

§ 301.38–4 Interstate movement of regulated articles.

(a) *Non-protected areas.* Interstate movement of regulated articles into or through any State or area that is not designated a protected area under § 301.38–3(d) is allowed without restriction under this subpart.

(b) *Protected areas.* (1) *Prohibited movement.* The following regulated articles are prohibited from moving interstate into or through any protected area:

(i) All rust-susceptible *Berberis*, *Mahoberberis*, and *Mahonia* plants, seeds, fruits, and other plant parts capable of propagation, except *Mahonia* cuttings for decorative purposes.

(ii) All seed-propagated plants of the *Berberis* species and varieties designated as rust-resistant in § 301.38–2(a)(1) of this subpart that are of less than 2 years' growth, and any seeds, fruits, and other plant parts capable of propagation from such plants.

(2) *Restricted movement.* The following regulated articles may be moved interstate into or through a protected area with a certificate issued and attached in accordance with §§ 301.38–5 and 301.38–7 of this subpart:

(i) Seed-propagated plants of at least 2 years' growth, clonally propagated plants of any age, seeds, fruits, and other plant parts capable of propagation of the *Berberis* species and varieties designated as rust-resistant in § 301.38–2(a)(1) of this subpart;

(ii) Plants, seeds, fruits, and other plant parts capable of propagation of the *Mahoberberis* and *Mahonia* species and varieties designated as rust-resistant in § 301.38–2(a)(2) of this subpart.

* * * * *

Done in Washington, DC, this 5th day of October 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–20387 Filed 10–11–05; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Part 319**

[Docket No. 05–003–1]

Importation of Peppers From Certain Central American Countries

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 in order to allow certain types of peppers grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported into the United States without treatment. The conditions to which the proposed importation of peppers would be subject, including trapping, pre-harvest inspection, and shipping procedures, are designed to prevent the introduction of quarantine pests into the United States. This action would allow for the importation of peppers from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

DATES: We will consider all comments that we receive on or before December 12, 2005.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the “Search for Open Regulations” box, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column, select APHIS–2005–0095 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the “Advanced Search” function in Regulations.gov.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–003–1, 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. 05–003–1.

Reading Room: 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.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis

and Operations, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1228; (301) 734–8262.

SUPPLEMENTARY INFORMATION:**Background**

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

We are proposing to amend the regulations to allow the importation of peppers (*Capsicum* spp.) from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua under certain conditions that would be set forth in a new § 319.56–2nn. The quarantine pests of concern for peppers from those countries, as identified in a pest risk assessment prepared for this proposed rule,¹ are the Mexican fruit fly (Mexfly, *Anastrepha ludens*) for certain types of peppers, Mediterranean fruit fly (Medfly, *Ceratitidis capitata*), the weevil *Faustinus ovatipennis*, pea leafminer (*Liriomyza huidobrensis*), tomato fruit borer (*Neoleucinodes elegantalis*), banana moth (*Opogona sacchari*), latana mealybug (*Phenacoccus parvus*), passionvine mealybug (*Planococcus minor*), melon thrips (*Thrips palmi*), the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato yellow mosaic virus.

To mitigate the risks presented by Mexfly and Medfly, we have developed a specific systems approach, which is described below. The remaining pests exhibit symptoms that are macroscopic and detectable upon visual inspection in the production areas or during pre-export or port-of-entry inspections. Specifically:

- The weevil *Faustinus ovatipennis* feeds on leaves, stem, inflorescence, and fruit. Both larvae and adults are external feeders and, as a result, easily observed.
- Pea leafminers spend a majority of their life cycle in larval form, mining host leaves. These mines are easily detectable via visual inspection.
- Tomato fruit borer larvae penetrate the fruit and may cause the fruit to fall

¹ The pest risk assessment, titled “Importation of Fresh Pepper Fruit with Stems (*Capsicum annuum* L., *C. frutescens* L., *C. baccatum* L., *C. pubescens* Ruiz & Pav., and *C. chinense* Jacq.) from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua into the United States,” may be viewed on the Regulations.gov site (see ADDRESSES above for instructions for accessing Regulations.gov) or on the APHIS Web site at <http://www.aphis.usda.gov/ppq/pra/draft/>.

or become otherwise unmarketable. More mature larvae create large exit holes in the fruit that can be easily detected. In addition, the screen size required by the systems approach as described below is too small to allow the entry of adult tomato fruit borers.

- The banana moth mines plant stems, causing leaf fall and allowing pathogens to colonize and destroy affected plants. Infected plants will not produce quality fruit suitable for export. In addition, the screen size required by the systems approach as described below is too small to allow the entry of adult banana moths.

- Latana mealybug and passionvine mealybug are both external pests that are white in color. They are easily detectable on the darker skin of the host. In addition, these pests may also cause deformities in the plant, making infestation obvious.

- Melon thrips cause leaves to yellow and die. Terminal bud growth may be arrested and fruits may be scarred or deformed.

- The rust fungus *Puccinia pampeana* causes yellow or orange rust pustules to form on the pepper fruit stem which are easily detectable via visual inspection.

- The Andean potato mottle virus and tomato yellow mosaic virus are easily observable on mature plants in the field. Symptoms include mottling of the plant, mosaic coloring, and other plant deformities. In many cases the fruit will not develop and the plants themselves may be dwarfed.

We have developed the following phytosanitary measures to guard against the entry of Medfly and Mexfly in shipments of peppers from those countries into the United States. The proposed measures vary, depending upon area freedom from Medfly and Mexfly. *Capsicum pubescens* (commonly referred to as rocoto pepper), a preferred host for Mexfly and Medfly, would be allowed entry only if grown in a certified pest-free greenhouse, whereas field-grown *Capsicum annuum* (e.g., bell, wax, pimento, jalapeno), *Capsicum frutescens* (e.g., tabasco, malagueta), *Capsicum baccatum* (e.g., bird pepper, aji), and *Capsicum chinense* (e.g., habanero, scotch bonnet) would be permitted under certain circumstances.

Areas Where Medfly Is Present

C. annuum, *C. frutescens*, *C. baccatum*, *C. chinense*, and *C. pubescens* grown in an area that has not been determined to be free of Medfly would be required to be grown in approved production sites registered with the national plant protection

organization (NPPO) of the exporting country and would be subject to the systems approach detailed below. Initial approval of the production sites would be completed jointly by the exporting country's NPPO and the Animal and Plant Health Inspection Service (APHIS). Representatives of the exporting country's NPPO would have to visit and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS could monitor the production sites at any time during this period.

Pepper production sites would have to consist of pest exclusionary greenhouses with self-closing double doors. All additional openings would be required to be covered with 1.6 (or less) millimeter screening. Registered sites would have to contain traps with an approved protein bait for the detection of fruit flies within the greenhouses at a density of four traps per hectare, with a minimum of at least two traps per greenhouse. Traps would have to be serviced on a weekly basis. In addition, Medfly traps with an approved protein bait would have to be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares. These traps would have to be checked at least once every 7 days. At least one trap would have to be near the greenhouse. Traps would have to be set for at least 2 months prior to export and trapping would have to continue to the end of harvest. Capture of 0.7 or more Medflies per trap per week within the buffer zone would suspend or delay the harvest, depending on whether the harvest had begun, for consignments of peppers from that production site until APHIS and the exporting country's NPPO determine that the pest risk has been mitigated.

If a single Medfly is detected inside a registered production site or in a consignment, the registered production site would lose its ability to export peppers to the United States until APHIS and the exporting country's NPPO mutually determine that risk mitigation has been achieved.

For the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, banana moth, latana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato yellow mosaic virus, the production site would have to be inspected prior to harvest, and if any of these pests or any other quarantine pests are found to be generally infesting the production site, the NPPO would not allow export from that production site until risk mitigation

has been achieved. If the NPPO detects any quarantine pests in the consignment, the shipment would be deemed ineligible for export to the United States.

The exporting country's NPPO would have to maintain records of trap placement, checking of traps, and any Medfly captures. In addition, the exporting country's NPPO would have to maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records would have to be maintained for APHIS's review.

We would require that the peppers be packed within 24 hours of harvest in a pest exclusionary packinghouse. The peppers would have to be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing. The peppers would have to be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards would have to remain intact until arrival in the United States or the shipment would not be allowed to enter the United States.

During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse could accept peppers only from registered approved production sites.

The exporting country's NPPO would be responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of peppers would have to be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These peppers were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements." The shipping box would have to be labeled with the identity of the production site.

Areas Where Mexfly Is Present

C. pubescens grown in an area that has not been determined to be free of Mexfly² would have to be grown in approved production sites registered with the NPPO of the exporting country and would be subject to the systems approach detailed below. Initial approval of the production sites would be completed jointly by the exporting country's NPPO and APHIS. Representatives of the exporting country's NPPO would have to visit and inspect the production sites monthly,

² Currently, there are no areas covered by this proposed rule that contain Mexfly free zones.

starting 2 months before harvest and continuing through until the end of the shipping season. APHIS could monitor the production sites at any time during this period.

Pepper production sites would have to consist of pest exclusionary greenhouses with self-closing double doors. All additional openings would be required to be covered with 1.6 (or less) millimeter screening. Registered sites would have to contain traps with an approved protein bait for the detection of fruit flies within the greenhouses at a density of four traps per hectare, with a minimum of at least two traps per greenhouse. Traps would have to be serviced on a weekly basis. In addition, Mexfly traps with an approved protein bait would have to be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares. These traps would have to be checked at least once every 7 days. At least one trap would have to be near the greenhouse. Traps would have to be set for at least 2 months prior to export and trapping would have to continue to the end of harvest. Capture of 0.7 or more Mexflies per trap per week within the buffer zone would suspend or delay the harvest, depending on whether the harvest had begun, for consignments of peppers from that production site until APHIS and the exporting country's NPPO determine that the pest risk has been mitigated.

If a single Mexfly is detected inside a registered production site or in a consignment, the registered production site would lose its ability to export peppers to the United States until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved. For the other pests of concern listed above, the greenhouse would have to be inspected prior to harvest, and if any of these pests or any other quarantine pests are found to be generally infesting the greenhouse, the NPPO would not allow export from that production site until risk mitigation has been achieved. If the NPPO detected any quarantine pests in the consignment, the shipment would be deemed ineligible for export to the United States.

The exporting country's NPPO would have to maintain records of trap placement, checking of traps, and any Mexfly captures. In addition, the exporting country's NPPO would have to maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records would have to be maintained for APHIS's review.

We would require that the peppers be packed within 24 hours of harvest in a pest exclusionary packinghouse. The peppers would have to be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing. The peppers would have to be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards would have to remain intact until arrival in the United States or the shipment would not be allowed to enter the United States.

During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse could accept peppers only from registered approved production sites.

The exporting country's NPPO would be responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of peppers would have to be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These peppers were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements." The shipping box would have to be labeled with the identity of the production site.

Medfly Free Areas

We would allow *C. annuum*, *C. frutescens*, *C. baccatum*, and *C. chinense* grown in a Medfly-free area to be imported under conditions less stringent than those described above for peppers grown in areas where Medfly is present. The peppers would have to be grown and packed in an area that APHIS has determined to be free of Medfly in accordance with the procedures described in § 319.56-2(f); currently, Honduras and Guatemala are the only Central American countries covered by this proposal that contain such areas.

A pre-harvest inspection of the production site would be conducted by the NPPO for the detection of Medfly. If Medfly is found to be generally infesting the production site, the NPPO would not allow export from that production site until it is determined that risk mitigation is achieved. For the other pests of concern listed above (*i.e.*, those pests other than Medfly and Mexfly), the production site would have to be inspected prior to harvest, and if any of these pests or any other quarantine pests are found to be generally infesting the production site, the NPPO would not allow export from that production site until risk mitigation has been achieved.

If the NPPO detected any quarantine pests in the consignment, the shipment would be deemed ineligible for export to the United States.

We would require that peppers be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards would have to remain intact until arrival in the United States or the shipment would not be allowed to enter the United States. These measures would be necessary since, although the production area is Medfly-free, the peppers would need to be protected against infestation while in transit.

The exporting country's NPPO would be responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of peppers would have to be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These peppers were grown in an area recognized to be free of Medfly and the shipment has been inspected and found free of the pests listed in the requirements." The shipping box would have to be labeled with the identity of the production site.

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.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. In accordance with section 603 of the RFA, we have prepared an initial regulatory flexibility analysis describing the expected impact of the changes proposed in this document on small entities.

Under the Plant Protection Act (7 U.S.C. 7701-7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests and noxious weeds.

We are proposing to amend the regulations governing the importation of fruits and vegetables in order to allow certain types of peppers grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported into the United States without treatment. The conditions to which the proposed importation of peppers would

be subject, including trapping, pre-harvest inspection, and shipping procedures, are designed to prevent the introduction of quarantine pests into the United States. This action would allow for the importation of peppers from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

Central American Production and Exports

While agriculture is an important industry in the countries that would be affected by this rule, it does not account for the largest share of gross domestic product in any of the countries. Peppers do not appear to be major crops in those Central American countries. However, production and exports of both commodities are following upward trends.

Over the past four decades, pepper production in Central America has been on the rise. For the last 11 years, exports of peppers from this region have also

increased. However, much of the increase in exports is a reflection of increased trade among the countries in this region. During this time period, an average of 62.23 percent of exports were intra-regional. Although this percentage has fluctuated substantially, the percentage of peppers exported from Central American countries to other Central American countries has been generally above 70 percent since 1997 with the exception of 2002. In 2003, approximately 96 percent of all Central American pepper exports were sent to other countries within the region.

It is estimated that about 31,040 metric tons of peppers may be imported into the United States each year from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua as a result of the proposed rule.³

U.S. Production and Trade Levels

In 2004, U.S. total pepper production totaled 843,696 metric tons (Table 1). While domestic production has fluctuated from year to year and has

declined or remained steady since 2000, there has been an upward trend in domestic pepper production over the last 9 years. Imports have also been on the rise, and these have been increasing at a rapid pace since 1996. Per capita consumption of bell peppers has remained fairly constant over the past nine years, while consumption of chile peppers has been growing at a steady pace since 1996, as seen in Table 1. Although the levels of production, imports, and per capita consumption are reported for all pepper varieties, information on exports and domestic consumption is not available. This is only reported in the case of bell peppers, and is shown in Table 2. This table shows that most production is consumed domestically, with approximately 10 percent devoted to exports. Additionally, as mentioned above, per capita consumption of bell peppers has been steady despite the overall increase in imports.

TABLE 1.—U.S. PRODUCTION, IMPORTS, AND PER CAPITA CONSUMPTION OF ALL PEPPERS, 1996–2004

Year	Production and imports (metric tons)		Per capita consumption (pounds)		
	Production	Imports	Bell peppers	Chili peppers	Total
1996	752,976	277,334	7.1	4.6	11.7
1997	680,400	290,557	6.4	4.5	10.9
1998	662,256	329,336	6.4	4.7	11.1
1999	707,616	342,128	6.7	4.7	11.4
2000	911,736	346,660	7.0	5.1	12.1
2001	857,304	366,514	6.9	5.1	12.0
2002	843,696	408,499	6.8	5.7	12.5
2003	843,696	426,197	6.9	5.5	12.4
2004	843,696	445,982	7.1	6.0	13.1

Source: USDA/ERS, "Vegetables and Melons Yearbook," <http://usda.mannlib.cornell.edu/data-sets/specialty/89011/>.

TABLE 2.—U.S. SUPPLY AND UTILIZATION OF FRESH BELL PEPPERS, 2000–2004

Year	Supply			Utilization		
	Production	Imports	Total	Exports	Domestic	Per capita use (pounds)
(Metric tons)						
1996	754,745	171,143	925,888	60,465	865,423	7.1
1997	678,540	179,217	857,758	60,692	797,066	6.4
1998	660,260	199,085	859,345	57,970	801,375	6.4
1999	705,892	206,524	912,416	66,309	846,107	6.7
2000	765,631	198,190	963,822	71,479	892,342	7.0
2001	748,168	215,596	963,764	73,347	890,417	6.9
2002	710,700	249,979	960,679	73,166	887,514	6.8
2003	731,112	245,715	976,828	72,077	904,751	6.9
2004	762,184	258,053	1,020,237	73,438	946,799	7.1

Source: USDA/ERS, "Vegetables and Melons Yearbook," <http://usda.mannlib.cornell.edu/data-sets/specialty/89011/>.

³ These estimates were provided by the proposed exporting countries and have been aggregated for the purpose of this analysis.

From 1995 to 2003, most of the peppers imported into the United States came from Mexico, Canada, and the Netherlands, with the majority supplied by Mexico. Given the close ties created by the North American Free Trade Agreement, these trading patterns are not surprising.

It is unlikely that the proposed changes would lead to dramatic increases in U.S. import levels of peppers. The amount of peppers expected to be imported from that region (31,040 metric tons) represents approximately 6.95 percent of the 2004 import level (445,982 metric tons). Thus, Central American imports are not expected to command a large portion of the U.S. imported pepper market.

Effects on Small Entities

This proposed rule would affect domestic producers of peppers as well as importers that deal with these commodities. It is likely that the entities affected would be small according to Small Business Administration (SBA) guidelines. As detailed below, information available to APHIS indicates that the effects on these small entities would not be significant.

Two alternatives to the proposed course of action are as follows: Maintaining the regulations as they are currently written regarding the importation of peppers from these Central American countries or allowing importation without establishing the proposed risk mitigations.

The first alternative would maintain current safeguards against the entry of quarantine pests. However, this option would also mean that those specified Central American countries as well as the United States would forgo the economic benefits expected to be afforded by the proposed trade.

Allowing importation of fresh peppers from certain Central American countries under phytosanitary requirements less restrictive than are proposed could potentially lead to the introduction of pests not currently found in the United States. This option could result in significant damage and costs to domestic production and is not desirable for those reasons.

Affected U.S. pepper producers are expected to be small based on the 2002 Census of Agriculture data and SBA guidelines for entities in two farm categories: Other Vegetable (except Potato) and Melon Farming (North American Industry Classification System [NAICS] number 111219) and Other Food Crops Grown Under Cover (NAICS number 111419). The SBA classifies producers in these farm categories as small entities if their total

annual sales are no more than \$750,000. APHIS does not have information on the size distribution of domestic pepper producers, but according to 2002 Census data, there were a total of 2,128,892 farms in the United States.⁴ Of this number, approximately 97 percent had total annual sales of less than \$500,000 in 2002, which is well below the SBA's small entity threshold for commodity farms.⁵ This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 4,748 pepper farms that could be affected by the proposed rule would also qualify as small. In the case of fruit and vegetable wholesalers (NAICS number 422480),⁶ those entities with fewer than 100 employees are considered small by SBA standards.⁷ In 1997, there were a total of 4,811 fruit and vegetable wholesale trade farms in the United States.⁸ Of these farms, 4,610 or 95.8 percent employed fewer than 100 employees and were considered small by SBA standards. Between 1997 and 2002 there is not likely to have been substantial changes in the industry. Therefore, domestic producers and importers that may be affected by this proposed rule are predominantly small entities.

Economic analysis of the expected increase in imports of peppers from Central America shows that the proposed importation of these commodities would lead to negligible changes in domestic prices. Based on historical consumption data, an increase in imports of this magnitude would lead to a decrease in price of approximately \$0.01 to \$0.02 per pound at the retail level, based on an average price of \$1.15 per pound over the last 25 years.

Although domestic producers may face slightly lower prices as a result of the proposed increase in the pepper supply, these price changes are expected to be negligible. APHIS welcomes public comment on these preliminary estimates. Changes of the magnitude presented here should not

⁴ This number represents the total number of farms in the United States, thus including barley, buckwheat, corn, millet, oats, rice, soybean, and sugarcane farms.

⁵ Source: SBA and 2002 Census of Agriculture.

⁶ Note that this NAICS code relates to the 1997 Economic Census. The 2002 NAICS code for this group is 424480.

⁷ For NAICS 424480, SBA guidelines state that an entity with not more than 100 employees should be considered small unless that entity is a government contractor. In this case, the size standard increases to 500 employees. However, in this instance, it is fair to assume that fruit and vegetable importers will not be under government contract since it is against regulations for imports to be used in relevant government programs (e.g., school lunch programs).

⁸ Source: SBA and 1997 Economic Census.

have large repercussions for either domestic producers or importers of peppers.

This proposed rule contains information collection or recordkeeping requirements (see "Paperwork Reduction Act" below).

Executive Order 12988

This proposed rule would allow certain types of peppers from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported into the United States. If this proposed rule is adopted, State and local laws and regulations regarding peppers imported under this rule would 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 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.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed importation of peppers from Central America, we have prepared an environmental assessment. The environmental assessment, entitled "Proposed Rule for the Importation of Peppers from Central America," was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and for information on the location and hours of the reading room). You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies.

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. 05-003-1. Please send a copy of your comments to: (1) Docket No. 05-003-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OClO, 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.

In this document, we are proposing to allow certain types of peppers grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported into the United States without treatment, under certain conditions. Those conditions include trapping, pre-harvest inspection, and shipping procedures designed to prevent the introduction of quarantine pests into the United States. These precautions, along with other requirements, would allow for the importation of peppers from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

Allowing peppers to be imported would necessitate the use of certain information collection activities, including the completion of pre-harvest inspections, phytosanitary certificates, and fruit fly monitoring records.

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 0.0037537 hours per response.

Respondents: Importers, producers, national plant protection organizations.

Estimated annual number of respondents: 200.

Estimated annual number of responses per respondent: 3,994.625.

Estimated annual number of responses: 798,925.

Estimated total annual burden on respondents: 2,299 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) 734-7477.

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 propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450 and 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 would be added as follows:

§ 319.56-2nn Administrative instructions: Conditions governing the entry of peppers from certain Central American countries.

Fresh peppers (*Capsicum* spp.) may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, only under the following conditions:

(a) For peppers of the species *Capsicum annuum*, *Capsicum frutescens*, *Capsicum baccatum*, and *Capsicum chinense* from areas free of Mediterranean fruit fly (Medfly), terms of entry are as follows:

(1) The peppers must be grown and packed in an area that has been determined by APHIS to be free of Mediterranean fruit fly (Medfly) in accordance with the procedures described in § 319.56-2(f) of this subpart.

(2) A pre-harvest inspection of the growing site must be conducted by the national plant protection organization (NPPO) of the exporting country for the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, banana moth, latana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato yellow mosaic virus, and if these pests are found to be generally infesting the growing site, the NPPO may not allow export from that production site until the NPPO has determined that risk mitigation has been achieved.

(3) The peppers must be packed in insect-proof cartons or containers or covered with insect proof mesh or plastic tarpaulin at the packinghouse for transit to the United States. These safeguards must remain intact until arrival in the United States.

(4) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These peppers were grown in an area recognized to be free of Medfly and the shipment has been inspected and found free of the pests listed in the requirements."

(b) For peppers of the species *Capsicum annuum*, *Capsicum frutescens*, *Capsicum baccatum*, *Capsicum chinense*, and *Capsicum pubescens* from areas in which Medfly is considered to exist:

(1) The peppers must be grown in approved production sites registered with the NPPO of the exporting country. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO will visit

and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(2) Pepper production sites must consist of pest exclusionary greenhouses, which must have self-closing double doors and have all other openings and vents covered with 1.6 (or less) mm screening.

(3) Registered sites must contain traps for the detection of Medfly both within and around the production site.

(i) Traps with an approved protein bait must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(ii) If a single Medfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to export peppers to the United States until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(iii) Medfly traps with an approved protein bait must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export and trapping must continue to the end of the harvest.

(iv) Capture of 0.7 or more Medflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of peppers from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, banana moth, latana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato yellow mosaic virus. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

(4) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Medfly captures. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the

trapping program. The trapping records must be maintained for APHIS's review.

(5) The peppers must be packed within 24 hours of harvest in a pest exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(6) During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse may accept peppers only from registered approved production sites.

(7) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These peppers were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements." The shipping box must be labeled with the identity of the production site.

(c) For peppers of the species *Capsicum pubescens* from areas in which Mexican fruit fly (Mexfly) is considered to exist:

(1) The peppers must be grown in approved production sites registered with the NPPO of the exporting country. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO must visit and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(2) Pepper production sites must consist of pest exclusionary greenhouses, which must have self-closing double doors and have all other openings and vents covered with 1.6 (or less) mm screening.

(3) Registered sites must contain traps for the detection of Mexfly both within and around the production site.

(i) Traps with an approved protein bait must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(ii) If a single Mexfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to ship under the systems approach until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(iii) Mexfly traps with an approved protein bait must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export and trapping must continue to the end of the harvest.

(iv) Capture of 0.7 or more Mexflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of peppers from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, banana moth, latana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato yellow mosaic virus. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

(4) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Mexfly captures. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS's review.

(5) The peppers must be packed within 24 hours of harvest in a pest exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(6) During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse may

accept peppers only from registered approved production sites.

(7) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These peppers were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements." The shipping box must be labeled with the identity of the production site.

Done in Washington, DC, this 6th day of October 2005.

N.E. Gutierrez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05-20388 Filed 10-11-05; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. S-0215]

RIN 1218-AB67

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Extension of Comment Period; Change in Date of Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of hearing; extension of comment period; reopening of the period to file notices of intention to appear at an informal public hearing; additional issues for comment.

SUMMARY: This notice reschedules an informal hearing on the proposed standards on electric power generation, transmission, and distribution and on electrical protective equipment, which were published on June 15, 2005. It also reopens the period to file notices of intention to appear at the informal public hearing, extends the period for written comments on the proposal, extends the period to provide the complete text of testimony and documentary evidence, and identifies additional issues on which OSHA is seeking comment. These periods are extended 90 days with this notice.

DATES: *Comments.* Comments on the proposal must be submitted (postmarked or sent) by January 11, 2006.

Informal public hearing. OSHA will hold an informal public hearing in Washington, DC, beginning March 6, 2006. The hearing will commence at 1 p.m. on the first day, and at 9 a.m. on the second and subsequent days.

Notices of intention to appear. Parties who intend to present testimony at the informal public hearing must notify OSHA in writing of their intention to do so no later than November 11, 2005.

Hearing testimony and documentary evidence. Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence postmarked no later than February 1, 2006.

ADDRESSES: You may submit written comments, notices of intention to appear, hearing testimony, and documentary evidence—identified by docket number (S-215) or RIN number (1218-AB67)—by any of the following methods.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- OSHA Web site: <http://dockets.osha.gov/>. Follow the instructions for submitting comments on OSHA's Web page.

- Fax: If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693-1648.

- Regular mail, express delivery, hand delivery, and courier service: Submit three copies to the OSHA Docket Office, Docket No. S-215, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210; telephone (202) 693-2350. (OSHA's TTY number is (877) 889-5627.) OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://dockets.osha.gov/>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read comments and background documents that can be posted go to <http://dockets.osha.gov/>. Written comments received, notices of intention

to appear, and all other material related to the development of the proposed standard will be available for inspection and copying in the public record in the Docket Office at the address listed previously.

Hearing: The hearing will be held in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Mr. Kevin Ropp, Director, Office of Communications, Room N3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999.

Technical information: Mr. David Wallis, Director, Office of Engineering Safety, Room N3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2277 or fax (202) 693-1663.

Hearings: Ms. Veneta Chatmon, OSHA Office of Communications, Occupational Health and Safety Administration, Room N3647; 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999.

Electronic copies of this **Federal Register** notice, as well as news, are available at OSHA's Web page on the Internet at <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION: On June 15, 2005, OSHA published a proposal that would update the standards on electric power generation, transmission, and distribution and on electrical protective equipment for general industry and construction (70 FR 34822). Interested parties were given until August 15, 2005, to submit notices of intention to appear at an informal hearing, and they were given until October 13, 2005, to submit written comments.

The Edison Electric Institute (EEI) requested that OSHA extend the rulemaking period by 90 days. EEI argued that an extension is warranted because of the involvement of their membership in electric power restoration following Hurricane Katrina, as follows:

EEI is the association of the nation's investor owned electric companies. Many EEI member companies, their employees, and contractors they regularly engage, are now overwhelmingly occupied with providing assistance in the areas affected by Hurricane Katrina. This is especially so as to those involved in electric power transmission and distribution construction, as sister companies work to provide mutual aid, including restoration of electric power, to customers of those companies whose service territories include affected portions of southern states.