantitatively account for the possibility that imports from Central America may displace imports from other countries. In fact, the economic analysis cautions that the impacts are likely overstated because the displacement of other tomato imports was not taken into account. Florida and other tomato-producing States do not produce enough field-grown tomatoes to meet domestic demand. Thus, domestic field production is supplemented by domestic greenhouse production and by imports. Over the past 6 years, fresh tomato imports have comprised approximately 34 percent of U.S. supply (production plus imports minus exports). Over one-third of annual imports arrive in the United States during the winter months, with the bulk of these imports coming from Mexico.

We are unclear as to the commenter's intent in stating that transportation costs of imports of fresh tomatoes from Central America would prevent them from competing with all fresh tomatoes produced domestically and about pink and red tomatoes being a most perishable commodity. We presume the commenter believes that it will not be cost effective, nor feasible time-wise due to a more advanced stage of ripeness, for importers to transport tomatoes all over the United States. It would appear that the commenter is concerned that the bulk of Central American tomato imports will end up in the southern States because of their closer proximity to Central America. Most of the tomatoes produced in Florida are shipped to markets in the eastern United States, while Mexican imports serve mainly the western States. We believe that Central American imports will follow a similar pattern as Mexican imports. These marketing patterns would suggest that Florida producers may be less affected by fresh tomato imports from Central America than other domestic and foreign suppliers.

Miscellaneous Change

In our proposed provisions concerning the placement of Medfly traps in the buffer area surrounding each production site, we referred to Medfly traps with an approved protein bait. In this final rule, those provisions (§ 319.56–2dd(f)(2)(iii)(C)) refer to Medfly traps with an approved lure, as it will be parapheromone lures, rather than protein baits, that will be used outside of the greenhouses.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made

effective less than 30 days after publication in the **Federal Register**.

This rule relieves restrictions on the importation of tomatoes from Central America while continuing to protect against the introduction of plant pests into the United States. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested producers, importers, shippers, and others to benefit immediately from the relief in restrictions. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests and noxious weeds.

We are amending the regulations governing the importation of fruits and vegetables in order to allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States. The conditions to which the importation of tomatoes will 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 will allow for the importation of pink and red tomatoes from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

Central American Production and Exports

While agriculture is an important industry in the countries that will be affected by this rule, it does not account for the largest share of gross domestic product in any of the countries. Tomatoes do not appear to be major crops in those Central American countries. However, production and exports of tomatoes are following upward trends.

Tomato production in Central America has been steadily increasing since the early 1960s. Over this period, production has increased almost 300 percent. In conjunction with this increase in production, exports of tomatoes from the region have also increased. Exports in 2003 were 42 times the exports in 1962. Between 1980 and 2003, exports increased by 45 percent.

Nearly all of this trade has been intraregional. From 1962 to 2003, 96 percent of Central American tomato exports were to other countries within Central America. Thus, the vast majority of the tomatoes exported from any Central American country are destined for another country within the same region.

U.S. Import Levels

U.S. imports of Central American tomatoes have fluctuated greatly over the last 15 years.[2] In fact, 2003 was the end of a 10-year period during which the United States did not import tomatoes from any Central American country. U.S. imports of fresh tomatoes principally originate in Mexico, Canada, and the Netherlands, with Mexico being by far the largest supplier.

Although this rule will allow for more liberal importation of tomatoes from certain Central American countries, it is unlikely that the changes will lead to dramatic increases in U.S. import levels from that region.

Effects on Small Entities

This rule will affect domestic producers of tomatoes as well as importers that deal with these commodities. It is likely that the entities affected will be small according to Small Business Administration (SBA) guidelines. As detailed below, information available to APHIS indicates that the effects on these small entities will not be significant.

Two alternatives to this course of action are as follows: Maintaining the status quo with respect to the importation of tomatoes from these Central American countries (*i.e.*, green tomatoes only) or allowing importation without establishing the risk mitigations in this rule.

The first alternative would maintain current safeguards against the entry of quarantine pests. However, this option would also mean that those specified Central American countries as well as the United States would forgo the economic benefits expected to be afforded by the trade of Central American tomatoes.

Allowing the importation of fresh tomatoes from certain Central American countries under less restrictive phytosanitary requirements could potentially lead to the introduction of pests not currently found in the United States. This option could result in significant damage and costs to domestic production and is not desirable for those reasons.

Affected U.S. tomato producers are expected to be small based on the 2002 Census of Agriculture data and SBA guidelines for entities in two farm categories: Other Vegetable (except Potato) and Melon Farming (North American Industry Classification System [NAICS] code 111219) and Other Food Crops Grown Under Cover (NAICS code 111419). The SBA classifies producers in these farm categories as small entities if their total annual sales are $750,000 or less. APHIS does not have information on the size distribution of domestic tomato producers, but according to 2002 Census data, there were a total of 2,128,892 farms in the United States.[3] Of this number, approximately 97 percent had total annual sales of less than $500,000 in 2002, which is well below the SBA's small entity threshold for commodity farms.[4] This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 19,539 tomato farms that could be affected by the rule would also qualify as small. In the case of fruit and vegetable wholesalers (NAICS code 422480),[5] those entities with fewer than 100 employees are considered small by SBA standards.[6] In 1997, there were a total of 4,811 fruit and vegetable wholesale trade firms in the United States.[7] Of these firms, 4,610

[2] It is important to note here that this discussion refers to imports of all varieties of tomatoes. Disaggregated data were not available for this analysis.

[3] This number represents the total number of farms in the United States, thus includes barley, buckwheat, corn, millet, oats, rice, soybean, and sugarcane farms.

[4] Source: SBA and 2002 Census of Agriculture.

[5] Note that this NAICS code relates to the 1997 Economic Census. The 2002 NAICS code for this group is 424480.

[6] For NAICS 424480, SBA guidelines state that an entity with not more than 100 employees should be considered small unless that entity is a Government contractor. In this case, the size standard increases to 500 employees. However, in this instance, it is fair to assume that fruit and vegetable importers will not be under Government contract since it is against regulations for imports to be used in relevant Government programs (*e.g.*, school lunch programs).

[7] Source: SBA and 1997 Economic Census.

or 95.8 percent employed fewer than 100 employees and were considered small by SBA standards. Between 1997 and 2002, there were not likely to have been substantial changes in the fruit and vegetable wholesale trade industry, thus we expect that a similar percentage of entities would have been small in 2002. Therefore, domestic producers and importers that may be affected by this rule are predominantly small entities.

Economic analysis of the expected increase in imports of tomatoes from Central America shows that the importation of this commodity will lead to negligible changes in domestic prices. APHIS estimates that an additional 13,092 metric tons of tomatoes may be imported from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama on a yearly basis. Using historical consumption data to estimate an elasticity of demand for tomatoes, an increase in imports of this size will result in a price decrease of $0.50 per hundredweight (cwt) overall.

TABLE 1.—U.S. SUPPLY, UTILIZATION, AND FARM WEIGHT PRICE OF FRESH TOMATOES, 2000–2005

Year	Supply			Utilization			Season-average price	
	Production	Imports	Total	Exports	Domestic	Per capita use	Current dollars	Constant 2000 dollars
	(Million pounds)					(Pounds)	($/cwt)	
2000	4,162.0	1,609.5	5,771.5	410.4	5,361.2	19.0	$30.70	$30.70
2001	4,061.1	1,815.6	5,876.7	398.2	5,478.5	19.2	30.00	29.30
2002	4,289.3	1,896.2	6,185.5	332.1	5,853.4	20.3	31.60	30.36
2003	3,909.8	2,070.7	5,980.5	314.1	5,666.4	19.5	36.70	34.62
2004	3,975.7	2,054.6	6,030.3	367.5	5,662.8	19.3	36.70	33.92
2005[f]	4,086.0	2,000.0	6,086.0	360.0	5,726.0	19.4	.....	.....

Notes: — = not available, f = ERS forecast.
Source: USDA/ERS, ''Vegetables and Melons Yearbook,'' *http://usda.mannlib.cornell.edu/data-sets/specialty/89011/.*

For this analysis, it is assumed that imports of tomatoes from Central America will compete with all fresh tomatoes produced domestically. In 2004, U.S. fresh tomato production totaled 3,976 million pounds (table 1). APHIS estimates that an additional 13,092 metric tons (28.7 million pounds) of tomatoes will be imported from Central America. These import levels equate to only 0.7 percent of domestic production in 2004 and 1.4 percent of 2004 imports. Given the additional imports, it is possible that the domestic price will fall by as much as $0.50 per cwt. In 2004, the average producer price was $36.70 per cwt. Thus, the expected price decline will represent a 1.4 percent decline. However, this percentage is likely overstated because the new imports will be close substitutes for tomatoes from other countries. Imports from Central America will probably displace at least some of those imports from other countries. This likely substitution is not taken into account in the analysis.

In order to put this price change into perspective, we consider it in terms of average revenue for small-entity tomato producers. Due to the lack of data on tomato farming, it is difficult to determine an accurate potential change in revenues for all producers. Averaging the total drop in revenues across all firms will overstate the loss to small producers while understating that for the larger ones. Data from the 2002 Census of Agriculture were used to estimate tomato production by small and large firms. This, in turn, was used to estimate revenues for these two categories. An average revenue per firm was then calculated. We conclude that any producer with fewer than 80 acres of tomatoes may be considered small, based on industry yields and revenues and the small-entity definition of not more than $750,000 in annual revenue. For small-entity producers with fewer than 100 acres (the reported category closest to 80 acres), a price change of $0.50 per cwt will lead to an estimated per firm decline in annual revenue of $293, or 1.6 percent. Given this small change and recalling that these effects are likely overstated, domestic producers are not likely to be significantly impacted by the rule.

Although domestic producers may face slightly lower prices as a result of the potential increase in the tomato supply, these price changes are expected to be negligible. Domestic import firms, on the other hand, may actually benefit from more open trade with Central America resulting from increased opportunities that could be made available as a result of establishing new sources of tomatoes at a more advanced stage of ripeness. In both instances, changes of the magnitude presented here should not have large repercussions for either domestic producers or importers of tomatoes.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This rule will allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States. State and local laws and regulations regarding tomatoes 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 will 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.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of tomatoes under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were

prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[8] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0286.

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 interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

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.

[8] Go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0009, click on *Submit,* then click on the Docket ID link in the search results page. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

■ 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 319.56–2dd is amended by adding a new paragraph (f) and revising the OMB citation at the end of the section to read as follows:

§ 319.56–2dd Administrative instructions: conditions governing the entry of tomatoes.

* * * * *

(f) *Tomatoes (fruit) (Lycopersicon esculentum) from certain countries in Central America.* Pink or red tomatoes may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama only under the following conditions:

(1) From areas free of Mediterranean fruit fly:

(i) The tomatoes must be grown and packed in an area that has been determined by APHIS to be free of Mediterranean fruit fly (Medfly) in accordance with the procedures described in § 319.56–2(f) of this subpart.

(ii) A pre-harvest inspection of the production site must be conducted by the national plant protection organization (NPPO) of the exporting country for pea leafminer, tomato fruit borer, and potato spindle tuber viroid. If any of these pests are found to be generally infesting the production site, the NPPO may not allow exports from that production site until the NPPO and APHIS have determined that risk mitigation has been achieved.

(iii) The tomatoes must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin at the packinghouse for transit to the United States. These safeguards must remain intact until arrival in the United States.

(iv) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, ''These tomatoes were grown in an area recognized to be free of Medfly and the shipment has been inspected and found free of the pests listed in the requirements.''

(2) From areas where Medfly is considered to exist:

(i) The tomatoes must be grown in approved registered production sites. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO must visit and inspect the production sites monthly starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(ii) Tomato production sites must consist of pest-exclusionary greenhouses, which must have self-closing double doors and have all other openings and vents covered with 1.6 (or less) mm screening.

(iii) Registered sites must contain traps for the detection of Medfly both within and around the production site as follows:

(A) Traps with an approved protein bait for Medfly must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(B) If a single Medfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to export tomatoes to the United States until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(C) Medfly traps with an approved lure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export and trapping must continue to the end of the harvest.

(D) Capture of 0.7 or more Medflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of tomatoes from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(E) The greenhouse must be inspected prior to harvest for pea leafminer, tomato fruit borer, and potato spindle tuber viroid. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, exports from that production site will be halted until the exporting country's NPPO and APHIS determine that the pest risk has been mitigated.

(iv) The exporting country's NPPO must maintain records of trap

placement, checking of traps, and any Medfly captures in addition to production site and packinghouse inspection records. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS's review.

(v) The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The tomatoes must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The tomatoes must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit into the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(vi) During the time the packinghouse is in use for exporting tomatoes to the United States, the packinghouse may only accept tomatoes from registered approved production sites.

(vii) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, ''These tomatoes were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements.'' The shipping box must be labeled with the identity of the production site.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0131, and 0579–0286)

Done in Washington, DC, this 22nd day of August 2006.

Nick Gutierrez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–14219 Filed 8–25–06; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–109–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia revised the Code of West Virginia (W. Va. Code) as amended by Senate Bill 461 concerning water rights and replacement, and revised the Code of State Regulations (CSR) as amended by Committee Substitute for House Bill 4135 by adding a postmining land use of bio-oil cropland, and the criteria for approving bio-oil cropland as a postmining land use for mountaintop removal mining operations.

DATES: *Effective Date:* August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158, E-mail address: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated April 17, 2006 (Administrative Record Number WV–1462), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its permanent regulatory program in accordance with SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of State Committee Substitute for House Bill 4135, which amends CSR 38–2 by adding a postmining land use of bio-oil cropland and criteria for approving bio-oil cropland as an alternative postmining land use for mountaintop removal mining operations with variances from approximate original contour (AOC). The State also submitted State Senate Bill 461, which amends W. Va. Code section 22–3–24 relating to water rights and replacement. In its submittal of the amendment, the WVDEP stated that the codified time table for water replacement is identical to the one contained in the agency's policy dated August 1995 (Administrative Record Number WV–1425) regarding water rights and replacement that is referenced in the Thursday, March 2, 2006, **Federal Register** (71 FR 10764, 10784–85).

The West Virginia Governor also signed Senate Bill 774, on April 4, 2006, which amends language concerning definitions, offices, and officers within the WVDEP. The amendments to Senate Bill 774 are non-substantive changes to the West Virginia program that do not require OSM approval. Therefore, the amendments to Senate Bill 774 can take effect as provided therein on June 9, 2006.

We announced receipt of the proposed amendment in the June 2, 2006, **Federal Register** (71 FR 31996). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment (Administrative Record Number WV–1464). We did not hold a hearing or a meeting, because no one requested one. The public comment period closed on July 3, 2006. We received comments from two Federal agencies.

III. OSM's Findings

Following are the findings that we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment in full. Any revisions that we do not specifically discuss below concern non-substantive wording or editorial changes and are approved herein without discussion.