

# Proposed Rules

Federal Register

Vol. 78, No. 85

Thursday, May 2, 2013

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–2012–0078]

RIN 0579–AD72

### Importation of Female Squash Flowers From Israel Into the Continental United States

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations governing the importation of fruits and vegetables to allow the importation of female squash flowers from Israel into the continental United States. As a condition of entry, female squash flowers from Israel would be subject to a systems approach that would include requirements for pest exclusion at the production site and fruit fly trapping and monitoring. The female squash flowers would also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization of Israel with an additional declaration that the female squash flowers had been inspected and found free of quarantine pests. This action would allow for the importation of female squash flowers from Israel into the continental United States while continuing to provide protection against the introduction of quarantine pests.

**DATES:** We will consider all comments that we receive on or before July 1, 2013.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0078-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0078, 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-2012-0078> 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. Meredith Jones, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2289.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart–Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–58, 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.

Male squash flowers from Israel are currently admissible into the continental United States. However, the importation of female flowers is not allowed because the immature fruit that may be attached to the female flowers is a potential host of quarantine pests.

The national plant protection organization (NPPO) of Israel has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow female squash flowers from Israel to be imported into the continental United States. As part of our evaluation of Israel’s request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

All female squash flowers may potentially have immature fruit attached. Although the fruit may be very small, it still poses a potential risk.

Therefore, while we are proposing to allow the importation of female squash flowers specifically, the PRA, titled “Importation of Fresh Fruit and Flowers of Summer Squash, *Cucurbita pepo* L., from Israel into the Continental United States: A Qualitative, Pathway-initiated Risk Assessment” (July 13, 2009), evaluates the risks associated with the importation of female squash flowers with and without fruit from Israel into the continental United States.

The PRA identified two pests of quarantine significance present in Israel that could be introduced into the United States through the importation of immature fruit attached to female squash flowers. These are *Ceratitis capitata* (Mediterranean fruit fly or Medfly) and *Dacus ciliatus* (Ethiopian fruit fly). The documents also identified one pest that could be introduced by the importation of female squash flowers without fruit, *Scirtothrips dorsalis* (Chilli thrips), and one pest associated with both the female squash flower and squash fruit, *Helicoverpa armigera* (cotton bollworm). All four of these pests were determined to have a high risk potential.

Based on the conclusions of the PRA and RMD, we are proposing to allow the importation of female squash flowers from Israel into the continental United States subject to a systems approach. Under a systems approach, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified, whereby fruits and vegetables may be imported into the United States from countries that are not free of certain pests. As a condition of entry, female squash flowers from Israel would be subject to requirements for pest exclusion at the production site, fruit fly trapping and monitoring, packing the flowers, and a phytosanitary certificate. The specific mitigation measures required in the systems approach are discussed below, as well as in the RMD.

##### Production Site Requirements

Under proposed § 319.56–59(a), female squash flowers from Israel would have to be grown in approved production sites registered with the NPPO of Israel. Initial approval of production sites would be completed jointly by the NPPO of Israel and APHIS. The NPPO of Israel would have

to visit and inspect the production sites to ensure that the necessary mitigation measures have been completed. APHIS would be able to monitor the production sites, if necessary. This condition would ensure that the required phytosanitary measures are properly implemented throughout the process of growing and packing female squash flowers for export to the United States.

Production sites for female squash flowers would also have to be in pest-exclusionary structures (PES). The PES would be required to have self-closing double doors, and all openings, including vents, to the outside of the PES would have to be covered by screening with mesh openings of not more than 1.6 mm. Screening with openings of not more than 1.6 mm will prevent the introduction of pests, including fruit flies.

#### *Mitigation Measures for Fruit Flies*

Proposed § 319.56–59(b) would address the mitigation measures required for fruit flies. The NPPO of Israel would be required to set, maintain, and monitor fruit fly traps with an APHIS-approved bait at a density of one trap per hectare, with a minimum of one trap inside each PES and one trap outside the entrance of each PES. The traps would have to be checked every 7 days. We also propose to require the NPPO of Israel to maintain records of trap placement, trap maintenance, and captures of any fruit flies of concern. The trapping records would have to be made available to APHIS upon request.

Capture of a single fruit fly of concern inside a registered production site would immediately result in cancellation of exports to the United States from that production site. The detection of a fruit fly of concern in a consignment at the port of entry that is traced back to a production site would also result in immediate cancellation of exports to the United States from that production site. In both cases, exports from the production site in question could not resume until APHIS and the NPPO of Israel have mutually determined that the risk has been properly mitigated.

#### *Packinghouse Requirements*

Proposed § 319.56–59(c) would specify that, while being used for packing female squash flowers for export to the United States, the packinghouses would only be allowed to accept flowers from registered production sites. This requirement would reduce the risk that quarantine pests are introduced to flowers exported

to the United States in the packinghouse.

#### *Post-Harvest Procedures*

Under proposed § 319.56–59(d), female squash flowers would have to be placed in cartons or containers while still in the PES. The cartons or containers would have to be marked to show the official registration number of the production site. The place of production where the flowers were grown must remain identifiable from the time when the blossoms leave the PES, to the packinghouse, and through the export process. This requirement would allow the shipments to be traced back to the production site in the event of the discovery of a pest.

#### *Commercial Consignments*

Under proposed § 319.56–59(e), only commercial consignments of female squash flowers would be allowed to be imported. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control.

#### *Inspection and Phytosanitary Certificate*

Because *H. armigera* and *S. dorsalis* are large external feeders that cause easily visible damage, they would likely be detected during inspection. Under proposed § 319.56–59(f), each consignment of female squash flowers would have to be accompanied by a phytosanitary certificate issued by the NPPO of Israel with an additional declaration stating that the consignment has been inspected and found free of *C. capitata*, *D. ciliatus*, *H. armigera*, and *S. dorsalis*. This requirement would certify that the provisions of the regulations have been met.

#### **Executive Order 12866 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.

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

This proposed rule would amend the regulations to allow, under certain conditions, the importation of female squash flowers from Israel into the continental United States. Squash flowers have gained popularity as a garnish for dishes, desserts, and salads, and as an ingredient in other dishes. Marketing of commercially grown edible flowers is typically directed to upscale restaurants.

Farms that solely produce squash flowers are rare. The blossoms are typically a byproduct of squash fruit production. Squash is commercially produced throughout the United States, but principally in Michigan, California, Florida, and Georgia.

The Small Business Administration's small-entity standard for U.S. farms that produce squash is annual receipts of not more than \$750,000. In 2007, the average market value of sales by the 11,821 U.S. farms that produced squash was about \$17,222, well below the small-entity standard. We infer that by far most farms producing squash, including farms producing squash flowers, are small entities.

Israel is expecting to export 10 metric tons of fresh female squash flowers annually to the United States. We do not know the quantity or value of female squash flower production in the United States, or the quantity or value of female squash flowers imported from other countries. Without basic production and trade information, we are unable to evaluate potential impacts of this proposed rule. We welcome information of this type that would permit an analysis of possible effects for U.S. squash flower producers.

#### **Executive Order 12988**

This proposed rule would allow female squash flowers to be imported into the continental United States from Israel. If this proposed rule is adopted, State and local laws and regulations regarding female squash flowers imported under this rule would be preempted while the product is in foreign commerce. Fresh fruits and vegetables 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 information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2012–0078. Please send a copy of your comments to: (1) Docket No. APHIS–2012–0078, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the regulations governing the importation of fruits and vegetables to allow the importation of female squash flowers from Israel into the continental United States. As a condition of entry, female squash flowers from Israel would be subject to a systems approach that would include requirements for pest exclusion at the production site and fruit fly trapping and monitoring. The importation of female squash flowers from Israel will also require information collection activities that include production site registrations, trapping records, box markings, and phytosanitary certificates issued by the national plant protection organization of Israel with an additional declaration that the female squash flowers had been inspected and found free of quarantine pests. This action would allow for the importation of female squash flowers from Israel into the continental United States while continuing to provide protection against the introduction of quarantine pests.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.0455 hours per response.

*Respondents:* Producers and importers of female squash flowers, and the NPPO of Israel.

*Estimated annual number of respondents:* 6.

*Estimated annual number of responses per respondent:* 1,743.

*Estimated annual number of responses:* 10,458.

*Estimated total annual burden on respondents:* 476 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

#### 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 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 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. A new § 319.56–59 is added to read as follows:

#### § 319.56–59 Female squash flowers from Israel.

Female squash flowers (*Cucurbita pepo* L.) may be imported into the continental United States from Israel only in accordance with this section and other applicable provisions of this subpart. These conditions are designed to prevent the introduction of the following quarantine pests: *Ceratitis capitata*, *Dacus ciliatus*, *Helicoverpa armigera*, and *Scirtothrips dorsalis*.

(a) *Production site requirements.* (1) Production sites in which the female squash flowers are produced must be registered with the national plant protection organization (NPPO) of Israel. Initial approval of production sites must be completed jointly by the NPPO of Israel and APHIS.

(2) The NPPO of Israel must visit and inspect the production sites. APHIS may monitor the production sites if necessary.

(3) Production sites must be inside pest-exclusionary structures (PES). The PES must have self-closing double doors. All openings, including vents, to the outside of the PES must be covered by screening with mesh openings of not more than 1.6 mm.

(b) *Mitigation measures for fruit flies (C. capitata and D. ciliatus).* (1) The NPPO of Israel must set and maintain fruit fly traps with an APHIS-approved bait at a rate of one trap per hectare, with a minimum of one trap in each PES and one outside the entrance of each PES. The NPPO of Israel must check the traps every 7 days and maintain records of trap placement, trap maintenance, and captures of any fruit flies of concern. The NPPO must maintain trapping records and make the records available to APHIS upon request.

(2) Capture of a single fruit fly of concern inside a production site will immediately result in cancellation of exports to the United States from that production site. The detection of a fruit fly of concern in a consignment at the port of entry that is traced back to a production site will also result in immediate cancellation of exports to the United States from that production site. In both cases, exports from the production site in question may not resume until APHIS and the NPPO of

Israel have mutually determined that the risk has been properly mitigated.

(c) *Packinghouse requirements.* While in use for exporting female squash flowers to the United States, the packinghouses may only accept flowers from registered production sites.

(d) *Post-harvest procedures.* Before being removed from the PES, harvested female squash flowers must be placed in field cartons or containers that are marked to show the official registration number of the production site. The place of production where the flowers were grown must remain identifiable from the time when the blossoms leave the production site, to the packinghouse, and through the export process.

(e) *Commercial consignments.* The female squash flowers may be imported in commercial consignments only.

(f) *Phytosanitary certificate.* Each consignment must be accompanied by a phytosanitary certificate issued by the NPPO of Israel with an additional declaration stating that the consignment has been inspected and found free of *Ceratitis capitata*, *Dacus ciliatus*, *Helicoverpa armigera*, and *Scirtothrips dorsalis*.

Done in Washington, DC, this 26th day of April 2013.

**Kevin Shea,**

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

[FR Doc. 2013-10382 Filed 5-1-13; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS-2012-0042]

RIN 0579-AD69

#### Importation of Fresh Beans, Shelled or in Pods, From Jordan Into 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 commercial shipments of fresh beans, shelled or in

pods (French, green, snap, and string), from Jordan into the continental United States. As a condition of entry, the beans would have to be produced in accordance with a systems approach that would include requirements for packing, washing, and processing. The beans would also be required to be accompanied by a phytosanitary certificate attesting that all phytosanitary requirements have been met and that the consignment was inspected and found free of quarantine pests. This action would allow for the importation of fresh beans, shelled or in pods, from Jordan 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 July 1, 2013.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0042-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2012-0042, 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-2012-0042> 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:** Mr. Marc Phillips, Senior Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737-1231; (301) 851-2114.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart-Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-58, 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.

Currently, we do not allow the importation of fresh beans (*Phaseolus vulgaris* L.), shelled or in pods (French, green, snap, and string), from Jordan into the continental United States. The Animal and Plant Health Inspection Service (APHIS) received a request from the national plant protection organization (NPPO) of Jordan to allow such beans to be imported from Jordan into the continental United States (the lower 48 States, the District of Columbia, and Alaska). As part of our evaluation of Jordan’s request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and the risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The PRA, titled “Importation of Fresh Beans (*Phaseolus vulgaris* L.), Shelled or in Pods, from Jordan into the Continental United States: A Qualitative, Pathway-Initiated Risk Assessment” (February 2011), evaluates the risks associated with the importation of fresh beans into the continental United States from Jordan. The risk management document lists the phytosanitary measures necessary to ensure the safe importation into the United States of fresh beans from Jordan.

The PRA identifies seven quarantine pests that could be introduced into the United States in consignments of fresh beans from Jordan. A quarantine pest is defined in § 319.56-2 as “a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.” In the PRA, the likelihood and consequences of introducing these pests to the United States are considered. Five of the pests are considered to have high pest risk potentials, and two, medium pest risk potentials, as shown in the following chart: