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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 838, 841, 842, and 843

RIN 3206–AF65

Miscellaneous Corrections of Retirement Regulations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations correcting errors and updating tables currently contained in the regulations on retirement in Title 5, Code of Federal Regulations. These regulations correct erroneous statutory and regulatory references in the regulations concerning survivor elections under the Civil Service Retirement System (CSRS), the definition of part-time service under the Federal Employees Retirement System (FERS), and court orders affecting CSRS or FERS benefits. They also correct the language governing the effective date of changes in the "normal cost percentages" under FERS. This change is necessary to make the language of the regulations conform with both the original intended purpose of the regulations and the construction that we have given the regulations since they were issued. The regulations also update tables of salary data published by other agencies that OPM uses to compute certain FERS benefits; revise instructions to agencies concerning employee deductions in back pay situations to conform the procedure with statutory requirements; and revise the CSRS survivor election regulations to conform with recent decisions of the U.S. Court of Appeals for the Federal Circuit and the Merit Systems Protection Board.

EFFECTIVE DATE: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: We have recently become aware of several errors in provisions of title 5, Code of Federal Regulations, concerning retirement benefits administered by the Office of Personnel Management. These regulations correct those errors by making the regulatory language conform with the purpose that the regulation was intended to accomplish when it was originally issued. The changes in regulatory text made by these regulations neither adopt new nor change existing OPM practices.

1. Erroneous References

Part 838 of title 5, Code of Federal Regulations, OPM's regulations on court orders affecting retirement benefits, contains several regulatory references to sections that do not exist. Most of these references are to § 843.602 which does not exist. The correct reference is to § 843.102 which contains the definition involved. These regulations correct 12 erroneous regulatory references.

Sections 838.237(b)(4) and 838.1012(b)(4) of title 5, Code of Federal Regulations, concerning payments of a court-awarded former spouse's share of an employee annuity to children in cases in which the former spouse has died and additional benefits are payable, contain incorrect statutory references. OPM's practice has been to accept court orders awarding the former spouse's share of an employee annuity to one or more children (of the employee) regardless of the age of the children. In revising the regulations on court orders affecting retirement benefits last summer, OPM was not attempting to limit payments to children who would qualify for a survivor annuity. We were merely trying to specify that only children of the employee can qualify, as has been our practice. We incorrectly referred to the statutory definition of a child in sections 8341 and 8441 which govern survivor annuity benefits and for that reason contain age restrictions. The statutory references should be to sections 8342(c) and 8424(d) of title 5, United States Code, which govern payment of the lump-sum credit as a death benefit and do not include similar age restrictions. These regulations correct that error.

The definition of part-time service in § 842.402 of title 5, Code of Federal Regulations, includes a reference to "any period of time credited as nonpay status time under 5 U.S.C. 8411(e)." Section 8411(e) applies only to credit for periods of leave without pay to serve with an employee organization. The correct reference is section 8411(d) which concerns credit during nonpay status generally. The amendment to § 842.402 corrects this erroneous reference.

2. Changes Required by Statute or Appellate Decisions

To qualify for a child survivor annuity based on the death of a parent who was an employee or retiree under CSRS, the child must have been dependent on the parent. OPM has considered all legitimate and adopted children dependent and has generally refused to consider evidence to the contrary. In the case of *Cull* v. *Office of Personnel Management*, 55 M.S.P.R. 476 (1992), the Merit Systems Protection Board decided that other claimants must be allowed to prove lack of dependency. The amendment to § 831.615 changes our rule treating legitimate and adopted children as dependent to a presumption of dependency that may be rebutted by appropriate evidence.

The amendment to § 831.627, which concerns the annual notice that Public Law 95–317 requires that OPM provide to retirees about their survivor election rights under certain sections of 8339 of title 5, United States Code, conforms that section to the recent decision in the case of *Brush* v. *OPM*, 982 F.2d 1555 (Fed. Cir. 1992). The court decided that the annual notice requirement in Public Law 95–317 applied to former spouse election rights as well as elections for current spouses based on post-retirement marriages. The annual notices that OPM has sent have included the information about former spouse election rights from the inception of such election rights even though OPM did not believe the statute required its inclusion. However, to conform with the court decision, these regulations make the regulatory provision applicable to former spouses as well as current spouses, by removing the reference in the current regulatory text that limits the regulation's application to current spouses based on post-retirement marriages.

The amendment to § 841.507(b) concerning employee deductions to be

collected from gross back pay is required to avoid conflicting instructions concerning adjustments required by statute and by OPM regulations in 5 CFR 550.805(e) to the amount of back pay due an employee under 5 U.S.C. 5584. Agencies must withhold the appropriate employee deduction; however, the amount of back pay from which the withholding can be made must be computed in accordance with the provisions of § 550.805(e).

3. Effective Date of Changes in Normal Cost Percentages

The regulatory language in § 841.408 of title 5, Code of Federal Regulations, does not plainly state that changes in normal cost percentages, the rates that agencies pay to fund the Federal Employees Retirement System, change only at the beginning of a fiscal year. The supplementary information to OPM's interim regulations (published at 51 FR 47185, December 31, 1986) on normal cost percentages contains such a statement, but the regulatory text does not.

Agencies make their budget plans more than a year in advance. To plan their budgets effectively, agencies should know their retirement costs before September of the year before they take effect. For this reason, as a general rule, we try to publish changes in normal cost percentages during July or August to allow 14 or 15 months for budgetary planning. Clearly, to allow changes published during July, August, or September to be effective during the same calendar year would be counterproductive.

When OPM last changed the normal cost percentages, the notice was published in August 1990 to be effective in October 1991, the beginning of fiscal year 1992. The timing of that notice was to allow the appropriate planning time for the changes in Government costs. Perhaps more importantly, the effective date of that change shows how we interpreted the present, poorly-worded rule. These regulations correct the regulatory text to state expressly that all changes in normal cost percentages are effective at the beginning of the first pay period of a fiscal year.

4. Updating Table

The amendment to appendix B to subpart C of part 843 merely updates a statistical table, for use in computing FERS annuity and survivor supplements, that contains data about the average total wages of all workers. This table contains no material which OPM collects, analyzes, or otherwise determines or influences. When we last published this table only data for calendar years before 1985 was available. We are adding the data for the calendar years 1985 through 1991.

Under section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Delaying implementation of these regulations would be contrary to the public interest. These regulations only correct ambiguous, incomplete or incorrect regulatory text. They make no changes in policy or practice, and are merely technical corrections. Notice of proposed rulemaking is unnecessary and would not be in the public interest.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects

5 CFR Parts 831 and 841

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 838

Administrative practice and procedure, Alimony, Claims, Disability benefits, Government employees, Income taxes, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

Administrative practice and procedure, Air traffic controllers, Firefighters, Government employees, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 843

Administrative practice and procedure, Claims, Disability benefits, Government employees, Pensions, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read in part as follows:

Authority: 5 U.S.C. 8347; * * *

PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

2. The authority citation for part 838 continues to read as follows:

Authority: 5 U.S.C. 8347(a) and 8461(g). Subparts B, C, D, E, and J also issued under 5 U.S.C. 8345(j)(2) and 8467(b). Sections 838.221, 838.422, and 838.721 also issued under 5 U.S.C. 8347(b).

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

3. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 and 5 U.S.C. 8402(c)(1); §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508; subpart H also issued under 5 U.S.C. 1104.

§§ 831.602, 831.615, 831.627, 838.237, 838.422, 838.701, 838.722, 838.732, 838.734, 838.911, 838.912, 838.921, 838.931, 838.932, 838.1012, and 842.402 [Amended]

4. In the list below, for each section and paragraph indicated in the left two columns, remove the reference indicated in the third column where it appears in the paragraph, and add the reference indicated in the fourth column:

Section	Paragraph	Remove	Add
831.602	(a)	Subpart Q of this part	Part 838 of this chapter.
831.615	(d)(1)	Considered	Presumed.
831.627	text	Code, in the event of post-retirement marriages.	Code.
838.237	(b)(4)	8341(a)(4)	8342(c).
838.237	(b)(4)	8441(4)	8424(d).
838.422	(a)(2)	838.2007(c)	831.2007(c).
838.701	(a)	843.602	843.102.
838.722	(c)(1)(ii)	843.602	843.102.
838.722	(c)(2)(iii)	843.602	843.102.
838.732	(a)	843.602	843.102.
838.732	(b)	843.602	843.102.
838.734	text	843.602	843.102.
838.911	(d)	843.602	843.102.
838.912	(b)(2)	843.602	843.102.
838.921	(b)(2)	843.602	843.102.
838.931	text	581.804(b)(2)	838.804(b)(2).
838.932	(a)	838.8804(b)(2)	838.804(b)(2).
838.1012	(b)(4)	8341(a)(4)	8342(c).
838.1012	(b)(4)	8441(4)	8424(d).
842.402	Part-time service	8411(e)	8411(d).

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

5. The authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; § 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; § 841.504 also issued under 5 U.S.C. 8422; § 841.506 also issued under 5 U.S.C. 7701(b)(2); § 841.507 also issued under section 505 of Public Law 99–335; § 841.508 also issued under section 505 of Public Law 99–335; subpart J also issued under 5 U.S.C. 8469.

Subpart D—Government Costs

6. In § 841.408, paragraph (a) is revised to read as follows:

§ 841.408 Effective date of normal cost percentages.

(a) Except as provided in paragraph (b) of this section and in § 841.412, normal cost percentages stated in a notice of normal cost percentages under § 841.407 will be effective at the beginning of the first full pay period of the first fiscal year that commences at least 3 months after the date of publication of the notice.

* * * * *

Subpart E—Employee Deductions and Government Contributions

7. In § 841.507, paragraph (b) is revised to read as follows:

§ 841.507 Correction of unjustified or unwarranted personnel action.

* * * * *

(b) The agency will withhold the appropriate employee deductions from the amount of basic pay included in gross back pay giving due regard to deductions described in § 550.805(e) of this chapter.

* * * * *

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

8. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

9. Appendix B to subpart C of part 843 is revised to read as follows:

APPENDIX B TO SUBPART C OF PART 843—AVERAGE TOTAL WAGES TABLE

Calendar year	Amount
1951	$2,799.16
1952	2,973.32
1953	3,139.44
1954	3,155.64
1955	3,301.44
1956	3,532.36
1957	3,641.72
1958	3,673.80
1959	3,855.80
1960	4,007.12
1961	4,086.76
1962	4,291.40
1963	4,396.64
1964	4,576.32
1965	4,658.72
1966	4,938.36
1967	5,213.44
1968	5,571.76
1969	5,893.76
1970	6,186.24
1971	6,497.08
1972	7,133.80
1973	7,580.16
1974	8,030.76
1975	8,630.92
1976	9,226.48
1977	9,779.44
1978	10,556.03
1979	11,479.46
1980	12,513.46
1981	13,773.10
1982	14,531.34
1983	15,239.24
1984	16,135.07
1985	16,822.51
1986	17,321.82
1987	18,426.51
1988	19,334.04
1989	20,099.55
1990	21,027.98
1991	21,811.60

[FR Doc. 93–19722 Filed 8–16–93; 8:45 a.m.]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 92–070–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing a number of previously prohibited fruits and

vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables will be required to undergo prescribed treatments for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

On February 25, 1993, we published a document in the **Federal Register** (58 FR 11383–11389, Docket No. 92–070–1) in which we proposed to amend the regulations to allow additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of those fruits and vegetables has been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We proposed to allow those importations at the request of various importers and foreign ministries of agriculture, and after determining that the fruits or vegetables could be imported under certain conditions without significant pest risk. In the proposed rule, we also proposed several editorial changes in the regulations for the sake of clarity.

We solicited comments on the proposed rule for a 45-day period ending on April 12, 1993. We received 15 comments by that date. The comments came from fruit growers, fruit distributors, State agricultural agencies, fruit growers' cooperative associations, and a citrus packers' trade association. We carefully considered all of the comments we received. They are discussed below.

Comment: The Animal and Plant Health Inspection Service (APHIS) should reconsider its proposal to allow carambola (*Averrhoa carambola*) from the Cook Islands to be imported into the United States, because there is too great a risk of introducing exotic pests, especially the fruit flies *Bactrocera melanota* (also known as *Dacus melanotus*) and *Bactrocera xanthodes*.

Response: None of the information available to APHIS indicates that carambola is a host of *Bactrocera melanota* or *Bactrocera xanthodes*. However, information contained in the "Journal of Economic Entomology" (Vol. 83, No. 1, 1990, p. 14) indicates that *Bactrocera melanota* does infest avocado, papaya, and granadilla. Based on this *Bactrocera melanota* host range information, the scarcity of any other definitive host range information, and the lack of an effective treatment for these particular fruit fly pests, we agree that our proposal to allow carambola from the Cook Islands to be imported into the United States should be withdrawn.

Comment: Inspection at the port of arrival for identified injurious plant pests is an unsound quarantine policy. The responsibility to export a pest-free product should remain at origin, while destination inspection should merely affirm the phytosanitary actions taken at origin and the commodity's freedom from pests. Now, however, inspection upon arrival is the only pest exclusion used for some commodities.

Response: We agree that exporting countries have a responsibility to ship pest-free products. There is always some risk, however, that pests could be present on imported produce, so APHIS must take measures to prevent the introduction of pests into the United States.

Inspection at the port of first arrival is never the sole means of pest exclusion for any commodity, but is only one aspect of APHIS' approach to pest exclusion. Before a fruit or vegetable is approved for importation into the United States, a pest risk analysis is conducted for the commodity. If a pest risk is found to be associated with a commodity proposed for importation, APHIS then determines what, if any, measures can be taken to allow the commodity to be imported without the risk of the pest being introduced into the United States. For example, in certain cases our regulations impose restrictions such as specific growing and shipping requirements or inspection in the country of origin. Certain commodities are required to be treated for pests at the point of origin, while in transit, or upon arrival in the United States. As a final precaution, all fruits and vegetables are subject to inspection at the port of first arrival. APHIS inspectors are aware of any potential pest risk associated with a particular commodity and conduct their inspections accordingly. We consider the measures taken in the exporting countries, coupled with the safeguards required by the regulations, to be adequate to prevent the introduction of injurious plant pests into the United States.

Comment: APHIS is proposing to allow the importation of various root crops from several countries without sampling for burrowing nematodes, reniform nematodes, or other injurious nematodes. In addition, the foliage of youngia greens, which is proposed for importation from South Korea, could harbor the foliar nematode *Aphelenchoides besseyi*, and APHIS did not include nematode sampling as a condition of entry for that commodity.

Response: In many plants, parasitic nematodes produce symptoms through their feeding on the cellular contents of the plant; breakdown of tissue is followed by the invasion of secondary fungi and bacteria, causing necrotic lesions to develop. These necrotic and decayed tissues are obvious, visible symptoms that an inspector would look for during an inspection. Similarly, there are predictable visible symptoms produced by specific nematode/host combinations (e.g., foliar nematodes typically cause leaf and stem tissues to be distorted and have associated necrotic spots). Therefore, we continue to believe that, for selected crops, visual inspection is adequate to prevent the introduction of nematodes.

Comment: APHIS is proposing to allow Mandarin orange to be imported into the United States from Bermuda without treatment. According to the book "Fruit Flies of Economic Significance; Their Identification and Bionomics" (White and Harris, 1992), the fruit fly *Anastrepha obliqua* occurs in Bermuda and is a pest of citrus.

Response: We investigated the report cited by the commenter back to its source. The White and Harris book cites "CIE Map 90," June 1988, which in turn cites "Review of Applied Entomology (Series A—Agriculture)," volume 28, page 26. That reference states, in part, "Injurious insects intercepted on imported plants include *Anastrepha fraterculus* var. *mombinpraeoptans*, Stein, in mangoes from the British West

Indies * * *" (*Anastrepha fraterculus* var. *mombinpraeoptans* is synonymous with *Anastrepha obliqua*, the name currently used.) It appears, then, that a record of the interception of *Anastrepha obliqua* on cargo coming into Bermuda was misinterpreted as meaning that the pest was present in Bermuda. APHIS continues to believe that economic species of *Anastrepha* do not occur in Bermuda.

Comment: On what scientific evidence did APHIS base its determination that the thrips *Haplothrips chinensis* does not attack strawberries in South Korea between the end of August and early June?

Response: The source of the strawberry plants is tissue culture, which the South Korean Government's Rural Development Administration (RDA) uses to produce mother plants for propagation. The strawberry plants propagated from the mother plants are distributed to the farmers by the RDA's Rural Guidance Office. The mother plants are tested to verify their virus-free status. The testing also serves to maintain high phytosanitary conditions, keeping potential vectors out and the propagated plants free of insects. On the farms, the strawberry plants are grown in vinyl houses constructed in the fields following the rice harvest. By producing the strawberries in the winter, there is less pressure from insects moving in from other crops or weeds, so it is easier to maintain clean production facilities.

Furthermore, thrips, as a pest group, are detectable by inspection. We have intercepted thrips on many different hosts from around the world, and we have numerous interception records of *Haplothrips chinensis*. Although there are literature reports that *Haplothrips chinensis* occurs on strawberries, we have never intercepted this thrips on strawberry fruits from countries where it is known to occur. The combination of the clean conditions under which the strawberries are grown, our ability to detect thrips should they be present, and the lack of interception records of this thrips on strawberries leads us to believe that the conditions placed on the importation of strawberries from South Korea are adequate to guard against the introduction of this plant pest.

Comment: Many consumers now recycle their food waste and at least attempt to propagate certain plant materials purchased for consumption, such as ginger root, other root crops, and seed from exotic fruits. This inappropriately propagated produce could find its way into commerce and thus has the potential to spread diseases or pests.

Response: APHIS has long recognized that some products imported for consumption are capable of being propagated and that individuals may from time to time, out of curiosity, plant them. While we do not believe that the extent of this practice makes it a significant pest risk, we have, in the past, explored three ways of preventing the practice: (1) Prohibit the importation of all commodities that could potentially be propagated; (2) treat all commodities capable of propagation with sprout inhibitor; or (3) devitalize the products prior to export.

We believe that the first option, prohibition, should be applied only to products that present pest risks that cannot be mitigated in other ways. We have experimented with the second option, using sprout inhibitors, but they do not offer sufficient quarantine security for high-risk products and are not registered for most products. The third option, devitalization, in most cases renders a product unacceptable for the fresh fruit and vegetable market.

Countries are becoming more and more sophisticated in their production and phytosanitary practices, so the quality of fruits and vegetables in general is increasing. Products are graded and inspected during packing and prior to export, and the products are inspected again upon arrival in the United States. All of this reduces the likelihood of a pest entering the United States. If, once a commodity has been imported into the United States, a person chooses to try to propagate that commodity, the person would likely choose the healthiest-looking material, thus further reducing the probability that a plant pest would be spread. The limited degree of risk that remains must be accepted if free trade is to be maintained.

Miscellaneous

In addition to the changes discussed above that have been made in response to comments, we are making two other changes in this final rule. In our proposed rule, we listed apples from Guyana in § 319.56–2x as requiring treatment for the Mediterranean fruit fly (Medfly) and fruit flies of the genus *Anastrepha*. While apples from Guyana do require treatment for *Anastrepha*, our mention of Medfly was incorrect. To the best of our knowledge, Medfly does not exist in Guyana. Therefore, this final rule does not include requirements pertaining to Medfly with regard to the importation of apples from Guyana.

Finally, we have reconsidered our position regarding the importation into the United States of cucurbits from South Korea, which was one of the commodities included in the proposed rule. The original pest risk assessment we conducted for cucurbits from South Korea did not uncover any evidence of fruit fly pests of cucurbits in that country, so we proposed allowing the commodity to be imported into the United States. However, after the assessment was completed and the proposed rule was published, we received a copy of a paper titled "Classification of the Fruit-pests from Korea," by Jong Jung Kwon. The paper lists the fruit fly *Bactrocera depressus* (Shiraki) as occurring in South Korea and includes cucurbits among the fruit fly's hosts. Until we can obtain additional information with respect to the biology, hosts, and distribution of *Bactrocera depressus* in South Korea, we cannot make a satisfactory determination regarding the pest risk associated with the importation of cucurbits from South Korea. We have, therefore, withdrawn that commodity from this final rule.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Effective Date

Dr. Lonnie J. King, the Acting Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by making this rule effective upon signature. This rule relieves restrictions on the importation of fruits and vegetables from certain parts of the world. In addition, the shipping season for some of the fruits and vegetables is approaching, so prompt implementation is necessary for this rule to be effective in time to allow for their shipment. This rulemaking will benefit interested U.S. importers, distributors, and retailers by allowing them to import, distribute, and sell additional fruits and vegetables from certain parts of the world. It will also provide U.S. consumers with additional sources of fruits and vegetables.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual

industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule amends the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. The importation of these fruits and vegetables has been prohibited because of the risk that they could introduce injurious plant pests into the United States. This rule revises the status of certain commodities from certain countries, allowing their importation into the United States for the first time.

These changes are based on biological risk assessments that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The risk assessments indicated that the fruits or vegetables listed in this rule can, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In addition, some of the fruits and vegetables in this proposal will be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. Thus, this action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction of injurious plant pests by imported fruits and vegetables.

Most of the fruits and vegetables in this rule are specialty items that are either not grown in the United States or are grown in very limited quantities. In general, U.S. fruit and vegetable producers will not be negatively affected by the increased importation of these specialty items. Consumers will benefit from the greater availability of the items at potentially lower prices. A positive net impact on the U.S. economy is expected overall.

A positive net impact on the U.S. economy is also expected with regard to those fruits and vegetables that are produced in significant quantities in the United States. Those fruits and vegetables include apples, pears, grapes, and strawberries.

The average annual U.S. production of fresh apples for 1987–1989 was approximately 2.5 million metric tons (Agricultural Statistics, 1991). Zimbabwe and Guyana will be allowed to export apples to the United States, but it is unlikely that either country will export quantities significant enough to affect domestic apple producer prices. Total apple production in Zimbabwe for 1987–1989 averaged approximately 6,000 metric tons annually (FAO Yearbook, 1989). If Zimbabwe exported its entire annual apple production to the United States, it would represent only about .24 percent of total annual U.S. fresh apple production. Guyana produces less than 500 metric tons of apples annually (FAO Yearbook, 1989), which is less than .02 percent of the average annual U.S. fresh apple production.

The same situation exists for pears from Zimbabwe and grapes from Jordan. U.S. pear production is approximately 450,000 metric tons annually (Agricultural Statistics, 1991). Zimbabwe produces less than 500 metric tons of pears annually (FAO Yearbook, 1989), which is less than .11 percent of annual U.S. pear production. Additionally, any pears exported from Zimbabwe are likely to be exported to the United States in the spring, which is opposite the peak U.S. pear production season (September to December). Therefore, it is unlikely that these exports will affect U.S. fresh pear prices. Total grape production in Jordan is approximately 3 percent of U.S. fresh grape production and 0.4 percent of total U.S. grape production (FAO Yearbook, 1989).

This rule will allow South Korea to export strawberries to the United States. Total strawberry production in South Korea was estimated to average approximately 36,000 metric tons annually from 1987–1989 (FAO Yearbook, 1989). This figure represents over 9 percent of fresh U.S. strawberry production and almost 7 percent of total U.S. strawberry production (Agricultural Statistics, 1991).

South Korean strawberry production levels are high enough to influence U.S. strawberry prices if significant quantities of the commodity are exported to the United States from South Korea. However, South Korean agricultural officials have estimated that strawberry exports will be very minimal, due in part to the relatively high market price being received for fresh strawberries in South Korean markets. Therefore, the importation of strawberries from South Korea will not have a significant effect on U.S. producers of that commodity.

The aggregate impact of this rule is expected to be positive. U.S. consumers will benefit from greater availability of specialty fruits and vegetables. It is not likely that any producers, large or small, of traditional U.S. fruits and vegetables will be affected in a significant way by the easing of importation restrictions on these particular commodities. There may be a very limited number of U.S. producers growing small quantities of specialty items who may decide to no longer compete with their foreign counterparts, but it is not possible to determine how many of these smaller entities exist.

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 12778

This final rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the fresh fruits and vegetables imported under this rule will be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the fruits and vegetables imported under the conditions specified in this rule will not present a significant risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with:

(1) The National Environmental Policy Act of 1969 (NEPA) (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 Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. In addition, copies may be obtained by writing to the individual listed under "FOR FURTHER INFORMATION CONTACT."

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, 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. 150dd, 150ee, 150ff, 151–167; 21 U.S.C. 136a; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In § 319.56a, paragraph (a)(7) is revised as set forth below and paragraph (a)(12) is amended by removing the word "section" and adding the word "subpart" in its place.

§ 319.56a Administrative instructions and interpretation relating to entry into Guam of fruits and vegetables under § 319.56.

(a) * * *

(7) Arrowroot, asparagus, bean sprouts, broccoli, cabbage, carrots (without tops), cassava, cauliflower, celery, chives, cow-cabbage, dasheen, garlic, gingerroot, horseradish, kale, kudzu, leek, lettuce, onions, Portuguese cabbage, turnip, udo, water chestnut, watercress, waterlilyroot, and yam bean root, from Taiwan (Formosa).

* * * * *

§ 319.56–2 [Amended]

3. In § 319.56–2, at the end of paragraph (a), "§ 319.56–1(b)." is removed and "§ 319.56–1." added in its place.

4. In § 319.56–2t, the introductory paragraph is revised, the list of commodities is amended by revising the entry for "Korea" in the first column to read "South Korea" and moving that entry to the appropriate alphabetical location, and by adding, in alphabetical order, the following:

§ 319.56–2t Administrative instructions; conditions governing the entry of certain fruits and vegetables.

The following commodities may be imported into all parts of the United States, unless otherwise indicated, from the places specified, in accordance with § 319.56–6 and all other applicable requirements of this subpart:

Country/locality	Common name	Botanical name	Plant part(s)
* * *	* * *	* * *	* * *
Belize	Banana	*Musa* spp	Flower in bracts with stems.
Bermuda			
* * *	* * *	* * *	* * *
	Mandarin orange	*Citrus reticulata*	Fruit.
* * *	* * *	* * *	* * *
	Papaya	*Carica papaya*	Fruit.
* * *	* * *	* * *	* * *
	Peach	*Prunus persica*	Fruit.
	Pineapple guava	*Feijoa* spp	Fruit.
* * *	* * *	* * *	* * *
Cook Islands			
* * *	* * *	* * *	* * *
	Ginger	*Zingiber officinale*	Root (Prohibited entry into Puerto Rico, Virgin Islands, and Guam due to ginger weevil (*Elytroteinus subtruncatus*)).
* * *	* * *	* * *	* * *
	Lemongrass	*Cymbopogon* spp	Leaf.
	Tossa jute	*Corchorus olitorius*	Leaf.
* * *	* * *	* * *	* * *
Costa Rica			
* * *	* * *	* * *	* * *
	Yam bean	*Pachyrhizus tuberosus* or *P. erosus.*	Root.

Country/locality	Common name	Botanical name	Plant part(s)
• •	•	•	• • •
Jamaica	Fenugreek	*Trigonella foenum-graecum*	Leaf, stem, root.
• •	•	•	• • •
Panama			
• •	•	•	• • •
	Fenugreek	*Trigonella foenum-graecum*	Leaf, stem
• •	•	•	• • •
St. Vincent and the Grenadines.	Turmeric	*Curcuma longa*	Rhizome.
• •	•	•	• • •
South Korea	Aster greens	*Aster scaber*	Leaf, stem.
• •	•	•	• • •
	Dasheen	*Colocasia* spp., *Alocasia* spp., and *Xanthosoma* spp.	Root (Prohibited entry into Guam due to dasheen mosaic virus).
• •	•	•	• • •
	Strawberry	*Fragaria* spp	Fruit (Entry permitted only from September 15 to May 31, inclusive, to prevent the introduction of a complex of exotic pests including, but not limited to, a thrips (*Haplothrips chinensis*) and a leafroller (*Capua tortrix*)).
• •	•	•	• • •
	Youngia greens	*Youngia sonchifolia*	Leaf, stem, root.
• •	•	•	• • •
Taiwan	Burdock	*Arctium lappa*	Root.
• •	•	•	• • •
Tonga			
• •	•	•	• • •
	Pumpkin	*Cucurbita maxima*	Fruit.
• •	•	•	• • •
Zambia	Pea, snow	*Pisum sativum* spp. *sativum.*	Flat immature pod.

5. In § 319.56–2x, paragraph (a), the list of fruits and vegetables is amended by adding, in alphabetical order, the following:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country	Fruit or vegetable	Treatment
• •	• •	• • •
Guyana	Apple (fruit) *Malus domestica*	Cold treatment—for fruit flies of the genus *Anastrepha.*
• •	• •	• • •
Israel	Litchi (fruit) *Litchi chinensis*	Cold treatment—for Mediterranean fruit fly (A sample of fruits should be exposed to the treatment to determine fruit tolerance before commercial shipments are attempted.)
• •	• •	• • •
Jordan		
• •	• •	• • •
	Grape (fruit) *Vitis* spp	Fumigation with methyl bromide—for Mediterranean fruit fly and grape vine moth (*Lobesia botrana*)

Country	Fruit or vegetable	Treatment
Zimbabwe	Apple (fruit) *Malus domestica*	Cold treatment—for Mediterranean fruit fly and Natal fly.
	Kiwi (fruit) *Actinidia deliciosa*	Cold treatment—for Mediterranean fruit fly and Natal fly.
	Pear (fruit) *Pyrus communis*	Cold treatment—for Mediterranean fruit fly and Natal fly.

Done in Washington, DC, this 9th day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19542 Filed 8–16–93; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 917

[Docket No. FV93–917–1 FR]

Fresh Pears and Peaches Grown in California; Finalize Revised Variety-Specific Size Requirements for Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that added 7 varieties of peaches to variety-specific size requirements under the marketing order handling regulations for California peaches and removed 3 varieties from those requirements. The minimum size requirements are expected to result in more suitable sizes of peaches being shipped to the fresh market, an improved market for fresh California peaches, and increased returns to California peach producers.

EFFECTIVE DATE: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5127; or Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 917 [7 CFR part 917] regulating the handling of pears and peaches grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 250 California peach handlers subject to regulation under the order covering pears and peaches grown in California, and about 1,600 producers of peaches in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

Fresh California peach shipments are regulated during the period April 15 through November 23 each year by grade, maturity, and size under California Peach Grade and Size Regulation [7 CFR 917.459]. These regulations have been issued on a continuing basis subject to amendment, modification, or suspension as may be recommended by the Peach Commodity Committee (committee) and approved by the Secretary. The committee met on January 26, 1993, and unanimously recommended that variety-specific size requirements be established for 7 peach varieties and that such requirements be removed for 3 varieties.

The interim final rule was issued on June 7, 1993, and published in the **Federal Register** [58 FR 32591, June 11, 1993], with an effective date of June 11, 1993. That rule amended § 917.459 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended July 12, 1993. No comments were received.

Section 917.459 specifies size requirements for fresh peaches in paragraphs (a)(2) through (c)(3). Upon implementation of the interim final rule, § 917.459 was amended to establish variety-specific size requirements for 7 peach varieties, and remove 3 varieties from variety-specific size requirements.