

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 02–084–2]

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

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

**ACTION:** Final rule.

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

**EFFECTIVE DATE:** June 10, 2003.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

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

On December 20, 2002, we published in the **Federal Register** (67 FR 77940–77942, Docket No. 02–084–1) a proposal to amend the regulations in § 319.56–2ee by removing the requirement that Ya pears imported from Hebei Province in the People's Republic of China be cold treated for Oriental fruit fly. We proposed to remove this requirement because fruit fly trapping data submitted in March 2000 by the People's Republic of China showed no occurrence of Oriental fruit fly in Hebei Province for 1997 through 1999. Further data have continued to indicate that Oriental fruit fly is not present in Hebei Province. In addition, the cool climate of Hebei Province, which is comparable to that of Pennsylvania in the United States, does not favor the development of Oriental fruit fly. We proposed to leave the other safeguards required by § 319.56–2ee for Ya pears from Hebei Province in place, as they help to prevent against the introduction of other plant pests.

We solicited comments concerning our proposal for 60 days ending February 18, 2003. We received four comments by that date. They were from a private citizen, an industry advocacy group, and representatives of State and foreign governments. The issues raised by the commenters are discussed below.

One commenter opposed the proposed rule on the grounds that it would increase the risk of a fruit fly outbreak in the United States, with potentially devastating effects for U.S. agriculture.

When the Animal and Plant Health Inspection Service (APHIS) originally allowed the importation of Ya pears from China, we required that the pears be cold treated because we had no information indicating that Oriental fruit fly was not present in Hebei and Shandong Provinces. As stated above, we now have data submitted by the People's Republic of China that indicates that Oriental fruit fly is not present in Hebei Province; in addition, climatic conditions there do not favor its establishment. (**Note:** In the proposed rule and in the regulations in § 319.56–2ee, we incorrectly refer to Shandong Province as “Shadong Province.” This rule corrects that error in the regulations, and we refer to the province by its correct name throughout this document.)

In order to require cold treatment for Ya pears imported into the United

States from Hebei Province, we would have to have scientific evidence indicating that Oriental fruit fly is present in Hebei Province and that importing Ya pears from Hebei Province would pose a risk of introducing Oriental fruit fly into the United States. The available scientific evidence, to the contrary, indicates that the cold treatment requirement for Ya pears imported from the Hebei Province in China is no longer necessary. We cannot require treatment based on a purely theoretical risk of pest introduction. Therefore, we are removing the requirement that Ya pears imported into the United States from Hebei Province be cold treated, and we are making no changes in response to this comment.

One commenter supported the proposed rule on the condition that the People's Republic of China maintain an Oriental fruit fly detection program in Hebei Province and submit annual reports to APHIS affirming that fruit fly continues not to be present in Hebei Province. Furthermore, this commenter asserted, if Oriental fruit fly is ever detected in Hebei Province, APHIS should immediately reinstate the cold treatment requirement.

The People's Republic of China will continue trapping and surveying for Oriental fruit fly and for other fruit flies and quarantine pests in Hebei Province after this final rule becomes effective. We will not, however, require that China submit the trapping and surveying data to us. Climatic conditions do not favor the establishment of Oriental fruit fly in Hebei Province, and we have no reason to suspect that Oriental fruit fly will become established there. Nevertheless, if trapping data were to indicate in the future that a quarantine pest such as Oriental fruit fly is present in Hebei Province, the national plant protection organization of China would notify APHIS immediately, fulfilling its obligation to do so under trade agreements for agricultural products. Thus, any requirement that the People's Republic of China continue submitting trapping data would, in practice, only mandate repeated submissions of negative data. Since we already have data sufficient to prove that Oriental fruit fly does not exist in Hebei Province, we do not believe further submissions of negative data are necessary.

In the event that Oriental fruit fly is detected in Hebei Province after this final rule becomes effective, we would take any and all appropriate actions to ensure that this plant pest is not introduced into the United States. Such actions may include, but may not be limited to, the reinstatement of the cold treatment requirement for Ya pears imported from Hebei Province.

One commenter questioned the reliability of the fruit fly trapping data submitted to us by the People's Republic of China. We have examined the data and believe it to be accurate. In the proposed rule, we invited persons interested in reviewing the data to contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We received no comments asserting that any specific aspects of the data appeared unreliable. We are making no changes in response to this comment.

One commenter argued that the recent rise in the quantity of imports of Ya pears from China and the decrease in the price of the imports, as described in the economic analysis in the proposed rule, showed that the cold treatment requirement was not significantly hampering the ability of Chinese producers to export Ya pears to the United States. The commenter also took issue with the statement in the economic analysis that Ya pears are not a substitute for domestically produced pears, on the grounds that all produce items compete for a share of the food dollar of U.S. consumers. This commenter stated that until restrictions on the export of U.S. pears to China are lifted by the Government of the People's Republic of China, APHIS restrictions on the importation of pears from China should remain in place. Another

commenter opposed removing the cold treatment requirement on the grounds that the cost of complying with the cold treatment requirement was not particularly onerous.

Cold treatment was required for Ya pears from Hebei Province in China because we had no information indicating that Oriental fruit fly was not present in Hebei Province. Data made available by the People's Republic of China indicate that the Oriental fruit fly is not present in Hebei Province; therefore, this requirement appears to be unnecessary. The purpose of treating imported fruits and vegetables is to mitigate pest risk, not to impose economic barriers on the importation of fruits and vegetables; APHIS has no authority to regulate based on purely economic considerations. We are making no changes in response to these comments.

One commenter supported the proposed rule but argued that we should additionally remove the cold treatment requirement from Ya pears imported from Shandong Province in China. We will consider removing this requirement if the People's Republic of China provides APHIS with data similar to the data submitted for Hebei Province indicating that Oriental fruit fly is not present in Shandong Province. In addition, removing the cold treatment requirement from Ya pears imported from Shandong Province is beyond the scope of the present rulemaking. We are making no changes in response to this comment.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

**Effective Date**

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is warranted to remove a cold treatment requirement for Ya pears imported from Hebei Province in the People's Republic of China that is no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

**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.

This rule removes the cold treatment requirement for Ya pears imported from Hebei Province in the People's Republic of China. This action is based on data from the national plant protection organization of the People's Republic of China indicating that Oriental fruit fly does not occur in Hebei Province and the fact that climatic conditions do not favor the establishment of Oriental fruit fly in Hebei Province.

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

TABLE 1.—YA VARIETY PEAR IMPORTS FROM CHINA

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

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

We expect that removing the cold treatment requirement for Ya pears imported from Hebei Province will reduce shipping costs. The magnitude of the reduction will depend on transport costs with and without the cold treatment requirement. While refrigeration costs will still be borne by importers in the absence of the cold treatment requirement, the costs

required to maintain, monitor, and report cold treatment temperatures during transport will all be saved.

The cold treatment schedule for Ya pears from China, as specified in the Plant Protection and Quarantine Treatment Manual, is T107–F. The number of days required for cold treatment en route under the schedule—10 to 14 days, depending on the

treatment temperature—is less than the number of days it takes to ship Ya pears to the United States from China. No reduction in shipping time, and thus no associated cost savings, is expected to result from the removal of the cold treatment requirement.

A recent analysis of cold treatment requirements for the Mediterranean fruit fly at U.S. ports, used here as a proxy

for cold treatment costs en route, indicated a cost of 50 cents per day per pallet.<sup>1</sup> Most of this expense is the cost of refrigeration. Under this rule, Ya pears from Hebei Province will still be refrigerated while en route to the United States, although not to cold treatment specifications. For this analysis, it is assumed that the savings from not having to meet cold treatment requirements would be 25 cents per day per pallet. This amount probably exceeds the actual savings that will be realized, providing an upper-bound approximation of potential effects.

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

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

#### Economic Effects on Small Entities

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

Under these circumstances, the Administrator of the Animal and Plant

Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

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

#### Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we 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, 7711–7714, 7718, 7731, 7732, 7751–7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–2ee is amended as follows:

■ a. In paragraph (a)(1), by removing the word "Shadong" and adding the word "Shandong" in its place.

■ b. By revising paragraphs (b) and (c) to read as set forth below.

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

\* \* \* \* \*

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

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

Done in Washington, DC, this 5th day of June, 2003.

**Peter Fernandez,**

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

[FR Doc. 03–14551 Filed 6–9–03; 8:45 am]

BILLING CODE 3410–34–P

#### DEPARTMENT OF AGRICULTURE

#### Grain Inspection, Packers and Stockyards Administration

#### 7 CFR Part 802

#### Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** In accordance with a periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations under the United States Grain Standards Act, as amended, entitled Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems. FGIS is incorporating by reference the applicable requirements of the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 2002 edition (Handbook 44 issued November 2001) and continues to adopt all of the requirements of NIST Handbook 105–1, "Specifications and Tolerances for Reference Standard Weights and Measures," 1990 revision (Handbook 105–1). Currently, the 1994 Edition of Handbook 44 and the 1990 edition of Handbook 105–1 are incorporated into Part 802 by reference.

**DATES:** This rule is effective September 8, 2003 without further action, unless adverse comments or written notice of intent to submit adverse comments are received by July 10, 2003. If adverse comments are received, GIPSA will publish a timely withdrawal of the rule in the **Federal Register**. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of September 8, 2003.

**ADDRESSES:** Please send any adverse comments or written notice of intent to submit adverse comments to H. Tess Butler, GIPSA, USDA, 1400

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

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

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