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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2010–0020]

RIN 0579–AD33

#### Importation of Tomatoes With Stems From the Republic of Korea Into the United States

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations to allow, under certain conditions, the importation into the United States of commercial consignments of tomatoes with stems from the Republic of Korea. The conditions for the importation of tomatoes with stems from the Republic of Korea will include requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse procedures. The tomatoes will also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the Republic of Korea with an additional declaration confirming that the tomatoes have been produced in accordance with the requirements. This action will allow for the importation of tomatoes with stems from the Republic of Korea while continuing to provide protection against the introduction of injurious plant pests into the United States.

**DATES:** *Effective Date:* November 14, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Phillip B. Grove, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ,

APHIS, 4700 River Road, Unit 156, Riverdale, MD 20737; (301) 734–6280.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–51, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

On March 15, 2011, we published in the **Federal Register** (76 FR 13892–13896, Docket No. APHIS–2010–0020) a proposal<sup>1</sup> to amend the regulations to allow the importation of commercial consignments of tomatoes with stems from the Republic of Korea (South Korea) into the United States if produced under a systems approach. The proposed systems approach included requirements for pest-exclusionary structures, trapping and monitoring inside and outside the pest-exclusionary structures for the fruit fly *Bactrocera depressa*, and packinghouse procedures designed to exclude the quarantine pests. We further proposed to require that consignments of tomatoes with stems from South Korea be accompanied by a phytosanitary certificate with an additional declaration stating that the tomatoes were grown in approved pest-exclusionary structures and were inspected and found free from quarantine pests of concern to the United States.

We solicited comments concerning our proposal for 60 days ending May 16, 2011. We received six comments by that date. They were from private citizens and a State department of agriculture. Four commenters supported the proposed rule. Two commenters were opposed to the proposed rule.

One of these commenters stated their opposition to the proposed rule because the climate and crop production systems of the commenter’s State would likely be favorable to many pests that could be imported with tomatoes from South Korea.

We have determined, for the reasons described in the risk management document (RMD) that accompanied the

proposed rule, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of tomatoes with stems from South Korea. The commenter did not provide any evidence suggesting that the mitigations are not effective. Therefore, we are not taking the action requested by the first commenter.

The other commenter expressed concern regarding the possibility that the South Korean national plant protection organization (NPPO) could falsify phytosanitary certificates, which could lead to pest introductions that would put U.S. farmers out of business.

South Korea is a signatory to the International Plant Protection Convention (IPPC), like the United States. As a signatory to the IPPC, one of South Korea’s responsibilities is to issue phytosanitary certificates with accurate and complete information. We have no reason to doubt that South Korea will do this.

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.

#### 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 final rule amends the regulations to allow, under certain conditions, the importation into the continental United States of fresh tomatoes with stems from the Republic of Korea (South Korea). APHIS has concluded, based on a pest risk analysis, that a systems approach will mitigate the risk associated with importing this fruit.

South Korea expects to export one 40-foot shipping container of fresh tomatoes with stems per year to the United States. A shipping container can hold about 25 metric tons (MT) of tomatoes with stems. In 2009, the

<sup>1</sup>To view the proposed rule and the comments we received, go to <http://www.regulations.gov/jdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0020>.

United States produced 1.47 million MT of tomatoes, U.S. imports reached 1.19 million MT, and U.S. exports were 0.17 million MT. Thus, the total U.S. supply of tomatoes for this period was approximately 2.49 million MT (production plus imports minus exports). This quantity greatly dwarfs the relatively small amount that is expected to be imported from South Korea.

We also note that the average price of tomatoes exported from South Korea in 2009 was \$2,447 per MT, compared to an average price of U.S. tomato imports of less than half that amount, \$1,180 per MT. This large price difference implies that tomato imports from South Korea may not be widely competitive in the United States; South Korean exporters may intend to target U.S. specialty vegetable markets or certain ethnic consumer groups with special preference for Korean tomatoes with stems if they expect to earn prices comparable to South Korea's average 2009 export price level.

Farms producing tomatoes in open fields are classified within the North American Industry Classification System under "Other vegetable (except potato) and melon farming" (NAICS 111219). Farms producing tomatoes in greenhouses are classified under "Other food crops grown under cover" (NAICS 111419). For both industry classifications, a business is considered to be a small entity if its annual receipts are not more than \$750,000.

The average market value of crops sold by farms classified within "Other vegetable (except potato) and melon farming" in 2007 was \$312,333. We infer that the majority of the 25,809 farms that produced tomatoes in open fields that year were small. The average market value of crops sold by farms classified within "Food crops grown under cover" (NAICS 11141) in 2007 was \$758,687. We infer that at least some of the 2,926 farms that produced tomatoes in greenhouses were small entities. While the majority of tomato farms are small, the impact of importation of tomatoes with stems from South Korea will be negligible.

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 tomatoes with stems to be imported into the United States from the Republic of Korea. State and local laws and regulations regarding tomatoes imported under this rule will

be preempted while the fruit is in foreign commerce. Fresh fruits 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 0579-0371.

#### 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. A new § 319.56-52 is added to read as follows:

#### § 319.56-52 Tomatoes with stems from the Republic of Korea.

Fresh tomatoes with stems (*Solanum lycopersicum* L.) (Synonym: *Lycopersicon esculentum* P. Mill.) may be imported into the United States from the Republic of Korea only under the conditions described in this section. These conditions are designed to prevent the introduction of the

following quarantine pests: *Bactrocera depressa*, *Heliocoverpa armigera*, *Heliocoverpa assulta*, *Mamestra brassicae*, *Ostrinia furnacalis*, *Scirtothrips dorsalis*, and *Thrips palmi*.

(a) *Registered pest-exclusionary structures.* The tomatoes must be grown in pest-exclusionary structures that are registered with the national plant protection organization (NPPO) of the Republic of Korea and approved by the NPPO of the Republic of Korea and APHIS.

(1) The pest-exclusionary structures must be equipped with double self-closing doors.

(2) Any vents or openings in the pest-exclusionary structures (other than the double self-closing doors) must be covered with 1.6 mm or smaller screening in order to prevent the entry of pests into the pest-exclusionary structures.

(3) The pest-exclusionary structures must be inspected monthly throughout the growing season (March through November) by the NPPO of the Republic of Korea or its approved designee to ensure that phytosanitary procedures are employed to exclude plant pests and diseases and to verify that the screening is intact.

(b) *Trapping for Bactrocera depressa.* Trapping for *B. depressa* is required both inside and outside the pest-exclusionary structures. Trapping must begin at least 2 months prior to the start of harvest and continue until the end of harvest.

(1) *Inside the pest-exclusionary structures.* APHIS-approved traps with an APHIS-approved protein bait must be placed inside the pest-exclusionary structures at a density of at least two traps per pest-exclusionary structure. The traps must be serviced at least once per week. If a single *B. depressa* is captured in a trap inside a pest-exclusionary structure, the NPPO of the Republic of Korea will immediately prohibit that pest-exclusionary structure from exporting tomatoes to the United States and notify APHIS of the action. The prohibition will remain in effect until the NPPO of the Republic of Korea and APHIS agree that the risk has been mitigated.

(2) *Outside the pest-exclusionary structures.* APHIS-approved traps with an approved protein bait must be placed in a 500-meter-wide buffer area around the registered pest-exclusionary structure at a density of one trap per 10 hectares. During the months of March through November, at least one trap must be placed in the buffer area near each pest-exclusionary structure. The traps must be serviced at least once per week. If three *B. depressa* are found

inside the buffer zone within 2 kilometers of each other within a 30-day period, the NPPO of the Republic of Korea will immediately prohibit all registered pest-exclusionary structures within 2 kilometers of the finds from exporting tomatoes to the United States and notify APHIS of the action. The prohibition will remain in effect until the NPPO of the Republic of Korea and APHIS agree that the risk has been mitigated.

(3) Records of trap placement, trap servicing, and fruit fly captures for each pest-exclusionary structure must be kept for at least 1 year and trapping records provided to the NPPO of the Republic of Korea each month. The NPPO of the Republic of Korea must make the records available to APHIS for review upon request.

(c) *Packinghouse procedures.* The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. During the time the packinghouse is in use for exporting tomatoes to the United States, the packinghouse may only accept tomatoes from registered pest-exclusionary structures. A random sample of fruit per lot, as determined by the NPPO of the Republic of Korea and agreed to by APHIS, must be inspected for external pests and the fruit must be cut to reveal internal pests. Each sample must be of sufficient size in order to detect pest infestations. Any damaged, diseased, or infested fruit should be removed and separated from the commodity destined for export. The tomatoes must be safeguarded by an insect-proof mesh, screen, or plastic tarpaulin while in transit from the production site 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 to the United States. These safeguards must remain intact until the arrival of the tomatoes in the United States or the consignment will not be allowed to enter the United States.

(d) *Commercial consignments.* Tomatoes with stems from the Republic of Korea may be imported in commercial consignments only.

(e) *Phytosanitary certificate.* Each consignment of tomatoes must be accompanied by a phytosanitary certificate of inspection issued by the NPPO of the Republic of Korea bearing the following additional declaration: "Tomatoes in this consignment were grown in pest-exclusionary structures in accordance with 7 CFR 319.56–52 and were inspected and found free from *Bactrocera depressa*, *Heliocoverpa armigera*, *Heliocoverpa assulta*,

*Mamestra brassicae*, *Ostrinia furnacalis*, *Scirtothrips dorsalis*, and *Thrips palmi*."

(Approved by the Office of Management and Budget under control number 0579–0371)

Done in Washington, DC, this 5th day of October 2011.

**Kevin Shea,**

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

[FR Doc. 2011–26345 Filed 10–11–11; 8:45 am]

**BILLING CODE 3410–34–P**

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

#### RIN 3245–AG17

#### Small Business Jobs Act: 504 Loan Program Debt Refinancing

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes the interim final rule that implemented section 1122 of the Small Business Jobs Act of 2010, which authorizes projects approved for financing under Title V of the Small Business Investment Act to include the refinancing of qualified debt. As a result of comments received, this final rule amends the interim final rule to authorize the financing of business expenses as part of a Refinancing Project, to allow the Third Party Loan to be at least as much as the 504 loan instead of requiring that the Third Party Loan provide at least 50% of the financing, and to revise the definition of qualified debt. Other aspects of the interim final rule are adopted as final without change.

**DATES:** *Effective Date:* This rule is effective October 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** Andrew B. McConnell, Jr., Office of Financial Assistance, at [jobsact\\_debtrefinancing@sba.gov](mailto:jobsact_debtrefinancing@sba.gov) or 202–205–9949.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On February 17, 2011, SBA published an interim final rule with request for comments in the **Federal Register** to implement section 1122 of the Small Business Jobs Act of 2010 (Jobs Act). See 76 FR 9213. This provision of the Jobs Act temporarily authorizes projects approved for financing under Title V of the Small Business Investment Act to include the refinancing of qualified debt. Prior to the Jobs Act, in a typical 504 project with a refinancing component, the borrower was required

to use a significant portion of the loan proceeds for expansion of the business. See 13 CFR 120.882(e). The temporary Jobs Act program authorizes the use of the 504 Loan Program for the refinancing of debt where there is no expansion of the small business, and is available for loan applications approved by SBA through September 27, 2012.

The interim final rule was effective February 17, 2011 and the comment period was open until May 18, 2011. SBA received written comments from 34 commenters, including 6 banks, 2 small businesses, 17 Certified Development Companies, 3 national trade associations, and 6 individuals. The comments are summarized and addressed below with, where applicable, the citation to the rule provision that has been changed after consideration of the comments.

##### **II. Summary of Comments Received**

1. *Financing for Business Expenses—13 CFR 120.882(g)(6).* In the interim final rule, SBA requested comments from the public on whether, and how, to implement the provision in the Jobs Act that authorizes the financing of business expenses in the temporary debt refinance program. Twenty-five of the 34 comments received requested that SBA implement the authority to finance business expenses; none of the comments opposed implementing this authority. Several commenters stated that there is an urgent need for this financing due to the national recession which, they assert, resulted in bank regulator restrictions on lending institutions, limitations on lines of credit, and decreased opportunity for equipment vendor financing. Businesses could enhance their viability and growth potential if they were able to access the accumulated equity in their real estate and other fixed assets for business purposes. No suggestions were received on how to implement the business expense provision.

Based on the comments, SBA is amending the rule to allow a Borrower to request the financing of business expenses as part of its application for the Refinancing Project. Such financing will be available only if the amount of cash that will be provided as a result of the refinancing exceeds the amount to be paid to the lender of the Qualified Debt. The Borrower's application must include a specific description of the business expenses for which the financing is requested and an itemization of the amount of each expense. The funds provided for business expenses must be used solely for the business expenses of the Borrower, such as salaries, rent,