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[Rules and Regulations]
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Rules and Regulations
Federal Register

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DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service
7 CFR Part 319
[Docket No. 03-086-3]
RIN 0579-AC23

Importation of Fruits and Vegetables
AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Final rule.

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SUMMARY: We are amending the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. Some of the fruits and vegetables are already eligible for importation under permit, but are not specifically listed in the regulations. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to

treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables will be required to meet other special conditions. In one case, we are adding a systems approach that will provide an alternative to methyl bromide fumigation. These actions will provide the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

EFFECTIVE DATE: December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-8758.

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 22, 2005, we published in the Federal Register (70 FR 75967-75981, Docket No. 03-086-1) a proposal \1\ to amend the regulations by listing a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. We solicited comments on the proposed rule for 60 days ending on February 21, 2006.

\1\ To view the proposed rule and comments we received, go to <http://www.regulations.gov>, click on the ``Advanced Search'' tab,

and select ``Docket Search.'' In the Docket ID field, enter APHIS-2005-0107, then click on ``Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

On March 3, 2006, we published in the Federal Register (71 FR 10924, Docket No. 03-086-2) a notice in which we reopened the comment period for our proposed rule until March 10, 2006. We received 11 comments by that date. The comments were from representatives of State and foreign governments, industry organizations, importers and exporters, distributors, farmers, and individuals. Seven of these commenters wrote to support the proposed provisions regarding citrus from New Zealand, and another commenter wrote to support the proposed provisions regarding the importation of tomatoes from Chile. The remaining commenters raised specific issues which are discussed below.

General Comments

In our proposal, we stated that citrus fruit from the Bahamas would be allowed importation into the United States provided that each

shipment was accompanied by a phytosanitary certificate stating that the fruit originated from an area of the Bahamas that is free from citrus canker disease, *Xanthomonas citri* (Hase) Dowson. We also stated that the island of Abaco is the only island in the Bahamas where citrus canker is known to exist. One commenter stated that the existence of citrus canker should be based on periodic and systematic surveys and the importation of citrus fruit from the Bahamas ultimately should meet the same standards developed by the U.S. Department of Agriculture for the movement of domestic fruit from Florida.

The Bahamas is currently conducting ongoing surveillance for citrus canker and there have been no other reports of the disease. With regard to requiring Bahamian citrus to meet the same standards as domestic fruit moved from Florida, we presume the commenter is referring to the restrictions on the interstate movement of citrus from areas quarantined for citrus canker. The current domestic citrus canker regulations in 7 CFR part 301 allow fruit from citrus canker quarantined areas in Florida to move interstate provided they are not destined for a commercial citrus-producing area. This rule will allow citrus from the Bahamas to enter the United States only if it is grown in an area where citrus canker does not exist. Under those circumstances, we believe it is unnecessary to limit the movement of Bahamian citrus fruit to non-citrus-producing States.

In our proposal, we proposed to amend Sec. 319.56-2t by removing the common names provided for *Cichorium* spp. articles (e.g., endive, chicory, and radicchio) from several Central and South American countries and replacing those common name entries with the more general term ``cichorium.'' This was proposed in order to make our regulations more clear and consistent and to allow additional varieties of *Cichorium* entry from those countries. In our proposed regulatory text, we listed leaves, stems, and roots as the enterable plant parts for *Cichorium* from the listed Central and South American countries. One commenter stated that chicory root poses different pest problems than stems and leaves and should be addressed separately.

As stated in the proposed rule, we prepared a pest risk assessment which examined the risks posed by roots, stems, and leaves of all *Cichorium* spp. from Central America and South America and found that no pests would follow the pathway. Therefore, we believe that the general requirements listed in Sec. 319.56-6 are adequate for

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roots, stems, and leaves of *Cichorium* spp.

We proposed to list eggplant from Belize, Costa Rica, and Honduras in Sec. 319.56-2t as eligible for importation into the United States, but only in commercial shipments. One commenter stated that the distinction we drew between commercial and noncommercial shipments is not clear and that the distinguishing characteristics mentioned in the proposed rule (i.e., quantity of product, type of packaging, identification of grower and packinghouse, and consigning documents) are not enough to discourage determined shippers of substandard products. The commenter was concerned that distinguishing between commercial and noncommercial shipments would not offer any broad ranging pest protection to the United States.

In addition to the distinction that we drew between noncommercial

and commercial shipments in the proposed rule, noncommercial shipments can also refer to articles carried in passenger baggage, while commercial shipments refer to commodities that are imported under the condition that specific phytosanitary measures were applied. We continue to believe, based on the considerations discussed in the proposed rule, that noncommercial shipments pose a greater risk of pest introduction because they were not subject to the same mitigation measures as commercial shipments and that the criteria we apply in distinguishing between commercial and noncommercial shipments are effective.

One commenter was concerned that allowing pineapples and apples from South Africa to be imported without treatment into the United States could result in the introduction of the oriental red mite (*Eutetranychus orientalis*). The commenter stated that oriental red mite occurs in South Africa and is a serious pest on more than 180 plants, both crops and ornamentals, many of which are grown in Florida.

While oriental red mite occurs in South Africa, our research indicates that neither pineapples nor apples are a preferred host of that pest. If the commenter has additional research that is contrary to this assertion, we invite him to submit it. Further, pineapples and apples have both been authorized for importation into the United States from South Africa for several years, so they were not being proposed for entry for the first time. With regard to pineapples, the regulations have indicated that pineapples from South Africa are approved for entry into all States, but our risk analysis only evaluated the risks of allowing pineapple entry into the continental United States. As explained in our proposal, we intended to correct that oversight by amending Sec. 319.56-2t to limit their distribution to the continental United States. With regard to apples, we have been allowing apples from South Africa entry under permit with a prescribed treatment, and we were simply proposing to add them to Sec. 319.56-2x to improve the transparency of our regulations.

Leeks From Canada

One commenter stated that the proposed import restrictions for leeks from Canada should apply only to Quebec and Ontario, because they are the only two Provinces where the leek moth is known to exist.

We would be willing to consider limiting the applicability of our import restrictions if the Canadian Food Inspection Agency submits to APHIS, field surveys or other documentation that demonstrates that Quebec and Ontario are the only areas within Canada where the leek moth exists and describes the measures that are being used to prevent the spread of the pest within Canada.

One commenter stated that ornamental Allium represent a negligible host for the leek moth and should not be subject to the proposed mitigation measures.

Ornamental Allium products are not covered under the fruits and vegetables regulations and therefore would not be subject to the mitigation measures in this rule.

One commenter stated that some Allium products are being produced in Mexico, imported into Canada, and then re-exported to the United States. The commenter stated that those products of non-Canadian origin should not be impacted by the new regulations.

It would be difficult to determine if a commodity had originated in Mexico if it is re-exported from Canada because it would be unlikely that the original packaging would be preserved. Further, it would be difficult to ensure and verify that there was no commingling between Allium spp. of Canadian and Mexican origin. If the packaging of Allium products from Mexico (or another country eligible to export such products to the United States) remains intact and the shipment is accompanied by a re-export certificate, then we would not require a phytosanitary certificate for the shipment. Under any other circumstances, Allium spp. whole plants or above ground parts imported in the United States from Canada will be subject to the restrictions set forth in this final rule.

One commenter stated that the proposed mitigation measures for the leek moth should not apply to vacuum-packed Allium spp. because vacuum packing is a mitigation measure itself.

The commenter did not provide, nor do we have, any research regarding the efficacy of vacuum packing as a mitigation measure for leek moth. Therefore, we will not add an exemption for vacuum-packed Allium spp. in this final rule.

We proposed to amend Sec. 319.56-2t to allow grapes from Argentina to be imported into the United States if they are grown in a fruit-fly free area. For grapes that are grown outside a fruit-fly free area, we also proposed to amend Sec. 319.56-2x to add grapes from Argentina to the list of fruits and vegetables that may be imported into the United States provided that they are treated in accordance with 7 CFR part 305. The regulations in part 305 prescribe cold treatment for fruit flies and methyl bromide for other pests of grapes from Argentina. The regulations in part 305 also provide that irradiation may be substituted for other approved treatments for any of the pests listed in Sec. 305.31(a). So, while part 305 does allow irradiation to be substituted for the cold treatment and fumigation prescribed for grapes from Argentina, one commenter appeared to believe that irradiation was the sole treatment we were prescribing, which is not the case, and presented several questions about irradiation. While we believe it would be unlikely that irradiation would be used for grapes from Argentina, a summary of the commenter's questions and our responses are presented below.

The commenter asked specific questions about research on how the quality of grapes was affected by irradiation and whether or not such research has been conducted over a time period that approximates shipping time to match what the end consumer would find in stores.

Those questions are commercial considerations and are not relevant to the regulatory process. As cautioned in Sec. 305.31(n) of the regulations, irradiation is approved to assure quarantine security against listed pests, but the facility operator and shipper are responsible for determination of tolerance.

The commenter also asked about whether we have conducted any research on the efficacy of irradiation on table grapes.

The required irradiation doses are specific to plant pests, rather than the commodities they are associated with.

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Specific characteristics of the fruits or vegetables being treated, which may need to be considered in developing other phytosanitary treatments, are irrelevant to the effectiveness of irradiation as long as the required minimum dose is absorbed.

The commenter also asked if there has been any work done to determine the cumulative risk factors of allowing fruit and vegetables from multiple countries into the United States under various protocols and if so, what is the risk.

We receive requests to authorize the importation of specific fruits or vegetables from specific countries, so it is in that context (i.e., case-by-case, not cumulative) that we evaluate risks and make decisions.

The commenter asked if irradiation would take place pre-shipment or post, under what conditions, and if USDA would be approving irradiation facilities and inspecting the fruit.

As provided in Sec. 305.31, irradiation may take place either in the United States or outside of the United States prior to shipment. In

either case, the operator of an irradiation facility must sign a compliance agreement with the Administrator and all irradiation facilities must be certified by the Administrator. When the treatment occurs outside the United States, the plant protection organization of the country where irradiation is to take place must enter into a facility preclearance workplan and a framework equivalency work plan with APHIS. The equivalency workplan is a document in which both APHIS and the foreign plant protection organizations specify the following information for their respective countries:

Citations for any requirements that apply to the importation of irradiated articles;

The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated articles into that country; and

Any other conditions that must be met to allow the importation of irradiated articles into that country.

The commenter asked what level of inspection would take place.

There is no pre-set level of inspection for grapes or any other article. The level of inspection applied will vary from commodity to commodity and shipment to shipment. Inspectors take into account factors such as pest conditions in the exporting region, the types of pests and past interceptions associated with the article, whether and what type of treatment has been applied, the type of packaging (bulk or loose), the bill of lading and number of containers by each shipper, and specific targeting activities based on continuing analysis of pest conditions worldwide.

The commenter asked if fruit flies do not die under irradiation but are rendered sterile, what is the protocol for determining whether the irradiation has been effective pre-shipment.

Irradiation is considered effective if flies are killed or if they are rendered unable to reproduce or emerge from the host as an adult. Based on research conducted by the USDA's Agricultural Research Service

(ARS), we have determined the necessary irradiation doses, which vary from pest to pest, to achieve that result. We will ensure that the commodity received the prescribed dose through dosimetry systems at the facility and certification of the treatment.

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.

This rule relieves restrictions on the importation of certain fruits and vegetables from certain countries while continuing to protect against the introduction of plant pests into the United States.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested producers, importers, shippers, and others to benefit immediately from the relieved restrictions. 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.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

Under the Plant Protection Act (7 U.S.C. 7701 et seq.), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.

We are amending the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. Many of these fruits and vegetables are already being imported under permit, but are not specifically listed in the regulations. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, we will require that some of the fruits and vegetables be treated or meet other special conditions. We are also eliminating or modifying existing treatment requirements for specified commodities and making other miscellaneous changes. These actions will improve the transparency of our regulations while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

Impact on Small Entities

The Regulatory Flexibility Act requires agencies to consider the economic impact of their regulations on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between differently sized entities. Data on the number and size of U.S. producers of the various commodities addressed in this rule are not available. However, since most fruit and vegetable

farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities listed below are small entities.

As previously stated, many of the commodities listed in this document may currently enter the United States under permit. Therefore, we do not expect the amount of many commodities submitted for importation to increase beyond current levels. Additionally, in many cases, importation of certain commodities is necessary given that the commodities are not grown extensively in the United States (e.g., chicory, kiwis, and mangoes). In other instances, importation augments domestic supplies that are not sufficient to meet consumer demand (e.g., apples, garlic, and onions).

Grapes and Cichorium From Argentina

Grapes from Argentina are already admissible under permit into the United

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States. The United States imports an average of 490,000 tons of grapes (7 percent of its domestic supply) per year to satisfy its domestic demand for consumption.\2\ However, less than 1 percent of these imports originates in Argentina. The growing season for grapes in Argentina is opposite of that in the United States, thereby complementing rather than competing with U.S. grape production. Therefore, even if we assume that Argentina greatly increases its exports of grapes to the United States, it is more likely to displace other countries' share of U.S. imports than to affect the level of U.S. consumption of domestic grapes. The economic impact on the level of U.S. grape consumption and production resulting from this change is expected to be small.

\2\ FAOSTAT for production data. USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Trade Data: Harmonized Tariff Schedule for trade data.

With respect to cichorium, no official production data are available in either the United States or Argentina. Therefore, we assume that both the United States and Argentina are small commercial producers of cichorium. Between 2000 and 2003, U.S. imports of fresh cichorium averaged 3.8 thousand tons of a non-witloof variety and 2.5 thousand tons of a witloof variety; none of these imports originated in Argentina.\3\ Between 2000 and 2003, Argentina's exports of cichorium to the world as a whole averaged 7 metric tons annually. Even if all of these exports were directed to the United States, they would only represent 0.11 percent of U.S. demand for imported cichorium. The economic impact resulting from this change is not expected to be substantial.

\3\ FAOSTAT for production data. USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Trade Data: Harmonized Tariff Schedule (HS: 070529 non-witloof variety of chicory, and 070521 fresh chicory of witloof variety).

Allium spp. From Canada

Alliaceus vegetables (i.e., onions, shallots, leeks, and garlic) from Canada can be imported into the United States under the general permit in Sec. 319.56-2(c) for articles from Canada. Between 2000 and 2003, Canada supplied 19 percent of annual U.S. imports of shallots and onions, 3 percent of U.S. imports of leeks, and 0.62 percent of U.S. imports of garlic on average.\4\ U.S. imports amount to less than 10 percent of U.S. production of shallots and onions and less than 15 percent of U.S. garlic production. This rule will add, as a condition of entry, that each shipment of alliaceus vegetables consisting of the whole plant or above ground parts be accompanied by a phytosanitary certificate containing an additional declaration from the Canadian NPPO that the shipment is free of Acrolepiopsis assectella. We do not expect exporters to incur any additional expenses as a result of this requirement. Therefore, U.S. importers/consumers of these commodities will not see an increase in the cost of alliaceus vegetables from Canada. Even if exporters of alliaceus vegetables from Canada were to experience an increase in exporting cost because of the phytosanitary requirement and pass this on to U.S. importers/consumers, the benefits of keeping the leek moth out of the United States would outweigh such an increase in cost. As a result, the economic impact on the U.S. level of demand for consumption and/or production of alliaceus vegetables is not expected to be significant.

\4\ FAOSTAT for production data. USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Trade Data: Harmonized Tariff Schedule for trade data.

Cichorium, Lemons, and Tomatoes (Under a Systems Approach) From Chile

Lemons from Chile are already being imported into the United States under permit; between 2000 and 2003, 4 percent of annual U.S. imports of lemons and limes originated in Chile.\5\ We have no reason to expect that listing lemons from Chile in the regulations will result in an increase in exports. Even if we assume that Chile increases its exports of lemons into the United States, it is more likely to displace other countries' share for U.S. imports of them than to affect the level of U.S. consumption of domestic lemons. The economic impact resulting from this change is not expected to be substantial.

 \5\ Source of Production Data:
<http://apps.fao.org/faostat/agriculture/>.

Production data for lemons include limes. Source of

Trade Data: USDA/FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Harmonized Tariff Schedule 6 digits.

Tomatoes from Chile are already being imported into the United States if fumigated with methyl bromide. This rule will provide tomato producers with an alternative to methyl bromide fumigation by providing for a systems approach. APHIS continues to strive to meet the objectives of the Montreal Protocol by providing alternatives to methyl

bromide fumigation treatment for fruit and vegetable producers. As registered producers in Chile already comply with most of the production practices that will be required under the systems approach, the requirements will not likely result in any additional economic burden to tomato producers. In addition, registered producers who remain in compliance with the program throughout the shipping season will save money on costly fumigation treatments. Between 2000 and 2003, 0.02 percent of U.S. annual imports of tomatoes originated in Chile.\6\

The total amount of tomatoes from Chile exported to the world between 2000 and 2003 (all varieties) was on average only 2,209 tons or 0.38 percent of U.S. imports. This is Chile's maximum capacity of tomato exports and is not expected to increase in the short term. This small amount of imports, whether grown under the systems approach or treated with methyl bromide, is unlikely to affect the level of U.S. consumption of domestic tomatoes. The economic impact resulting from this change is not expected to be substantial.

 \6\ Source of Production Data:
<http://apps.fao.org/faostat/agriculture/>.

Source of Trade Data: USDA/FAS Global Agricultural

Trade System using data from the U.N. Statistical Office. Harmonized Tariff Schedule 6 digits.

With respect to cichorium, there are no available data on U.S. or Chilean production. The United States imports approximately 6,000 tons of cichorium per year. Cichorium is already being imported from Chile under permit, and Chile is a major source of U.S. cichorium imports, accounting for approximately 32 percent on average. Because the United States is such a small producer of cichorium, it is unlikely that this rule will significantly alter this situation. In fact, the addition of cichorium into the U.S. market from other countries such as Chile will be a benefit to U.S. consumers. The economic impact on the level of U.S. consumption of cichorium, lemons, and tomatoes as a result of these changes is expected to be small.

New Zealand Spinach From Israel

According to USDA's Foreign Agricultural Service (FAS), in 2000, the United States imported 1.5 metric tons of New Zealand spinach from Israel (0.02 percent of U.S. imports of New Zealand spinach in 2000). However, APHIS' Plant Protection and Quarantine (PPQ) program has no record of these imports and New Zealand spinach from Israel has not been admissible into the United States.\7\ Israel is a small

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producer of spinach (all varieties), producing, on average, an amount equivalent to a quarter of total U.S. spinach imports annually. The amount imported in 2000 corresponds to 50 percent of Israel's exports. Even if we assume that Israel will double its exports into the United States, it could not supply more than 0.04 percent of U.S. demand for imports of spinach. The economic effects of this change on the level of U.S. consumption and/or production of spinach are not expected to be significant.

\7\ The United States imported spinach from Israel for the first time in year 2000, but did not import any Israeli spinach in 2001, 2002, or 2003. Source: U.N. Trade Statistics, FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Trade Data: Harmonized Tariff Schedule (HS 6 Digit-- 070970) spinach fresh or chilled. Source of production data: <http://apps.fao.org/faostat/agriculture/>

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Kiwi From Italy

Kiwi fruits from Italy can already be imported into the United States under permit. The United States is a small kiwi producer that imports almost twice as much as it produces to satisfy its domestic demand.\8\ Italy supplies approximately 16 percent of U.S. imported kiwi fruits, and it is unlikely that this will change as a result of this rule. Even if Italy increased its exports of kiwi to the United States, it would most likely displace another countries' share because the United States is such a small producer of kiwi. The economic impact resulting from this change on the level of U.S. consumption is not expected to be substantial.

\8\ Source: U.N. Trade Statistics, FAS Global Agricultural Trade System using data from the U.N. Statistical Office.

Citrus From New Zealand

Although FAS statistics indicate that between 2001 and 2003, New Zealand supplied, on average, 0.006 percent of U.S. imports of oranges

and lemons,\9\ APHIS' PPQ has no records of these imports and citrus fruit from New Zealand has not been admissible into the United States. New Zealand is a small producer/exporter of citrus, and the country's exports were equivalent to less than 1 percent of U.S. imports of citrus on average. Its total citrus production is less than 8 percent of U.S. imports of citrus as a whole. Because the United States will import such a small percentage of New Zealand citrus, even if we assume that New Zealand greatly increases its exports to the United States, it is unlikely to have a substantial economic impact.

\9\ Total citrus trade data here includes the following categories of fruits: Oranges (HS-6: 080510), mandarins (HS-6: 080520), lemons (HS-6: 080530), and grapefruits (HS-6: 080540).

Mangoes From the Philippines

The United States currently imports a very small amount of mangoes (18 tons per year on average) from the Philippines.\10\ Because the Philippines is a significant producer of mangoes, allowing mangoes to be imported into Hawaii and Guam from additional production areas in the Philippines could result in mango exports from the Philippines capturing a larger share of those two markets. U.S. mango production is less than 1 percent of the amount the United States needs to satisfy its domestic consumption. Between 2001 and 2002, the United States imported approximately 100 times the amount of its domestic mango production, with most imports coming from Mexico. Thus, allowing imports from more islands in the Philippines would be a benefit to U.S. consumers in Guam and Hawaii. The economic impact of this change on the level of U.S. consumption or its domestic production of mangoes is not expected to be significant.

\10\ Trade Data: Harmonized Tariff Schedule (HS 6 Digit). Source of production data: <http://apps.fao.org/faostat/agriculture/>.

Apples and Grapes From South Africa

Apples and grapes from South Africa can already be imported into the United States under permit. South Africa supplies 3 percent of U.S. imports of apples and a little less than 2 percent of U.S. imports of grapes.\11\ With respect to grapes, South African exports alone cannot satisfy U.S. demand for domestic consumption. Even if South Africa directs all of its exports of grapes (880,590 tons) into the United States, it would be only enough to supply 22 percent of U.S. annual demand. The economic impact of this change on the level of U.S. consumption and/or domestic production of apples and/or grapes is not expected to be significant.

 \11\ Source: U.N. Trade Statistics, FAS Global Agricultural Trade System using data from the U.N. Statistical Office. Trade Data: Harmonized Tariff Schedule (HS 6 Digit). Source of production data: <http://apps.fao.org/faostat/agriculture/>.

Cichorium From Central and South America

There are no official data available for cichorium, either on production or trade, in the following countries: Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, French Guiana, Guyana, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. Thus, we assume that these countries are very small producers of cichorium and that they are either not currently exporting cichorium or are exporting only small amounts. For these reasons, we cannot determine what the economic effects of this rule will be, but they are not expected to be significant.

Summary

U.S. importation of the commodities included in this rule is not expected to have a significant economic impact on U.S. small entities. The different production season of the Southern Hemisphere, where many of the fruits and vegetables included in this rule are produced, helps maintain a steady supply of fresh produce, complementing rather than competing with U.S. production of these commodities. For those commodities that are not principal U.S. products, the additional supply will help satisfy growing demand for these specialty crops. For these reasons, we believe that any costs due to increased competition that may be incurred by domestic entities will be minimal, and that those minimal costs will be outweighed by the benefits associated with this rule, which include improving the transparency of our regulations and providing the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget (see ``Paperwork Reduction Act'' below).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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 importation of fruits and vegetables under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

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Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0280.

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 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.

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Accordingly, we are amending 7 CFR part 319 as follows:

PART 319--FOREIGN QUARANTINE NOTICES

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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.

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2. Section 319.56-1 is amended by adding, in alphabetical order, a definition for national plant protection organization (NPPO) to read as follows:

Sec. 319.56-1 Definitions.

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National plant protection organization (NPPO). Official service

established by a government to discharge the functions specified by the International Plant Protection Convention.

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3. In Sec. 319.56-2, paragraph (c) and the OMB citation at the end of the section are revised to read as follows:

Sec. 319.56-2 Restrictions on entry of fruits and vegetables.

* * * * *

(c) General permit for fruits and vegetables grown in Canada. Fruits and vegetables grown in Canada may be imported into the United States without restriction under this subpart; provided, that:

(1) Consignments of *Allium* spp. consisting of the whole plant or above ground parts must be accompanied by a phytosanitary certificate issued by the NPPO of Canada with an additional declaration stating that the articles are free from *Acrolepiopsis assectella* (Zeller).

(2) Potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road are prohibited importation into the United States in accordance with Sec. 319.37-2 of this part.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579-0049 and 0579-0280)

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4. Section 319.56-2t is amended as follows:

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a. In the table in paragraph (a), by:

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i. Revising the following entries to read as set forth below: Under Belize, for rambutan; under Bermuda, for longan; under Costa Rica, for rambutan; under El Salvador, for loroco and rambutan; under Grenada, for litchi and rambutan; under Guatemala, for eggplant and rambutan; under Honduras, for rambutan; under Mexico, for banana and rambutan; under Nicaragua, for loroco and rambutan; under Panama, for eggplant and rambutan; under Peru, for Swiss chard; under Sierra Leone, for cassava; and under South Africa, for pineapple.

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ii. Removing the following entries: Under Argentina, for endive; under Bolivia, for Belgian endive; under Ecuador, for radicchio; under Honduras, for chicory; under Nicaragua, for radicchio; under Panama, for Belgian endive, chicory, and endive; under Peru, for radicchio; and under Republic of Korea, for chard.

0

iii. Adding, in alphabetical order, the following entries to read as set forth below: Under Argentina, for cichorium and grape; under Belize, for cichorium and eggplant; under Bolivia, for cichorium; under Chile, for cichorium; under Colombia, for cichorium; under Costa Rica, for cichorium and eggplant; under Ecuador, for cichorium; under El Salvador, for cichorium; under French Guinea, for cichorium; under

Guatemala, for cichorium; under Honduras, for cichorium and eggplant; under Israel, for New Zealand spinach; under New Zealand, for citrus; under Nicaragua, for cichorium; under Panama, for cichorium; under Peru, for cichorium; under Republic of Korea, for Swiss chard; and under Suriname, for cichorium.

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iv. Adding entries for Bahamas, Brazil, French Guiana, Guyana, Paraguay, Uruguay, and Venezuela to read as set forth below.

0

b. In paragraph (b), by adding new paragraphs (b) (2) (v), (b) (5) (vi), (b) (5) (vii), and (b) (6) (v) to read as set forth below.

0

c. By revising the OMB citation at the end of the section to read as set forth below.

Sec. 319.56-2t Administrative instructions: Conditions governing the entry of certain fruits and vegetables.

(a) * * *

 Additional restriction(s)

Country/locality	Common name	Botanical name
Plant part(s)	(see paragraph (b) of this section)	

 Argentina

		* * * * *	
	Cichorium.....	Cichorium spp..	
Leaves, stems,			and
roots.			

		* * * * *	
	Grape.....	Vitis spp.....	
Fruit.....	(b) (1) (ii) .		

		* * * * *	
Bahamas.....	Citrus.....	Citrus spp.....	
Fruit.....	(b) (5) (vi), (b) (6) (v) .		

		* * * * *	
Belize			

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		* * * * *	
	Cichorium.....	Cichorium spp..	
Leaves, stems,			and
roots.			

* * * * *

Fruit.....	(b) (3).	Eggplant.....	Solanum melongena. * * * * *	
Fruit or cluster.	(b) (2) (i), (b) (5) (iii).	Rambutan.....	Nephelium lappaceum. * * * * *	
Bermuda				
Fruit or cluster.		Longan.....	Dimocarpus longan. * * * * *	
Bolivia.....		Cichorium.....	Cichorium spp..	and
Leaves, stems, roots.				
Brazil.....		Cichorium.....	Cichorium spp..	and
Leaves, stems, roots. Chile				
		Cichorium.....	Cichorium spp..	and
Leaves, stems, roots.				
Colombia.....		Cichorium.....	Cichorium spp..	and
Leaves, stems, roots.				
Costa Rica				
		Cichorium.....	Cichorium spp..	and
Leaves, stems, roots.				
Fruit.....	(b) (3).	Eggplant.....	Solanum melongena. * * * * *	
Fruit or cluster.	(b) (2) (i), (b) (5) (iii).	Rambutan.....	Nephelium lappaceum.	

Ecuador		* * * * *	
Leaves, stems, roots.	Cichorium.....	Cichorium spp..	and
El Salvador		* * * * *	
Leaves, stems, roots.	Cichorium.....	Cichorium spp..	and
Flower and leaf	Loroco.....	Fernaldia spp..	
Fruit or clusters.	Rambutan..... (b) (2) (i), (b) (5) (iii).	Nephelium lappaceum.	
French Guiana.....	Cichorium.....	Cichorium spp..	and
Leaves, stems, roots.			
Grenada		* * * * *	
Fruit or cluster.	Litchi.....	Litchi chinensis.	
Fruit or cluster.	Rambutan.....	Nephelium lappaceum.	
Guatemala		* * * * *	
Leaves, stems, roots.	Cichorium.....	Cichorium spp..	and

			* * * * *	
Fruit.....	(b) (3).	Eggplant.....	Solanum	
			melongena.	
			* * * * *	
Fruit or	(b) (2) (i), (b) (5) (iii).	Rambutan.....	Nephelium	
cluster.			lappaceum.	
			* * * * *	
Guyana.....		Cichorium.....	Cichorium spp..	
Leaves, stems,				and
roots.				
			* * * * *	
Honduras				
			* * * * *	
Leaf, stems,		Cichorium.....	Cichorium spp..	
roots.				and
			* * * * *	
Fruit.....	(b) (3).	Eggplant.....	Solanum	
			melongena.	
			* * * * *	
Fruit or	(b) (2) (i), (b) (5) (iii).	Rambutan.....	Nephelium	
cluster.			lappaceum.	
			* * * * *	
Israel				
			* * * * *	
Leaves.....		New Zealand	Tetragonia	
		spinach.	tetragonoides.	
			* * * * *	
Mexico				
			* * * * *	
Flower and leaf		Banana.....	Musa spp.....	
			* * * * *	
Fruit or	(b) (2) (i), (b) (5) (iii).	Rambutan.....	Nephelium	
cluster.			lappaceum.	
			* * * * *	

New Zealand

Fruit..... Citrus..... Citrus spp.....
(b) (3), (b) (5) (vii).

Nicaragua..... Cichorium..... Cichorium spp..
Leaves, stems,
roots. and

Flower and leaf Loroco..... Fernaldia spp..

Fruit or Rambutan..... Nephelium
(b) (2) (i), (b) (5) (iii). lappaceum.
cluster.

Panama
Leaves, stems, Cichorium..... Cichorium spp..
roots. and

Fruit..... Eggplant..... Solanum
(b) (3). melongena.

Fruit or Rambutan..... Nephelium
(b) (2) (i), (b) (5) (iii). lappaceum.
cluster.

Paraguay..... Cichorium..... Cichorium spp..
Leaves, stems,
roots. and

Peru
Leaves, stems, Cichorium..... Cichorium spp..
roots. and

and stem.. Swiss chard..... Beta vulgaris Leaf
subsp. cicla.

		* * * * *	
Republic of Korea			
		* * * * *	
and stem..	Swiss chard.....	Beta vulgaris	Leaf
		subsp. cicla.	
		* * * * *	
Sierra Leone.....	Cassava.....	Manihot	Leaf
and root..	esculenta.	
		* * * * *	
South Africa			
		* * * * *	
Fruit.....	(b) (2) (v) .	Pineapple.....	Ananas spp.....
			* * * * *
Suriname			
		* * * * *	
Leaves, stems,	Cichorium.....	Cichorium spp..	
roots.			and
		* * * * *	
Uruguay.....	Cichorium.....	Cichorium spp..	
Leaves, stems,			and
roots.			
Venezuela.....	Cichorium.....	Cichorium spp..	
Leaves, stems,			and
roots.			

* * * * *

(b) * * *

(2) * * *

(v) Prohibited entry into Puerto Rico, Virgin Islands, Northern Mariana Islands, Hawaii, and Guam. Cartons in which commodity is packed must be stamped ``For distribution in the continental United States only.''

* * * * *

(5) * * *

(vi) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the fruit is from an area where citrus canker (Xanthomonas citri (Hasse) Dowson) is not known to occur.

(vii) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin and with an additional declaration

stating that the fruit is free from *Cnephasia jactatana*, *Coscinoptycha improbana*, *Ctenopseustis obliquana*, *Epiphyas postvittana*, *Pezothrips kellyanus*, and *Planotortrix excessana*; must undergo a port of entry inspection with a biometric sampling of 100 percent of 30 boxes selected randomly from each shipment; and the randomly selected boxes must be examined for hitchhiking pests.

(6) * * *

(v) Grapefruit (*Citrus paradisi*), lemon (*Citrus limon*), orange (*Citrus sinensis*), and tangelo (*Citrus reticulata*) only.

(Approved by the Office of Management and Budget under control numbers 0579-0049, 0579-0236, 0579-0264, and 0579-0280)

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5. In Sec. 319.56-2x, the table in paragraph (a) is amended as follows:

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a. By revising the following entries to read as set forth below: Under China, for litchi and longan; under India, for litchi; under Israel, for litchi; and under Taiwan, for litchi.

0

b. By removing, under El Salvador, the entry for garden bean and by adding, in alphabetical order, the following entries to read as set forth below: Under Argentina, for grape; under Chile, for lemons; and under El Salvador, for green bean.

0

c. By adding, in alphabetical order, entries for Italy and the Republic of South Africa to read as set forth below.

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

(a) * * *

Country/locality	Common name
Botanical name	Plant part(s)

Argentina

* * * * *

Grape..... Vitis
spp..... Fruit. (Treatment for

Anastrepha spp. fruit

flies and Medfly not

required if fruit is grown

in a fruit fly-free area

(see Sec. 319.56-2(j)).

* * * * *

Chile..... Lemon..... Citrus
limon..... Fruit.

* * * * *

China..... Litchi..... Litchi
chinensis..... Fruit or cluster.

(Prohibited entry into
Florida due to litchi rust
mite. Cartons in which
litchi are packed must be
stamped ``Not for
importation into or
distribution in FL.'')

Dimocarpus longan..... Fruit or cluster
Longan.....

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* * * * *

El Salvador..... Green bean..... Phaseolus
vulgaris.... Pod or shelled.

* * * * *

India..... Litchi..... Litchi
chinensis..... Fruit or cluster

(Prohibited entry into
Florida due to litchi rust
mite. Cartons in which
litchi are packed must be
stamped ``Not for
importation into or
distribution in FL.'')

Israel

* * * * *

chinensis..... Fruit or cluster.
Litchi..... Litchi

(Prohibited entry into
Florida due to litchi rust
mite. Cartons in which
litchi are packed must be

stamped ``Not for
importation into or
distribution in FL.')

Italy..... Kiwi..... Actinidia
deliciosa... Fruit.

* * * * *

Republic of South Africa..... Apple..... Malus
domestica..... Fruit.
spp..... Fruit.
Grape..... Vitis

* * * * *

Taiwan

chinensis..... Fruit or cluster.
Litchi..... Litchi

* * * * *

* * * * *

(Prohibited entry into
Florida due to litchi rust
mite. Cartons in which
litchi are packed must be
stamped ``Not for
importation into or
distribution in FL.')

* * * * *

* * * * *

- 0
6. Section 319.56-2dd is amended as follows:
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a. By revising the introductory text of paragraph (d) to read as set forth below.
0
b. By redesignating paragraphs (d) (1), (d) (2), and (d) (3) as paragraphs (d) (1) (i), (d) (1) (ii), and (d) (1) (iii), respectively, and by adding new introductory text of paragraph (d) (1) to read as set forth below.
0
c. In newly redesignated paragraph (d) (1) (iii), in the first sentence, by adding the words ``with treatment in accordance with this paragraph (d) (1)'' after the word ``Chile''.
0
d. By adding a new paragraph (d) (2) to read as set forth below.

0

e. By revising the OMB citation at the end of the section to read as set forth below.

Sec. 319.56-2dd Administrative instructions: conditions governing the entry of tomatoes.

* * * * *

(d) Tomatoes from Chile. Tomatoes (fruit) (*Lycopersicon esculentum*) from Chile, whether green or at any stage of ripeness, may be imported into the United States with treatment in accordance with paragraph (d)(1) of this section or if produced in accordance with the systems approach described in paragraph (d)(2) of this section.

(1) With treatment. * * *

(2) Systems approach. The tomatoes may be imported without fumigation for *Tuta absoluta*, *Rhagoletis tomatis*, and Mediterranean fruit fly (Medfly, *Ceratitis capitata*) if they meet the following conditions:

(i) The tomatoes must be grown in approved production sites that are registered with SAG. Initial approval of the production sites will be completed jointly by SAG and APHIS. SAG will visit and inspect the production sites monthly, starting 2 months before harvest and continue until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(ii) Tomato 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 mm (or less) screening.

(iii) The tomatoes must originate from a Medfly free area (see Sec. 319.56-2(j)) of Chile or an area where Medfly trapping occurs. Production sites in areas where Medfly is known to occur must contain traps for both Medfly and *Rhagoletis tomatis* in accordance with paragraphs (d)(2)(iii) and (d)(2)(iv) of this section. Production sites

in all other areas do not require trapping for Medfly. The trapping protocol for the detection of Medfly in infested areas is as follows:

(A) McPhail traps with an approved protein bait must be used within registered greenhouses. Traps must be placed inside greenhouses at a density of 4 traps/10 ha, with a minimum of at least two traps per greenhouse.

(B) Medfly traps with trimedlure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap/10 ha 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 a greenhouse. Traps must be set for at least 2 months before export and trapping and continue to the end of the harvest season.

(C) Medfly prevalence levels in the surrounding areas must be 0.7 Medflies per trap per week or lower. If levels exceed this before harvest, the production site will be prohibited from shipping under the systems approach. If the levels exceed this after the 2 months prior to harvest, the production site would be prohibited from shipping under the systems approach until APHIS and the NPPO of Chile agree that the pest risk has been mitigated.

(iv) Registered production sites must contain traps for *Rhagoletis tomatidis* in

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accordance with the following provisions:

(A) McPhail traps with an approved protein bait must be used within registered greenhouses. Traps must be placed inside greenhouses at a density of 4 traps/10 ha, with a minimum of at least two traps per greenhouse. Traps inside greenhouses will use the same bait for Medfly and *Rhagoletis tomatidis* because the bait used for *R. tomatidis* is sufficient for attracting both types of fruit fly within the confines of a greenhouse; therefore, it is unnecessary to repeat this trapping protocol in production sites in areas where Medfly is known to occur.

(B) McPhail traps with an approved protein bait must be placed inside a 500 meter buffer zone at a density of 1 trap/10 ha surrounding the production site. At least one of the traps must be near a greenhouse. Traps must be set for at least 2 months before export until the end of the harvest season and must be checked at least every 7 days. In areas where Medfly trapping is required, traps located outside of greenhouses must contain different baits for Medfly and *Rhagoletis tomatidis*. There is only one approved bait for *R. tomatidis* and the bait is not strong enough to lure Medfly when used outside greenhouses; therefore, separate traps must be used for each type of fruit fly present in the area surrounding the greenhouses.

(C) If within 30 days of harvest a single *Rhagoletis tomatidis* is captured inside the greenhouse or in a consignment or if two *R. tomatidis* are captured or detected in the buffer zone, shipments from the production site will be suspended until APHIS and SAG determine that risk mitigation is achieved.

(v) Registered production sites must conduct regular inspections for *Tuta absoluta* throughout the harvest season and find these areas free of *T. absoluta* evidence (e.g., eggs or larvae). If within 30 days of harvest, two *Tuta absoluta* are captured inside the greenhouse or a single *T. absoluta* is found inside the fruit or in a consignment, shipments from the production site would be suspended until APHIS and SAG determine that risk mitigation is achieved.

(vi) SAG will ensure that populations of *Liriomyza huidobrensis* inside greenhouses are well managed by doing inspections during the monthly visits specifically for *L. huidobrensis* mines in the leaves and for visible external pupae or adults. If *L. huidobrensis* is found to be generally infesting the production site, shipments from the production site would be suspended until APHIS and SAG agree that risk mitigation is achieved.

(vii) All traps must be placed at least 2 months prior to harvest and be maintained throughout the harvest season and be monitored and serviced weekly.

(viii) SAG must maintain records of trap placement, checking of traps, and of any *Rhagoletis tomatidis* or *Tuta absoluta* captures for 1 year for APHIS review. SAG must maintain an APHIS approved quality control program to monitor or audit the trapping program. APHIS must be notified when a production site is removed from or added to the

program.

(ix) The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The tomatoes must be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Tomatoes 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.

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

(xi) SAG is responsible for export certification inspection and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by SAG with an additional declaration, ``These tomatoes were grown in an approved production site in Chile.'' The shipping box must be labeled with the identity of the production site.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579-0049, 0579-0131, 0579-0280, and 0579-0286)

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7. Section 319.56-2ii is amended as follows:

0

a. By revising paragraph (a) to read as set forth below.

0

b. In paragraph (d), by adding a new sentence at the end of the paragraph to read as set forth below.

0

c. By revising paragraph (e) to read as set forth below.

0

d. By adding an OMB citation at the end of the section to read as set forth below.

Sec. 319.56-2ii Administrative instructions: conditions governing the entry of mangoes from the Philippines.

* * * * *

(a) Mangoes grown on the island of Guimaras, which the Administrator has determined meet the criteria set forth in Sec. 319.56-2(e) (4) and Sec. 319.56-2(f) with regard to the mango seed weevil (*Sternochetus mangiferae*), are eligible for importation into all areas of the United States. Mangoes from all other areas of the Philippines except Palawan are eligible for importation into Hawaii and Guam only. Mangoes from Palawan are not eligible for importation into the United States.

* * * * *

(d) * * * Shipments originating from approved areas other than Guimaras must be labeled ``For distribution in Guam and Hawaii only.''

(e) Phytosanitary certificate. Mangoes originating from all approved areas must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains an additional declaration stating that the mangoes have

been treated for fruit flies of the genus Bactrocera in accordance with paragraph (b) of this section. Phytosanitary certificates accompanying shipments of mangoes originating from the island of Guimaras must also contain an additional declaration stating that the mangoes were grown on the island of Guimaras.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579-0172 and 0579-0280)

Done in Washington, DC, this 12th day of December 2006.
Kevin Shea,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. E6-21496 Filed 12-15-06; 8:45 am]

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