

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02-084-1]

Removal of Cold Treatment Requirement for Ya Pears Imported From Hebei Province in China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to remove the current cold treatment requirement for Ya pears imported from Hebei Province in the People's Republic of China. The cold treatment requirement was imposed to ensure that Ya pears did not introduce the Oriental fruit fly into the United States. The People's Republic of China has submitted data indicating that no Oriental fruit flies have been found in Hebei Province since the beginning of 1997 and has requested that we remove the cold treatment requirement. Removing the cold treatment requirement would lift a restriction that no longer appears necessary.

DATES: We will consider all comments that we receive on or before February 18, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-084-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-084-1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-084-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room 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) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737-1236; (301) 734-6799.

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 spread of plant pests that are new to or not widely distributed within the United States.

Section 319.56-2ee of the regulations sets out the conditions for importing Ya variety pears produced in approved growing areas in the Hebei and Shadong Provinces of the People's Republic of China. The safeguards specified in the regulations include growing the pears in registered orchards only, field inspections for pests during the growing season, applying pesticides to reduce the pest populations, bagging the pears on the trees, and inspecting the fruit after the harvest. In addition, the regulations require that the Ya pears undergo cold treatment for Oriental fruit fly in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at 7 CFR 300.1.

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruits, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid

population expansion; thus, outbreaks can cause severe economic losses. Heavy infestations can cause complete loss of crops. Oriental fruit fly is prevalent throughout tropical Asia, including parts of the People's Republic of China. It does not, however, thrive in cold climates.

In March 2000, the People's Republic of China submitted fruit fly trapping data for 1997 through 1999 that showed no occurrence of Oriental fruit fly in Hebei Province. Further data have continued to indicate that Oriental fruit fly is not present in Hebei Province. (More information about these data may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.) Based on these negative findings, the People's Republic of China has requested that we remove the cold treatment requirement for Ya pears from Hebei Province. We have determined that these negative findings are sufficient proof that Oriental fruit fly is not present in Hebei Province. In addition, the cool climate of Hebei Province, which is comparable to that of Pennsylvania in the United States, does not favor the development of Oriental fruit fly. Therefore, we propose to allow Ya pears from Hebei Province to be imported into the United States without cold treatment.

As noted, Ya pears may also be imported from Shadong Province under the regulations in § 319.56-2ee. We would continue to require that Ya pears from Shadong Province be cold treated, as China has not offered evidence demonstrating that Oriental fruit fly is not present in Shadong Province. If, in the future, China provides sufficient evidence to show that Oriental fruit fly is not present in Shadong Province, we would consider removing the cold treatment requirement for Ya pears produced in Shadong Province. Therefore, we propose to amend § 319.56-2ee (b) to indicate that only pears from Shadong Province would be required to undergo cold treatment before importation into the United States.

We also propose to amend § 319.56-2ee (c), which currently indicates that each shipment of pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions of paragraphs (a) and (b) of § 319.56-2ee have been met. Because Ya

pears imported from Hebei Province will no longer be subject to the conditions in § 319.56–2ee (b), we propose to amend § 319.56–2ee (c) to simply state that the phytosanitary certificate must state that the conditions of the section as a whole have been met.

Executive Order 12866 and Regulatory Flexibility Act

This proposed 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.

This proposed rule would remove the cold treatment requirement for Ya pears imported from Hebei Province in the People's Republic of China. This proposal is in response to data from the plant protection organization of the People's Republic of China indicating that Oriental fruit fly does not occur in

Hebei Province and the fact that climatic conditions do not favor the establishment of Oriental fruit fly in Hebei Province.

The rapid growth in Ya pear imports by the United States from China is evident in Table 1. Imports increased from about 329,000 kilograms in 1998 to over 6.57 million kilograms in 2001. The estimated cost savings discussed in this analysis are based on the import quantity and value for 2001.

TABLE 1.—YA VARIETY PEAR IMPORTS FROM CHINA

	Quantity (kilograms)	Value (millions of dollars)	Price (dollars per kilogram)
1998	328,818	\$0.328	\$1.00
1999	2,097,863	2.011	0.96
2000	5,264,099	3.746	0.71
2001	6,573,113	3.559	0.54

Source: World Trade Atlas, based on data from the U.S. Bureau of the Census. Harmonized Tariff Schedule code 080820.

We expect that removing the cold treatment requirement for Ya pears imported from Hebei Province would reduce shipping costs. The magnitude of the reduction would depend on transport costs with and without the cold treatment requirement. While refrigeration costs would still be borne by importers in the absence of the cold treatment requirement, the costs required to maintain, monitor, and report cold treatment temperatures during transport would all be saved.

The cold treatment schedule for Ya pears from China, as specified in the Plant Protection and Quarantine Treatment Manual, is T107–f. The number of days required for cold treatment en route under the schedule—10 to 14 days, depending on the treatment temperature—is less than the number of days it takes to ship Ya pears to the United States from China. No reduction in shipping time, and thus no associated cost savings, is expected to result from the proposed removal of the cold treatment requirement.

A recent analysis of cold treatment requirements for the Mediterranean fruit fly at U.S. ports, used here as a proxy for cold treatment costs en route, indicated a cost of 50 cents per day per pallet.¹ Most of this expense is the cost of refrigeration. Under the proposed rule, Ya pears from Hebei Province would still be refrigerated while en route to the United States, although not to cold treatment specifications. For this analysis, it is assumed that the savings

from not having to meet cold treatment requirements would be 25 cents per day per pallet. This amount probably exceeds the actual savings that would be realized, providing an upper-bound approximation of potential effects.

Assuming that boxing and pallet loading capacities are similar to those of domestic pears, a box of Ya pears would contain about 20 kilograms and a pallet would contain 49 boxes.² Assuming further a 14-day cold treatment period, the longest specified in the cold treatment regimen, the cost of cold treatment would be about 36 cents per 100 kilograms, or 0.36 cents per kilogram.³ As shown in Table 1, the average price of Ya pears has steadily fallen since imports began in 1998. Even so, estimated savings from not having to meet cold treatment requirements represent less than 1 percent of the 2001 price of 54 cents per kilogram. In addition, pears from Shandong Province would be unaffected by the proposed change, further dampening the total cost effect in the United States.

Ya pears are not produced in the United States, and Ya pears are not a substitute for domestically produced pears. Thus, this proposed rule is not expected to affect the U.S. domestic pear industry.

² The packing measure used for pears is four-fifths of a bushel, which corresponds to about 42 to 45 pounds. (Kevin Moffett, Pear Bureau, personal communication.)

³ (Twenty-five cents per day per pallet) x (14 days per treatment) = \$3.50 per pallet per treatment. (Twenty kilograms per box) x (49 boxes per pallet) = 980 kilograms per pallet. (\$3.50) / (980 kilograms) = \$0.00357/kg.

¹ Analysis for APHIS Docket 02–071–1, published in the *Federal Register* on October 15, 2002 (67 FR 63529–63536).

Economic Effects on Small Entities

Under the criteria established by the Small Business Administration, fruit importers (North American Industry Classification System code 422480, “Fresh Fruit and Vegetable Wholesalers”) must have 100 or fewer employees to be considered small entities. At least some U.S. importers of Ya pears from Hebei Province in China may be small entities, but the expected economic effect of no longer needing to meet cold treatment requirements is minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Further, this proposed rule would reduce information collection or recordkeeping requirements in § 319.56–2ee.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, 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 would be revised to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.56–2ee, paragraphs (b) and (c) would be revised to read as follows:

§ 319.56–2ee Administrative instructions: Conditions governing the entry of Ya variety pears from China.

* * * * *

(b) *Treatment.* Pears from Shandong Province must be cold treated for *Bactrocera dorsalis* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(c) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions of this section have been met.

* * * * *

Done in Washington, DC, this 17th day of December, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–32056 Filed 12–19–02; 8:45 am]

BILLING CODE 3410–34–P

SOCIAL SECURITY ADMINISTRATION**20 CFR Part 429**

RIN 0960–AF39

Filing Claims Under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rules.

SUMMARY: We propose to establish new regulation that would prescribe the procedures SSA follows when claims are filed by employees against SSA for personal property damage or loss incident to their service with SSA. This new regulation is necessary both to reflect SSA's status as an independent

agency and to comply with the requirement in the Military Personnel and Civilian Employees Claims Act of 1964 (MPCECA) that the head of each federal agency prescribe its own regulations for handling such claims.

We also propose to make several minor clarifications and corrections to our current procedures and practices on claims against the Government for damage to or loss of property or personal injury or death that is caused by the negligent or wrongful act or omission of an SSA employee. We have also rewritten the current rules on such claims in plain language.

DATES: To be sure that your comments are considered, we must receive them no later than February 18, 2003.

ADDRESSES: You may give us your comments by using: Our Internet site facility (*i.e.*, Social Security Online) at <http://www.ssa.gov/regulations>, e-mail to regulations@ssa.gov; telefax to (410) 966–2830; or by sending a letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version

The electronic file of this document is available on the Internet at http://www.access.gpo.gov/su_docs/aces/aces140.html. It is also available on the Internet site for SSA (*i.e.*, “SSA Online”) at <http://www.ssa.gov/regulations>.

FOR FURTHER INFORMATION CONTACT:

Jonathan R. Cantor, Attorney-at-Law, Office of General Law, Office of the General Counsel, Social Security Administration, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965–3166 or TTY (410) 966–5609.

SUPPLEMENTARY INFORMATION:**Employee Claims for Personal Property Damage or Loss**

The MPCECA, 31 U.S.C. 3721, establishes the guidelines Federal agencies must follow when an agency employee files a claim for personal property damage or loss incurred incident to his or her Federal service. Under the MPCECA, the head of each Federal agency is required to

promulgate its own regulations setting forth the procedures and practices the agency will follow in handling such claims (31 U.S.C. 3721(j)). The Social Security Independence and Improvements Act of 1994 (Pub. L. 103–296) established SSA as an independent agency in the executive branch of the United States Government effective March 31, 1995 and vested general regulatory authority in the Commissioner of Social Security. In order to comply with the requirement in the MPCECA that SSA have its own regulations dealing with employee claims, we propose to establish a new subpart B in part 429 of Title 20 of the Code of Federal Regulations.

The proposed rules in new subpart B of part 429 are modeled after those routinely published by other Federal agencies and would contain the following sections:

- Section 429.201 would explain that the new subpart applies to employee claims under the MPCECA, set a \$40,000 limit on the amount of payment for a claim, and define several terms used throughout the subpart.

- Section 429.202 would explain the procedures an employee should follow to file a claim for personal property loss or damage incident to service.

- Section 429.203 would explain the circumstances under which a claim for personal property loss or damage is allowable.

- Section 429.204 would describe the restrictions that apply to employee claims for personal property damage or loss.

- Section 429.205 would contain a list of the types of losses that are not allowable under subpart B.

- Section 429.206 would explain the procedures that are applicable when a claim involves a commercial carrier or an insurer.

- Section 429.207 would explain how an employee should file a claim for personal property damage or loss.

- Section 429.208 would explain how the SSA Claims Officer determines the amount of an award.

- Section 429.209 would contain the maximum fee an agent or attorney may receive for his/her services in connection with an individual claim under subpart B.

- Section 429.210 would explain the appeal process for claims under subpart B.

- Section 429.211 would contain the penalties for filing false claims.

Tort Claims

These proposed rules would also modify our existing rules dealing with the procedures SSA follows when