

# Rules and Regulations

Federal Register

Vol. 71, No. 205

Tuesday, October 24, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2006–0073]

RIN 0579–AC17

#### Importation of Shelled Garden Peas From Kenya

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations to allow the importation of shelled garden peas from Kenya into the continental United States. In order to be eligible for importation, the peas will have to be shelled, washed, and inspected and accompanied by a phytosanitary certificate issued by the Kenya Plant Health Inspectorate Service. This action will allow for the importation of shelled peas from Kenya into the continental United States while continuing to protect against the introduction of quarantine pests.

**DATES:** *Effective Date:* November 24, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

#### SUPPLEMENTARY INFORMATION:

##### Background

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

On July 6, 2006, we published in the **Federal Register** (71 FR 38302–38304, Docket No. APHIS–2006–0073) a proposal<sup>1</sup> to amend the regulations to allow the importation of shelled garden peas from Kenya into the continental United States. We proposed that in order to be eligible for importation, the peas would have to be shelled, washed, and inspected and accompanied by a phytosanitary certificate issued by the Kenya Plant Health Inspectorate Service (KEPHIS). We proposed these changes to allow for the importation of shelled peas from Kenya into the continental United States while continuing to protect against the introduction of quarantine pests.

We solicited comments concerning our proposal for 60 days ending September 5, 2006. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

**Note:** In our July 2006 proposed rule, we proposed to add the conditions governing the importation of shelled garden peas from Kenya as § 319.56–2ss. In this final rule, those conditions are added as § 319.56–2bb.

#### 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.

We are amending the fruits and vegetables regulations to allow the importation of shelled garden peas from Kenya into the continental United States. In order to be eligible for importation, the peas will have to be shelled, washed, and inspected and accompanied by a phytosanitary certificate issued by KEPHIS. This action allows for the importation of shelled peas from Kenya into the continental United States while continuing to protect against the introduction of quarantine pests.

<sup>1</sup> To view the proposed rule, go to <http://www.regulations.gov>, click on the “Advanced Search” tab, and select “Docket Search.” In the Docket ID field, enter APHIS–2006–0073, then click “Submit.” Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

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.

In our proposed rule, we asked the public to provide any comments on the potential economic effects of allowing the importation into the continental United States of garden peas from Kenya, and on how the proposed rule could be modified to reduce expected costs or burdens for small entities consistent with its objectives. In addition, we invited the public to comment on the potential effects of the proposed rule on small entities, in particular the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. However, we did not receive any additional information or data in response to those requests.

The United States is the third largest producer of garden peas after India and China. However, less than 1 percent of U.S. production goes into the fresh market, the reason being that fresh garden peas require harvesting by hand, whereas peas destined for processing can be machine-harvested. The cost of farm labor is considerably higher in the United States than in many other countries.

According to industry sources, fresh garden peas grown in the United States are mainly produced in California (more than 85 percent), with the rest grown mainly in Florida. Published data on domestic production of fresh garden peas exist only for two counties in California, San Luis Obispo County and Santa Barbara County.<sup>2</sup> Based on the 2000–2004 data for these two counties, California snow pea production declined over that 5-year period, while green pea production has expanded. The value of pea production in those two counties in 2004 was \$29 million.

The United States is a net importer of fresh/chilled peas, and our major foreign supplier of fresh garden peas in 2005 was Guatemala, with a 45 percent share (by value) of U.S. imports, followed by Peru (29 percent) and Mexico (24 percent). Nearly all U.S. fresh pea exports go to Canada.

Our reported domestic supply of fresh garden peas (California production plus

<sup>2</sup> Annual County Agricultural Commissioner Report Data (Sacramento: California Department of Food and Agriculture, 2000–2004).

net U.S. imports) in 2004 totaled about 39,700 metric tons, valued at \$42.7 million. These totals exclude U.S. production that may have taken place outside of San Luis Obispo and Santa Barbara Counties.

If we include the 15 percent of unreported U.S. production of fresh garden peas thought to occur outside of the two California counties, then the 2004 domestic supply would total about 42,800 metric tons, with roughly 65 percent imported and 35 percent supplied by U.S. producers.

U.S. entities that could be affected by this final rule are domestic producers of fresh garden peas and wholesalers who import fresh garden peas. Businesses producing green peas and snow peas are classified in the North American Industry Classification System (NAICS) within the category of Other Vegetable (except Potato) and Melon Farming (NAICS code 11219). The Small Business Administration's (SBA) small entity definition for these producers is annual receipts of not more than \$750,000. Firms that would import fresh, shelled garden peas from Kenya are defined as small entities if they have 100 or fewer employees (NAICS code 424480, Fresh Fruit and Vegetable Merchant Wholesalers).<sup>3</sup>

In general, firms engaged in production or importation of agricultural commodities are predominantly small. We believe that most if not all of the businesses affected by this final rule would be small.

We do not know the number of U.S. producers of fresh garden peas. According to the 2002 Census of Agriculture for California Counties, there were 327 vegetable farms in San Luis Obispo and Santa Barbara Counties, the two counties for which there are published fresh garden pea production data. We do not know how many of these vegetable farms produce fresh garden peas. Also, we do not know their size, but in general, such entities are predominantly small. As noted above, we asked for this type of information in our proposed rule and did not receive any comments.

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).

<sup>3</sup> The wholesale sector comprises two types of wholesalers: Those that sell goods on their own account and those that arrange sales and purchases for others for a commission or fee. Importers are included in both cases.

#### Executive Order 12988

This final rule allows shelled garden peas to be imported into the United States from Kenya. State and local laws and regulations regarding shelled garden peas imported under this rule will be preempted while the peas are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

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 0579-0302.

#### 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) 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.

■ 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. A new § 319.56-2bb is added to read as follows:

#### § 319.56-2bb Conditions governing the entry of shelled garden peas from Kenya.

Garden peas (*Pisum sativum*) may be imported into the continental United States from Kenya only under the following conditions:

(a) The peas must be shelled from the pod.

(b) The peas must be washed in disinfectant water at 3 to 5 °C containing 50 ppm chlorine.

(c) Each shipment of peas must be accompanied by a phytosanitary certificate of inspection issued by the national plant protection organization of Kenya bearing the following additional declaration: "These peas have been shelled and washed in accordance with 7 CFR 319.56-2bb and have been inspected and found free of pests."

(Approved by the Office of Management and Budget under control number 0579-0302)

Done in Washington, DC, this 18th day of October 2006.

**Kevin Shea,**

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

[FR Doc. E6-17774 Filed 10-23-06; 8:45 am]

**BILLING CODE 3410-34-P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 94

[Docket No. APHIS-2006-0037]

#### Change in Disease Status of Namibia With Regard to Foot-and-Mouth Disease and Rinderpest

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations to add Namibia, except the portion of the country north of the Veterinary Cordon Fence (VCF), to the list of regions that are considered free of foot-and-mouth disease (FMD), and to add the entire country to the list of regions that are considered free of rinderpest. We are taking this action because we have determined that the region in Namibia south of the VCF is now free of FMD and the entire country is free of rinderpest. We are also adding Namibia, except the region north of the VCF, to the list of FMD- and rinderpest-free regions that are subject to certain import restrictions on meat and other animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This action relieves certain