

(c) Participants who arrive after the 10 a.m. opening time may be restricted from participating in the market following their second violation. A written warning may be given to the participant for the first violation of this guideline. After the second violation occurs, a letter of reprimand may be given to the participant restricting their participation for the next immediate market day.

Dated: December 19, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02-049-2]

Importation of Fragrant Pears From China

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 fragrant pears from China under certain conditions. As a condition of entry, fragrant pears from China must be grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization of China. The fragrant pears will be subject to inspection. In addition, the pears must be packed in cartons that are labeled in accordance with the regulations, shipped in insect-proof containers, and safeguarded from pest infestation during transport to the United States. This action will allow fragrant pears to be imported from China while continuing to provide protection against the introduction of plant pests into the United States.

DATES: *Effective Date:* January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1231; (301) 734-8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 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.

The regulations have not previously included provisions authorizing the importation of fragrant pears from China. However, the national plant protection organization of China requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fragrant pears from the Korla region of Xinjiang Province in China to be imported into the United States.

Under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. The Secretary has determined that it is not necessary to prohibit the importation of fragrant pears from the Korla region of Xinjiang Province in China in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.¹

Accordingly, on May 23, 2003, we published in the **Federal Register** (68 FR 28161-28166, Docket No. 02-049-1) a proposal to amend the fruits and vegetables regulations to allow the importation of fragrant pears from China under certain conditions. Among other things, we proposed that the fragrant pears be packed in insect-proof containers that are labeled in accordance with § 319.56-2(g). However, upon further consideration, we are amending the packing and shipping requirements in this final rule to make clear that the fragrant pears must be packed in cartons that are labeled in accordance with § 319.56-2(g), shipped in insect-proof containers, and safeguarded during transport to the United States in a manner that will prevent pest infestation. These changes will clarify the packing and shipping requirements and be more consistent with current packing and shipping practices for pears.

¹ This determination is based on the finding that the application of the remedial measures contained in this rule will provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States. The factors considered in arriving at this determination include the conclusions of a pest risk assessment, program analysis, and site visits.

We solicited comments concerning our proposal for 60 days ending on July 22, 2003. We received seven comments by that date. They were from private citizens, a professional organization, and representatives of State and foreign governments. The comments are discussed by subject below.

General

One commenter requested that we provide the scientific name for fragrant pear. In the January 1997 pest risk assessment, we indicated that the scientific name for fragrant pear from China was *Pyrus ussuriensis* Maxim. However, in 2005, the national plant protection organization of China informed APHIS that the scientific name for fragrant pear is *Pyrus* sp. nr. *communis*. Accordingly, we will use *Pyrus* sp. nr. *communis*, rather than *Pyrus ussuriensis* Maxim, as the scientific name for fragrant pear.

Another commenter requested that APHIS identify the specific government organization that serves as the "national plant protection organization for China." Currently, the national plant protection organization for China is known as the Administration for Quality Supervision, Inspection and Quarantine (AQSIQ). We used the generic term "national plant protection organization of China" in the proposed rule and continue to do so in this final rule because the name of the national plant protection organization of China has changed several times in recent years. Our use of this more generic term is consistent with international standards.

One commenter recommended that APHIS fully disclose all information collected and used in generating the proposed rule. This commenter also recommended that APHIS delay action on the proposed rule until it has developed and circulated for peer review the following documents: A detailed plan documenting the incidence of specific quarantine pests in the Korla region, survey information for those pests for which free area status is proposed, in-orchard monitoring plans for those pests known to occur in the region, and greater detail of the post-harvest inspection protocols which will be implemented.

We do not believe it is necessary to delay action on the proposed rule pending development and peer review of the documents listed by the commenter. The Secretary has determined that it is not necessary to prohibit the importation from the Korla region of Xinjiang Province in China in order to prevent the introduction into the United States or the dissemination

within the United States of a plant pest or noxious weed. This determination is based on the finding that the remedial measures contained in this final rule will provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States. In making this determination, the Secretary considered the conclusions of a pest risk assessment, program analysis, survey information, and site visits. Our analysis is documented in a September 2005 information memorandum, which is available on the Internet at <http://www.regulations.gov>.² This memorandum updates a June 2003 information memorandum on the same subject. We do not believe that additional documents need to be developed and circulated for peer review.

With respect to the disclosure of all information collected and used in generating the proposed rule, we note that the proposed rule stated that the pest risk assessment and supporting documents could be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**, and we provided several individuals with the information they requested. The information and data provided by China are summarized in the September 2005 information memorandum and the documents on which the information memorandum is based are on file with APHIS. Due to the large volume of material provided by China, we would ask that persons wishing to view those documents make arrangements with the person listed under **FOR FURTHER INFORMATION CONTACT** for viewing the file or obtaining copies of specific documents.

One commenter indicated that fragrant pears should not be imported from China because the risk of fruit flies is too great, especially since "APHIS is already not doing its job with imports."

We do not agree that the risk of fruit flies is too great to allow the importation of fragrant pears from China. As documented in the September 2005 information memorandum, the Korla region of Xinjiang Province has been determined to be free of fruit flies. China conducted trapping for fruit flies for 3 years in the Korla region with negative results. Furthermore, in the

unlikely event a fruit fly is introduced into the region, climatic conditions and production practices there would significantly reduce the likelihood of establishment. The commenter provided no scientific documentation to support his suggestion that we continue to prohibit the importation of fragrant pears from the Korla region of Xinjiang Province in China.

Another commenter stated that "as a matter of equity, USDA should continue to postpone the implementation of this proposed rule until such time as the Chinese Government allows U.S. pear growers access to its market for U.S. pears since we believe that we have provided ample scientific justification for such access."

Other countries make decisions as to whether to allow the importation of U.S. products only when formally requested. APHIS has already formally requested that China allow the importation of U.S. pears, and we are working with the U.S. pear industry to address concerns raised by the national plant protection organization of China. Moreover, under the Plant Protection Act, our decisionmaking related to allowing or denying the importation of commodities must be based on phytosanitary considerations rather than the goal of reciprocal market access.

Pest Risk Assessment

Several commenters stated that APHIS' pest risk assessment did not consider all pests of quarantine concern. One commenter noted that the pest risk assessment did not include the following pests: *Carposina sasakii* Matsumura, *Coleophora hemerobiella* Scopoli, *Leucoptera malifoliella* (Costa), *Synanthedon hector* (Butler), and *Cydia inopinata* Heinrich. Another commenter identified 29 insect species of quarantine concern that were not identified in APHIS' pest risk assessment. However, the commenter noted that some of these pests may be synonymous with APHIS-listed species. This commenter also noted that a January 2003 proposed import risk assessment for Shandong pears published by the Australian Government identified a number of species that are not addressed by APHIS' pest risk assessment.

We have reviewed the scientific literature for each pest identified by the commenters. For various reasons (e.g., post-harvest handling practices, the pest does not attach to fruit, the pest is a surface pest and easily detected), we believe that none of these pests will follow the pathway into the United States. *Carposina sasakii* and *Cydia inopinata* (syn. *Grapholita inopinata*)

are absent from the fragrant pear production areas and the province of Xinjiang as a whole. *Leucoptera malifoliella* has been found not likely to follow the pathway. *Coleophora hemerobiella* may follow the pathway as hitchhikers but, since they are external, can be easily detected during inspection. *Synanthedon hector* does occur in China but does not attack pears since it is a pest of apples.

One commenter stated that one of the mites of concern, *Tetranychus viennensis*, occurs in Heshuo in Xinjiang Province. This commenter also stated that Canada has intercepted mites on fragrant pear shipments from China.

The Hawthorn spider mite, *Tetranychus viennensis*, was found in Heshuo Farm in Xinjiang Province in 1996. Heshuo Farm is located approximately 50 miles from the production sites in the Korla region and is difficult to reach due to poor road conditions. There is no commercial production of pears or apples in Heshuo, and there is very little commercial activity between Heshuo and Korla. To date, the Hawthorn spider mite has not been found in the Korla region. According to the September 2005 information memorandum, this mite was not found in the Korla region during general surveys in the 1970s, 1980s, and 1990s or during several intensive surveys for mites in 1996–1997. Moreover, based on information provided by Canada, the Hawthorn spider mite has been intercepted on Ya pear shipments from China, not fragrant pears. Ya pears are grown in the Hebei Province of China, which is separated from the Korla region by the Gobi Desert.

One commenter stated the proposed rule is overly strict and not scientifically justified. This commenter went on to note that the listed pests include non-quarantine saprophytes (organisms that obtain food from dead organic matter). The commenter suggested that APHIS delete these saprophytes from the quarantine pest table or determine which species will be recognized as quarantine pests.

We disagree with the commenter's claim that the proposed rule is overly strict and not scientifically justified. The provisions in the proposed rule and in this final rule are based on the conclusions of a pest risk assessment, program analysis, survey information, and site visits, and will provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States. The commenter did not provide the names of those saprophytes he considered to be non-quarantine pests, and we continue

² This final rule and the September 2005 information memorandum are available on the Regulations.gov Web site. Go to <http://www.regulations.gov>, click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS–2005–0108 then click on "Submit." The final rule and information memorandum will appear in the resulting list of documents. The information memorandum may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

to believe that the saprophytes listed in the pest risk assessment are properly characterized as quarantine pests.

One commenter requested that APHIS provide scientific documentation showing that *Hoplocampa pyricola* is not an internal feeder. This commenter also asked if the Hawthorn spider mite lays eggs in calices of fruit like the *Tetranychus urticae*.

Although little is known about the biology of the sawfly, *Hoplocampa pyricola*, the available scientific information indicates that sawfly eggs are deposited in the ovary of the flower. The larvae then feed on the ovary and the fruit. Once the larvae reach maturity, the infested fruit prematurely drops from the tree and the larvae enter the soil to pupate. Given the external damage and premature dropping of the fruit, we believe that inspections in China and the United States will mitigate the risk of this pest.

The Hawthorn spider mite primarily feeds on the underside of a leaf, preferably the underside of a cherry leaf. Female mites overwinter in the cracks and under the bark of stems and branches. When mite populations are high, the female mite may overwinter in the calyx crevices or in the depression on the stem-end of mature fruit, like the *Tetranychus urticae*.

Several commenters asked why APHIS had denied so many permits for pears from China in the past. These commenters wondered how these permit requests differed from the current request that APHIS allow fragrant pears from the Korla region of Xinjiang Province in China to be imported into the United States.

As previously discussed, 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. Prior to this final rule, the regulations did not authorize the importation of fragrant pears from China. Each year APHIS receives many requests for permits to import fruits and vegetables into the United States. Some of these requests are for nonadmissible items. Prior to 1995, when the importation of Ya pears from Hebei and Shandong Provinces was authorized, we had only allowed the importation of sand pears from China. Therefore, all requests for permits to export pears, other than sand pears, into the United States from China were denied prior to 1995, and since 1995, permits have been issued only for sand pears and Ya pears from China. This final rule amends the regulations to allow the importation of

fragrant pears from China under certain conditions, thus making the issuance of permits for fragrant pears possible.

Another commenter noted that the pest risk assessment states that there were no pest interceptions on pear imports from China between 1985 and 1995. To better evaluate this statement, the commenter requested that APHIS provide the total number of shipments imported into the United States during that time and the number of shipments that were sampled. The commenter also asked for the sample rate used by APHIS on other imported pear species from China.

The inspectors routinely sample 2 percent of fruit presented for inspection. There were 10 shipments of sand pears from China in 1994 and 15 shipments of sand pears in 1995, all of which were inspected. Our records show there were no interceptions of quarantine significance from commercial shipments or passenger baggage from 1984 through 1995.

One commenter noted that the pest risk assessment indicates that sweep nets and blacklight traps were used to survey for mites in the area. The commenter indicated that these are inappropriate survey tools to detect mites and expressed concern that inspection upon entry may not provide sufficient protection from the introduction of Hawthorn spider mite into the United States and more stringent measures may be needed.

Sweep nets and blacklight traps were reported as having been used by general survey teams working in the region between 1971 and 1975; those teams were engaged in surveys for a variety of pests, i.e., not just for mites. Subsequent intensive surveys for mites were conducted after Chinese officials provided advanced identification training to their extension agents in the Korla region. None of the species of mites collected are considered to be of quarantine significance by the United States.

As previously discussed, the Hawthorn spider mite has been found in Heshuo in Xinjiang Province, but not in the Korla region. According to the September 2005 information memorandum, the Hawthorn spider mite was not found in the Korla region during general surveys in the 1970s, 1980s, and 1990s. Moreover, the Hawthorne spider mite was not identified during several intensive surveys for mites in 1996–1997. Indeed, no mites of quarantine significance were identified during these intensive surveys. We believe that current production practices in China and the mitigation measures in this final rule

will provide the protection necessary to prevent the introduction and dissemination of the Hawthorn spider mite into the United States. Therefore, we are making no changes based on this comment.

Registration

Several commenters noted there is very little information about what it takes for a site to become registered (e.g., grower practices or surveys of pest populations). These commenters indicated there is insufficient information about the registration process to evaluate the effectiveness of that proposed requirement and whether the national plant protection organization of China has the authority and resources to maintain and evaluate such registrations.

The proposed rule and this final rule do not provide specific information about how a site becomes registered by the national plant protection organization of China because the national plant protection organization of China determines the requirements for registration, not APHIS. In general, a production site seeking to register would be subject to control practices and pest surveys mandated by the local and national plant protection organizations of China. This registration system is already being used by China to export fragrant pears to Canada and other countries. We are confident that the registration system, in addition to the other mitigation measures set forth in this rule, will be sufficient to protect against the introduction of plant pests into the United States. Accordingly, we are making no changes based on these comments.

One commenter requested proof that the growing area is free of fruit flies. As previously discussed, all available data indicates that the Korla region of Xinjiang Province is free of fruit flies. The Chinese Government conducted trapping for *Bactrocera dorsalis* for 3 years in the Korla region with negative results. Furthermore, our trading partners have not reported any interceptions of fruit fly larvae in fragrant pears from Xinjiang Province. In the unlikely event a fruit fly is introduced into the region, climatic conditions and production practices there would significantly reduce the likelihood of establishment.

Another commenter asked if the Korla region is currently free of the pests identified in the proposed rule and pest risk assessment. If so, the commenter requested that the supporting data be made available for review by independent experts.

As noted in our response to a comment earlier in this document, the proposed rule announced the availability of the pest risk assessment and supporting documents, and the information and data provided by China are summarized in the September 2005 information memorandum. The September 2005 information memorandum identifies 17 pests of concern; of these, 1 pest (*Tetranychus kanzawai* Kishida) is not considered a quarantine pest, 1 pest (pear rusty skin viroid, also known as apple scar skin viroid) is not expected to follow the pathway, and there is no evidence of the remaining 15 quarantine pests in Korla. We believe that the information memorandum fully identifies, summarizes, and analyzes the available scientific data, but, as stated previously, persons wishing to review the large volume of material provided by China may do so by making arrangements with the person listed under **FOR FURTHER INFORMATION CONTACT**.

Trapping and Monitoring

One commenter requested information about the sampling protocols used to detect pests. As discussed in the proposed rule, fragrant pears would be subject to both pre-harvest and post-harvest inspections by the national plant protection organization of China or officials authorized by the national plant protection organization of China. The national plant protection organization of China would establish the sampling protocols used to detect pests. However, the national plant protection organization of China would have to provide APHIS with information on pest detections and pest detection practices, and APHIS would have to approve the pest detection practices.

One commenter stated that the proposed rule did not mention any interceptions of quarantine diseases on Ya pears in 2001 and 2002, nor did it discuss interceptions of quarantine pests by Canada on both Ya and fragrant pears. The commenter recommended that APHIS conduct and publish a survey of other Chinese pome fruit importing countries to determine their experience with pest interception on Chinese pears and apples.

As part of APHIS' pest risk analysis, we reviewed information about interceptions of quarantine pests and diseases on all species of pears. Information obtained from Canada indicates that two pests of quarantine concern to APHIS were intercepted on pears from China during the 2002–2003 season—the *Aphanostigma* sp. poss. *jackusiensis* (phylloxeran) and the

Hawthorn spider mite. The phylloxeran was intercepted on both Ya pears and fragrant pears from China while the Hawthorn spider mite was intercepted only on Ya pears. Nevertheless, we believe that the origin requirements and remedial measures contained in this final rule will provide the protection necessary to prevent the introduction and dissemination of these pests into the United States. Phylloxeran causes damage on the surface of the fruit that is easily detected by inspection and, as previously discussed, the Hawthorn spider mite does not occur in the Korla region and it is unlikely to become established in that region due to climatic conditions and production practices. In response to the Canadian interceptions of phylloxeran on fragrant pears, we have added that pest to the list in § 319.56–2nn(a)(4)(ii) of pests that, if detected, could lead to APHIS' rejection of the lot or consignment and a prohibition on the importation into the United States of fragrant pears from the production site for the season.

In December 2003, after the close of the comment period for the proposed rule, APHIS suspended imports of Ya pears from China due to detections of Chocolate spot (*Alternaria yaliinficiens*). In March 2005, APHIS negotiated revisions to the Ya pear work plan with China, strengthening the mitigation measures applied to prevent further introductions of quarantine significant *Alternaria* spp. in Ya pears. Upon signing the new agreement, the Ya pear market was reopened. We note that this final rule requires that if any listed quarantine pest, including *Alternaria* spp., is found during the pre-harvest inspection or at any other time, the national plant protection organization of China must notify APHIS immediately. APHIS may then reject the lot or consignment and prohibit the importation into the United States of fragrant pears from the production site for the season, and imports may not resume until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

One commenter asked what would happen if different pests were found in different sites, and if that would be regarded in the same manner as if a single type of pest was found at more than one production site. Another commenter recommended that APHIS prohibit the importation of fragrant pears into the United States if any pests or more than one species of different pests are detected in more than one registered production site.

APHIS' response to a pest detection would depend upon the pest. Upon detection of Oriental fruit fly (*Bactrocera dorsalis*) during the pre-harvest inspection or at any other time, APHIS could prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken. In addition, APHIS could prohibit the importation into the United States of fragrant pears from a production site for the season if any of the following pests are detected on that production site during the pre-harvest inspection or at any other time: Peach fruit borer (*Carposina sasaki*), yellow peach moth (*Conogethes punctiferalis*), apple fruit moth (*Cydia inopinata*), Hawthorn spider mite (*Tetranychus viennensis*), red plum maggot (*Cydia funebrana*), brown rot (*Monilinia fructigena*), Asian pear scab (*Venturia nashicola*), pear trellis rust (*Gymnosporangium fuscum*), Asian pear black spot (*Alternaria* spp.), and phylloxeran (*Aphanostigma* sp. poss. *jackusiensis*). Thus, if peach fruit borer is detected in one production site and yellow peach moth is detected in another, APHIS could prohibit the importation into the United States of fragrant pears from each production site for the season. However, if any of the pests listed above is detected in more than one registered production site, APHIS could prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

One commenter indicated that it would be difficult to make sure that fragrant pears absolutely do not carry Asian pear black spot or Hawthorn spider mite. Thus, the commenter stated, it would be better if APHIS prohibited the importation of fragrant pears from the production sites where those pests are detected, instead of prohibiting the importation of all fragrant pears from China.

We do not agree that it would be too difficult to ensure that fragrant pears do not carry Asian pear black spot or Hawthorn spider mite. We believe that the mitigation measures in this rule will provide the protection necessary to prevent the introduction into and dissemination within the United States of plant pests. However, if Asian pear black spot or Hawthorn spider mite is detected on a production site during the pre-harvest inspection or at any other time, APHIS could prohibit the

importation into the United States of fragrant pears from that production site for the season. Moreover, if Asian pear black spot or Hawthorn spider mite is detected in more than one registered production site during the pre-harvest inspection or at any other time, APHIS could prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken. We are making no changes based on this comment.

One commenter noted that pest-specific remedial measures are not described in the proposed rule. The commenter contacted several experts in temperate orchard pest management to review the risk assessment and the proposed remedial measures. These experts indicated that they needed more information about the proposed remedial measures to determine if these measures would be adequate.

In the proposed rule, we proposed to allow the importation of fragrant pears from China under certain conditions. Specifically, we proposed to require that the fragrant pears be grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization of China and that these production sites be free of certain pests. Furthermore, we provided that detection of certain pests could result in a prohibition on the importation into the United States of fragrant pears from a particular production site for the season or from all of the production sites in the Korla region of Xinjiang Province until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken. Accordingly, the burden is on the national plant protection organization of China to provide remedial measures that are appropriate for the pest and agreeable to APHIS.

Safeguarding Pears From Pest Infestation

One commenter stated that the labeling and transport of fragrant pears must preclude the pears from being commingled with fruit from non-approved areas of China. Several commenters requested clarification about how the fragrant pears would be isolated from other fruits (e.g., would the pears need to be stacked on different pallets or different stacks on a pallet, in different cold rooms, or stored in facilities separated by distance or physical barrier?).

We agree that the labeling and transport of fragrant pears must preclude the commingling of fruit from non-approved areas of China. In the proposed rule, we proposed to require that the fragrant pears be safeguarded at the cold storage facility while awaiting export. Specifically, we proposed that the fragrant pears be isolated from fruit from unregistered production sites. To allow for greater flexibility in meeting this requirement, we did not specify the manner in which the fragrant pears are to be isolated. The fragrant pears could be isolated from fruit from unregistered production sites by stacking them on different pallets at the cold storage facility, by holding the pears and other fruits in separate rooms, or by holding the pears and other fruits in separate cold storage facilities. Any of these options would satisfy the requirement to isolate pears held in a cold storage facility from fruit from unregistered production sites.

Economic Analysis

One commenter stated that the cost/benefit assessment in the proposed rule may not be accurate because it is based on Ya pear imports, and fragrant pears are a different species with different sensory characteristics. The commenter also pointed out that an assessment of the short-term impacts is not appropriate for long-lived perennial crops such as pears.

The analysis in the proposed rule recognized that Ya pears and fragrant pears are different species with different sensory characteristics. Because fragrant pears have not been imported into the United States from China, the analysis used Ya pear data to estimate the potential economic effects of importing fragrant pears from China. In order to estimate the economic effects of importing fragrant pears, the analysis assumed that demand for Ya pears and fragrant pears will be similar, but it is not necessary to assume that the physical characteristics are the same.

Short-term and long-term impacts depend on consumer acceptance of, and demand for, fragrant pears, not on the length of the production cycle or the expected life of the tree. The short-run analysis is based on data from a similar good, Ya pears. There are no comparable data available for a long-run analysis. Accordingly, the analysis in the proposed rule focused on the short term impacts of importing fragrant pears from China into the United States.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

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 fragrant pears from China under certain conditions. This action will allow fragrant pears to be imported from China while continuing to provide protection against the introduction of plant pests into the United States.

The following economic analysis examines whether this rule might have a significant economic impact on a substantial number of small entities, as required by the Regulatory Flexibility Act. There are three reasons why we believe this will not be the case. First, the risk of quarantine pests being introduced into the United States via this pathway is extremely low. Second, fragrant pears are not produced in the United States and fragrant pear import levels are expected to be low relative to domestic pear availability. In addition, our analysis suggests that fragrant pears from China will not be a close substitute for domestically produced pears; therefore, profit losses, if any, for domestic pear producers are expected to be extremely low, at least over the next several years. Third, allowing the importation of a pear variety that is not produced domestically will lead to gains for small importers and pear consumers in the United States.

Pear Production and Pest Risks

Fragrant pears are grown in an area surrounding Korla, a city in Xinjiang Province, which makes up the northwest corner of China, and are not grown anywhere else in the world. The production area, which is west of the Gobi Desert and just north of the Taklamakan Desert, experiences extremely hot summers, cold winters, and very little rainfall, and is geographically, as well as culturally, isolated. In addition, while agricultural commodities are exported from the region, there is little if any incoming trade. As a result, the potential for pests of quarantine significance being introduced into the area is extremely low. Furthermore, in the unlikely event a pest was introduced into the region, climatic conditions and production practices there would significantly reduce the likelihood of establishment.

Approximately 15,000 hectares are devoted to fragrant pear production in Xinjiang Province, yielding roughly

90,718 metric tons per year, of which 10 percent is exported. We expect that exports to the United States would come mainly from the farm units known as Regiments 28, 29, 30, 33, and Shayi Dong Farms, although additional quantities could come from Regiments 31 and 32. The land belongs to the government, and the proper maintenance of every orchard is under the direct supervision of China's national plant protection organization, AQSIQ, which stations one supervisor to each regiment in the export area. The AQSIQ supervisor is in contact with the

growers on a weekly basis and directs the work of several survey teams.³ The survey teams are in the orchards every day and are responsible for maintaining traps, extension work, fruit cutting and inspection, checking to see that orchards are maintained properly, participating in annual pest surveys, and checking on other crops. If it is determined that an orchard is not being managed properly, AQSIQ assigns it to another grower.

Benefits and Costs

Because pest risks associated with this pathway are extremely low, we

expect regulatory costs associated with quarantine pest introductions to be negligible. In addition, because fragrant pears are not produced in the United States and because quantities designated for export are expected to be low, at least during the next several years, we do not expect fragrant pears to compete with domestically produced pears over the short run. However, imports of fragrant pears from China may increase over time, as has been the case for U.S. Ya pear imports and Canadian Ya and fragrant pear imports from China (table 1).

TABLE 1.—YA PEARS FROM CHINA AND DOMESTICALLY PRODUCED FRESH PEARS, QUANTITIES, AND PRICES

Year	U.S. Ya pear imports ¹ (1,000 kg)	Import prices ¹ (\$/kg)	Domestic production fresh pears ² (1,000 kg)	Domestic prices ² (\$/kg)	Chinese pear exports to Canada ³ (1,000 kg)
1996	NA	NA	416,897	\$0.62	321
1997	NA	NA	519,191	0.41	182
1998	329	\$1.48	466,107	0.44	909
1999	2,058	1.26	486,410	0.43	1,899
2000	5,264	0.73	496,348	0.36	4,663
2001	6,654	0.54	494,588	0.43	6,548
2002	5,788	0.57	475,769	0.40	10,933
2003	7,129	0.62	507,983	0.39	11,093
2004	109	0.63	477,429	0.48	2,826

NA = not available.

¹ Data for 1998–2004 are from FAS (2005).

² The nominal price data during 1996–2004 are from NASS (2005), and data for 1999–2004 are from NASS (2005).

³ China currently exports fragrant pears (and possibly Ya pears) to Canada. These data are from FAS (2005).

As indicated in Table 1, after the initial rapid expansion in Ya pear imports from 1998 to 2000, growth continued at a slower rate. Over the 4-year period 2000–2003, U.S. imports of Ya pears from China increased an average of about 8 percent per year. During this 4-year period, the quantity of Ya pears imported from China was equivalent to about 1.3 percent of domestic pear production, and the average price of Ya pears was about one-and-a-half times the average price of domestically produced pears.

Import restrictions on Ya and fragrant pear imports from China imposed by the Canadian Food Inspection Agency are somewhat similar to those in this rule and, as a result, Canadian imports of Chinese Ya and fragrant pears provide additional information regarding potential future U.S. imports of these commodities. During the same 4-year period, 2000–2003, Canadian imports of pears from China increased an average of about 24 percent per year.

We used time-series data on U.S. Ya pear imports from China, domestic fresh pear production and prices, and total domestic expenditures on fruit to estimate the rate of substitution between Ya pears and domestically produced pears in order to glean information about the potential rate of substitution between fragrant pear imports and domestic pears. In particular, we estimated a linear relationship between fresh domestic pear prices and a constant, fresh domestic production, and Ya pear imports from China. The coefficient estimate on Ya pear imports was found to be negative but not statistically different from zero, indicating that Ya pears do not substitute for domestically produced pears. If the relationship between imported fragrant pears and domestically grown pears is found to be similar to the modeled relationship between imported Ya pears and domestically grown pears, then the results of the regression analysis

indicate that U.S. imports of fragrant pears from China will not compete with domestically produced pears during the next several years.

Notwithstanding the expected insignificant effects of the rule on domestic pear production, allowing the importation of fragrant pears from China will provide benefits to U.S. importers and merchants of Chinese fragrant pears. The U.S. Small Business Administration defines a small pear importer (North American Industry Classification System [NAICS] category 424480, Fresh Fruit and Vegetable Merchant Wholesalers) as one that employs not more than 100 persons. In 1997,⁴ more than 96 percent (5,456 of 5,657) of fresh fruit and vegetable wholesalers would be considered small by SBA standards.⁵ There are no data to indicate directly the level of benefits that may accrue to small pear importers and merchants in the United States, but any new trade of a commodity (in this case, fragrant pears from China) can be

³ There are approximately 5,166 hectares of agricultural production, 3,000 growers, and 66 survey teams in Regiments 28, 29, 30, 33, and Shayi Dong Farms, for an average 1.72 hectares per grower and 79 hectares per survey team. Most of Regiment

30, however, is devoted to wheat and rice production. Each fragrant pear grower manages about 1 hectare.

⁴ Establishment and firm size is not yet available for the 2002 Economic Census.

⁵ 1997 Economic Census. Department of Commerce, U.S. Bureau of the Census. NAICS Category 424480: Fresh Fruit and Vegetable Merchant Wholesalers.

expected to benefit entities dealing in that commodity.

Conclusion

We expect that allowing the importation of fragrant pears from China will not have a significant economic impact on a substantial number of small entities. Fragrant pears from China will not directly compete with domestically produced pears, assuming the demand for imported fragrant pears will be similar to that for imported Ya pears. If imports of fragrant pears increase over time, as has been the case for U.S. Ya pear imports and Canadian Ya and fragrant pear imports, it is possible that fragrant pears could compete with some varieties of domestically produced pears in the future, but only marginally given the small quantity of fragrant pears expected to be imported compared to domestic pear production. Fragrant pear importers and merchants, most of which are likely to be small entities, will benefit from the importation of fragrant pears from China.

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 fragrant pears to be imported into the United States from the Korla region of Xinjiang Province in China. State and local laws and regulations regarding fragrant pears 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 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 0579-0227.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to

compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed 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 § 319.56-2nn is added to read as follows:

§ 319.56-2nn Administrative instructions: Conditions governing the entry of fragrant pears from China.

Fragrant pears may be imported into the United States from China only under the following conditions:

(a) *Origin, growing, and harvest conditions.* (1) The pears must have been grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization of China.

(2) All propagative material introduced into a registered production site must be certified free of the pests listed in this section by the national plant protection organization of China.

(3) Within 30 days prior to harvest, the national plant protection organization of China or officials authorized by the national plant protection organization of China must inspect the registered production site for signs of pest infestation and allow APHIS to monitor the inspections. The national plant protection organization of China must provide APHIS with information on pest detections and pest detection practices, and APHIS must approve the pest detection practices.

(4) If any of the quarantine pests listed in this section are found during the pre-harvest inspection or at any other time, the national plant protection organization of China must notify APHIS immediately.

(i) Upon detection of Oriental fruit fly (*Bactrocera dorsalis*), APHIS may reject the lot or consignment and may prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

(ii) Upon detection of peach fruit borer (*Carposina sasaki*), yellow peach moth (*Conogethes punctiferalis*), apple fruit moth (*Cydia inopinata*), Hawthorn spider mite (*Tetranychus viennensis*), red plum maggot (*Cydia funebrana*), brown rot (*Monilinia fructigena*), Asian pear scab (*Venturia nashicola*), pear trellis rust (*Gymnosporangium fuscum*), Asian pear black spot (*Alternaria spp.*), or phylloxera (*Aphanostigma sp. poss. jackusiensis*), APHIS may reject the lot or consignment and may prohibit the importation into the United States of fragrant pears from the production site for the season. The exportation to the United States of fragrant pears from the production site may resume in the next growing season if an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken. If any of these pests is detected in more than one registered production site, APHIS may prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

(5) After harvest, the national plant protection organization of China or officials authorized by the national plant protection organization of China must inspect the pears for signs of pest infestation and allow APHIS to monitor the inspections.

(6) Upon detection of large pear borer (*Numonia piovorella*), pear curculio (*Rhynchites fovepessin*), or Japanese apple curculio (*R. heros*), APHIS may reject the lot or consignment.

(b) *Packing requirements.* (1) The fragrant pears must be packed in cartons that are labeled in accordance with § 319.56-2(g).

(2) The fragrant pears must be held in a cold storage facility while awaiting export. If fruit from unregistered production sites are stored in the same facility, the fragrant pears must be isolated from that other fruit.

(c) *Shipping requirements.* (1) The fragrant pears must be shipped in insect-proof containers and all pears must be safeguarded during transport to

the United States in a manner that will prevent pest infestation.

(2) The fragrant pears may be imported only under a permit issued by APHIS in accordance with § 319.56-4.

(3) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the national plant protection organization of China stating that the conditions of this section have been met and that the shipment has been inspected and found free of the pests listed in this section.

(Approved by the Office of Management and Budget under control number 0579-0227)

Done in Washington, DC, this 19th day of December 2005.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05-24423 Filed 12-22-05; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2005-21381; Airspace Docket No. 05-ASW-2]

RIN 2120-AA66

Establishment of Area Navigation Routes; Southwestern and South Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the legal description of an Area Navigation (RNAV) route listed in a final rule published in the **Federal Register** on December 15, 2005 (70 FR 74197), Airspace Docket No. 05-ASW-2.

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

History

On December 15, 2005, a final rule for Airspace Docket No. 05-ASW-2 was published in the **Federal Register** (70 FR 74197). This rule established three RNAV routes (Q-20, Q-22, and Q-24) over the Southwestern and South Central United States. In the description for Q-20, the latitude for the HONDS fix was inadvertently listed as lat. 33°33'60" N. rather than lat. 33°34'00" N. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for Q-20 as published in the **Federal Register** on December 15, 2005 (70 FR 74197), and incorporated by reference in 14 CFR 71.1, are corrected as follows:

PART 71—[AMENDED]

§ 71.1 [Amended]

* * * * *

Q-20 CNX TO JCT [CORRECTED]

CNX	VORTAC	(lat. 34°22'01" N., long. 105°40'41" W.)
HONDS	FIX	(lat. 33°34'00" N., long. 104°51'12" W.)
UNNOS	WP	(lat. 32°57'00" N., long. 103°56'00" W.)
FUSCO	WP	(lat. 31°11'02" N., long. 101°19'30" W.)
JCT	VORTAC	(lat. 30°35'53" N., long. 099°49'03" W.)

* * * * *

Issued in Washington, DC, on December 19, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 05-24432 Filed 12-22-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2005-20700; Airspace Docket No. 04-AWA-8]

RIN 2120-AA66

Establishment of Class C Airspace and Revocation of Class D Airspace, Orlando Sanford International Airport, FL; and Modification of the Orlando International Airport Class B Airspace Area, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class C airspace at the Orlando Sanford International Airport (SFB), FL; revokes the existing Sanford, FL, Class D airspace area and its associated Class E airspace extension; and modifies the existing Orlando International Airport (MCO), FL, Class B airspace area. The FAA is taking this action to improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the Orlando, FL, terminal area.

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2005, the FAA published in the **Federal Register** a

notice of proposed rulemaking to modify the Orlando International Airport, FL, Class B airspace area, establish the Orlando Sanford International Airport Class C airspace, and revoke the existing Sanford Airport Class D airspace (70 FR 45599). The FAA proposed to realign the MCO Class B airspace area (within the existing lateral boundaries) due to the commissioning of runway 17L/35R; to ensure that MCO arrivals and departures are retained within Class B airspace; and adjust the configuration of the Class B airspace area to accommodate the Orlando Sanford International Airport Class C airspace area. The FAA proposed to establish the SFB Class C airspace area to enhance safety and improve the management of air traffic in the terminal area.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to the NPRM, the FAA received 20 written comments. Many of the commenters identified themselves as pilots who operate