

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2009–0086]

RIN 0579–AD26

#### Importation of Shepherd's Purse With Roots From the Republic of Korea Into the United States

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh shepherd's purse with roots from the Republic of Korea into the United States under a combination of mitigations to reduce the risk of introducing plant pests. As a condition of entry, the shepherd's purse would have to be produced in accordance with a systems approach that would include requirements for importation of commercial consignments, pest-free place of production, removal of soil, and inspection for quarantine pests by the national plant protection organization of the Republic of Korea. The shepherd's purse would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that it was grown, packed, and inspected and found to be free of pests in accordance with the proposed requirements. This action would allow the importation of fresh shepherd's purse with roots from the Republic of Korea while continuing to protect against the introduction of plant pests into the United States.

**DATES:** We will consider all comments that we receive on or before December 13, 2010.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/>

*component/main?main=DocketDetail&d=APHIS-2009-0086* to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2009–0086, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0086.

*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. Dorothy Wayson, Regulatory Coordination Specialist, PPQ, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–0627.

#### SUPPLEMENTARY INFORMATION:

#### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–50, 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 national plant protection organization (NPPO) of the Republic of Korea has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh shepherd's purse with roots from the Republic of Korea to be imported into the United States. Currently, shepherd's purse without roots is authorized for entry into the United States from the Republic of Korea.<sup>1</sup>

<sup>1</sup> Conditions for the importation of shepherd's purse without roots from the Republic of Korea are

As part of our evaluation of the Republic of Korea's request, we prepared a pest risk assessment (PRA), titled “Importation of Shepherd's Purse (*Capsella bursa-pastoris* (L.) Medik.) leaves and stems with roots from Republic of Korea into the United States, A Pathway-Initiated Risk Assessment” (October 2007). The PRA evaluated the risks associated with the importation of shepherd's purse into the United States from the Republic of Korea.

The PRA identified 11 pests of quarantine significance present in the Republic of Korea that could be introduced into the United States through the importation of fresh shepherd's purse with roots:

#### *Insect pests:*

- Sawfly (*Athalia rosae*)
- Leaf miner (*Chromatomyia horticola*)
- Turnip moth (*Agrotis segetum*)
- American bollworm moth (*Helicoverpa armigera*)
- Cabbage webworm moth (*Hellula undalis*, Fabricius)
- The cabbage moth (*Mamestra brassicae*)
- Oriental leafworm moth (*Spodoptera litura*, Fabricius)

#### *Nematodes:*

- *Hemicycliophora koreana*
- *Paratylenchus pandus*
- *Rotylenchus orientalis*
- *Rotylenchus pini*

Based on the information contained in the PRA, APHIS has determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these plant pests. To recommend specific measures to mitigate those risks, we prepared a risk management document (RMD). Copies of the PRA and RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the recommendations of the RMD, we are proposing to allow the importation of shepherd's purse with roots from the Republic of Korea into the continental United States only if

listed in the Fruits and Vegetables Import Requirements database (available at <http://www.aphis.usda.gov/favir>) in accordance with § 319.56–4. The shepherd's purse from the Republic of Korea is also subject to the requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

they are produced in accordance with a systems approach. The systems approach we are proposing would require that the shepherd's purse with roots be:

- Grown in a pest-free place of production for quarantine nematodes,
- Free from soil,
- Imported in commercial consignments only, and
- Inspected by the NPPO of the Republic of Korea and found free of quarantine pests.

The shepherd's purse with roots from the Republic of Korea would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that the shepherd's purse leaves and stems with roots in the consignment have been grown in a pest-free place of production for quarantine nematodes, have been inspected and found free of quarantine pests, and are free from soil.

We are proposing to add the systems approach to the regulations in a new § 319.56–51 governing the importation of shepherd's purse with roots from the Republic of Korea into the United States. The mitigation measures in the proposed systems approach are discussed in greater detail below.

Paragraph (a) of § 319.56–51 would require that shepherd's purse with roots be grown in places of production that are registered with the NPPO of the Republic of Korea and that have been determined free from nematodes. Their relatively small size makes the nematodes difficult to detect through regular inspections, so pest-free places of production are necessary. Fields must be certified free of the quarantine nematodes by sampling and microscopic inspection of the samples by the Korean NPPO. The sampling and inspection protocol must be preapproved by APHIS. APHIS will monitor the sampling and inspection records maintained by the Korean NPPO.

Paragraph (b) of § 319.56–51 would require that shepherd's purse with roots be free from soil. This would also help to prevent the introduction of nematodes and insect pests into the United States.

Paragraph (c) of § 319.56–51 would state that shepherd's purse with roots may be imported in commercial consignments only. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe and is often grown with little or no pest control. Commercial consignments, as defined in

§ 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Paragraph (d) of § 319.56–51 would require that each consignment of shepherd's purse with roots be accompanied by a phytosanitary certificate issued by the NPPO of the Republic of Korea with an additional declaration stating that the specific conditions of § 319.56–51 have been met.

The general requirements in the regulations in § 319.56–3 provide that all imported fruits and vegetables shall be inspected, and shall be subject to such disinfection at the port of first arrival as may be required by an inspector. Section 319.56–3 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with plant pests that an inspector determines that it cannot be cleaned or treated. We believe that the proposed conditions described above, as well as all other applicable requirements in § 319.56–3, would be adequate to prevent the introduction of plant pests into the United States associated with fresh shepherd's purse leaves and stems with roots from the Republic of Korea.

We have determined that these risk management measures will provide an appropriate level of phytosanitary protection against pests of quarantine concern associated with fresh shepherd's purse leaves and stems with roots from the Republic of Korea.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We have prepared an initial regulatory flexibility analysis for this proposed rule. The analysis examines the potential economic effects of this action on small entities, as required by the Regulatory Flexibility Act. The analysis identifies domestic producers of shepherd's purse, and wholesalers that import fresh shepherd's purse as the small entities most likely to be affected by this action and considers the effects of increased imports of fresh shepherd's purse with roots.

The Republic of Korea does not keep official statistics on minor agricultural

commodities such as shepherd's purse. However, production and export data have been gathered from farmers and wholesalers at Garak-tong market, one of the biggest wholesale agricultural markets in Seoul.<sup>2</sup> Based on these data, yearly sales of shepherd's purse at Garak-tong market have averaged 1,422 metric tons over the past 5 years. Most of the shepherd's purse production in the Republic of Korea is consumed domestically. During the same 5-year period, an average of only 298 kilograms per year were exported, i.e., 0.02 percent of reported production. Expected initial exports to the United States under this proposed rule as estimated by the NPPO of the Republic of Korea is 24 metric tons, which is far above the reported 2005–2009 export levels. Even with those higher export levels, based on the information presented in the analysis, we expect affected entities would experience minimal economic effects as a result of shepherd's purse with roots arriving in the United States from the Republic of Korea.

We invite comment on our initial regulatory flexibility analysis, which is posted with this proposed rule on the Regulations.gov Web site (*see ADDRESSES* above for instructions for accessing Regulations.gov) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### **Executive Order 12988**

This proposed rule would allow fresh shepherd's purse with roots to be imported into the United States from the Republic of Korea. If this proposed rule is adopted, State and local laws and regulations regarding shepherd's purse with roots imported under this rule would be preempted while the plant is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping

<sup>2</sup> Yunhee Kim, Agricultural Specialist, USDA/APHIS, American Embassy, Seoul, South Korea. The Garak-tong market has 131 acres of covered space.

requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2009-0086. Please send a copy of your comments to: (1) Docket No. APHIS-2009-0086, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, Room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the regulations concerning the importation of fruits and vegetables to allow for the importation of fresh shepherd's purse with roots from the Republic of Korea into the United States under a combination of mitigations to reduce the risk of introducing a variety of pests. As a condition of entry, fresh shepherd's purse would have to be produced in accordance with a systems approach that would include requirements for importation of commercial consignments, pest-free place of production, and inspection for quarantine pests by the national plant protection organization (NPPO) of the Republic of Korea.

Implementing this rule would require the completion of a phytosanitary certificate, inspections, and recordkeeping. 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 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 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 0.53928 hours per response.

*Respondents:* Importers; national plant protection organization of the Republic of Korea.

*Estimated annual number of respondents:* 30.

*Estimated annual number of responses per respondent:* 9.333.

*Estimated annual number of responses:* 280.

*Estimated total annual burden on respondents:* 151 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

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

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

Accordingly, we propose to amend 7 CFR part 319 as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

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

**Authority:** 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56-51 is added to read as follows:

#### § 319.56-51 Shepherd's purse with roots from the Republic of Korea.

Shepherd's purse (*Capsella bursa-pastoris* (L.) Medick) with roots from the Republic of Korea may be imported only under the following conditions:

(a) The shepherd's purse with roots must be grown in a pest-free place of production that is registered with the

national plant protection organization (NPPO) of the Republic of Korea. Fields must be certified free of the quarantine nematodes *Hemicyclophora koreana*, *Paratylenchus pandus*, *Rotylenchus orientalis*, and *Rotylenchus pini* by sampling and microscopic inspection of the samples by the NPPO of the Republic of Korea. The sampling and inspection protocol must be preapproved by APHIS.

(b) The shepherd's purse with roots must be free from soil.

(c) The shepherd's purse with roots must be imported in commercial shipments only.

(d) Each consignment of shepherd's purse with roots must be accompanied by a phytosanitary certificate of inspection issued by the NPPO of the Republic of Korea stating that the shipment has been inspected and found free of quarantine pests with an additional declaration stating that the shepherd's purse with roots has been produced and inspected in accordance with the requirements of 7 CFR 319.56-51.

Done in Washington, DC, this 5th day of October 2010.

**Gregory Parham,**

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

[FR Doc. 2010-25556 Filed 10-8-10; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 117 and 121

[Docket No. FAA-2009-1093; Notice No. 10-11]

RIN 2120-AJ58

#### Flightcrew Member Duty and Rest Requirements

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of procedures for submission of clarifying questions.

**SUMMARY:** The FAA published a proposed rule on September 14, 2010, to amend its existing flight, duty and rest regulations applicable to certificate holders and their flightcrew members. The FAA has received requests from stakeholders to provide a forum during the comment period where they can pose clarifying questions and receive answers to them. In response to these requests, the FAA is issuing this notice, which includes the procedures for handling clarifying questions to the proposed rule.