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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2011–0040]

RIN 0579–AD52

Importation of Mangoes From Australia Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of fruits and vegetables to allow the importation of fresh mangoes from Australia into the continental United States. As a condition of entry, the mangoes would have to be produced in accordance with a systems approach employing a combination of mitigation measures for the fungus *Cytosphaera mangiferae* and would have to be inspected prior to exportation from Australia and found free of this disease. The mangoes would have to be imported in commercial consignments only and would have to be treated by irradiation to mitigate the risk of the mango seed weevil and fruit flies. The mangoes would also have to be accompanied by a phytosanitary certificate with an additional declaration that the conditions for importation have been met. This action would allow the importation of mangoes from Australia while continuing to protect against the introduction of plant pests into the United States.

DATES: *Effective Date:* October 21, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. S. Gadh, Senior Risk Manager–Treatments, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2018.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–59, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Australia has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh mangoes from Australia to be imported into the continental United States under a combination of mitigations to reduce the risk of introducing plant pests.

On October 25, 2011, we published in the **Federal Register** (76 FR 65988–65991, Docket No. APHIS–2011–0040) a proposal [1] to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh mangoes from Australia into the continental United States. We prepared a pest risk assessment (PRA), titled ''Importation of Fresh Fruit of Mango, *Mangifera indica* L., from Australia into the Continental United States: A Pathway-initiated Risk Analysis'' (June 2011). The PRA evaluated the risks associated with the importation of mangoes into the continental United States from Australia. Based on the information contained in the PRA, APHIS determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these quarantine pests. To recommend specific measures to mitigate those risks, we prepared a risk management document (RMD).

Based on the RMD, we proposed requirements for mangoes to be produced in accordance with a systems approach employing a combination of mitigation measures for the fungus *Cytosphaera mangiferae* and to be inspected prior to exportation from Australia and found free of this disease. We proposed to require the mangoes to be imported in commercial consignments only and to be treated by irradiation to mitigate the risk of the mango seed weevil and fruit flies. We also proposed to require the mangoes to be accompanied by a phytosanitary certificate with an additional declaration that the conditions for importation have been met.

We solicited comments concerning the PRA and RMD for 60 days ending December 27, 2011. We received three comments by that date. They were from a State department of agriculture, a group of State departments of agriculture, and the Government of Australia. The comments are discussed below.

In order to mitigate the risks posed by *C. mangiferae,* which we consider to be of medium risk of introduction and dissemination within the continental United States, we proposed three options: (1) The mangoes be treated with a broad-spectrum post-harvest fungicidal dip, (2) the mangoes originate from an orchard that was inspected prior to the beginning of harvest during the growing season and the orchard was found free of *C. mangiferae,* or (3) the mangoes originate from an orchard that was treated with a broad-spectrum fungicide during the growing season and was inspected prior to harvest and the fruit was found free of *C. mangiferae.*

One commenter was in support of these three mitigation options for *C. mangiferae;* however, the commenter stated that requiring packinghouse inspection to determine freedom from symptoms is unnecessary if one of the fungicide treatment options is administered.

We consider the inspection at the packinghouse to be necessary to ensure that the fungicide treatments were effective. Conducting a final phytosanitary inspection to ensure freedom from pests is standard procedure for all import commodities. Overlapping mitigation measures such as treatment and inspection are characteristic of system approaches. APHIS requires the same mitigation options for *C. mangiferae* for mangoes imported from India and Pakistan, a policy that has resulted in no interceptions of the disease at U.S. ports of entry.

One commenter suggested that the systems approach include both the use of a pre-harvest broad spectrum fungicide and the use of a broad-spectrum post-harvest fungicidal dip to prevent the introduction of *C.*

[1] To view the proposed rule, PRA, RMD, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0040.*

mangiferae, in addition to packinghouse and port of entry inspections.

We have determined that requiring both treatments is unnecessary since *C. mangiferae* has not been found during inspections of mangoes imported from India and Pakistan under the same mitigation measures, which indicates that those measures are effective.

One commenter requested the removal of all mitigation measures for *Fusarium* spp. associated with mango malformation disease (MMD). The commenter stated that MMD is not considered a quarantine pest by the United States with respect to mangoes imported from other countries. In addition, the commenter presented evidence that MMD has been successfully eradicated from Australia and that the sole pathogen associated with MMD in Australia is *Fusarium mangiferae,* which is already present in the United States. Furthermore, the commenter stated that studies indicate that commercially produced mangoes are not a pathway for the introduction of MMD.

We consider MMD to be a quarantine pest for all countries; when susceptible commodities have been authorized for importation without MMD mitigations, we have administratively added requirements for MMD. However, based on the information provided by the commenter, we have determined that *F. mangiferae* is the sole causal agent associated with MMD in Australia and that it is absent from Australia due to Australia's successful official control efforts for MMD. In response, we have revised the PRA and the RMD to reflect Australia's freedom from causal agents associated with MMD, and this final rule omits the proposed mitigations for *Fusarium* spp. complex associated with MMD.

The PRA identified *Lasiodiplodia pseudotheobromae, Neoscytalidium novaehollandiae, Neofusicoccum mangiferae,* and *Pseudofusicoccum adansoniae* as pathogens associated with mangoes. One commenter stated that there is no evidence that these pathogens are associated with mango fruit in natural environments; all work cited in the PRA as establishing these pathogens as pests of mangoes was under artificial conditions. The commenter noted the conditions proposed for Australian mangoes require that mangoes be imported to the continental United States in commercial consignments only, which would remove these pathogens from the pathway. In addition, the commenter stated that the PRA only mentions *N. mangiferae* in the introduction and presents no evidence that this species is associated with mango fruit. Therefore, the commenter requested that requirements related to these pathogens be removed from the rule.

The PRA addressed *N. mangiferae* and included additional references that document the stem end rot (SER) of mango fruit caused by *N. mangiferae* known to occur in Australia. The pathogen also has been documented under many synonyms (*Dothiorella mangiferae, Nattrassia mangiferae,* and *Fusicoccum mangiferum*), which may account for the confusion about this species associated with mango fruit rot in Australia.

The remaining species, *L. pseudotheobromae, N. novaehollandiae,* and *P. adansoniae,* are recently reported and appear to have limited distribution in Australia. These pathogens were isolated from stems and twigs of mango trees showing dieback and canker symptoms in orchards, were shown to infect fruit in artificial inoculations, and were not isolated from naturally infected mango fruit. However, a range of other related fungal species cause SER of mango, including *Neofusicoccum parvum, Neofusicoccum mangiferae, Botryosphaeria dothidea,* and *Lasiodiplodia theobromae.* These pathogens may become established in mango plants without expressing symptoms, but stress or ripening trigger disease development, expressed as SER, cankers, and mango decline. These newly reported pathogens of mango likely occupy a similar niche associated with mango in which the pathogens switch from quiescent to pathogenic in the plant tissue, and may affect a range of plant parts of their hosts. For this reason, these pathogens are considered to follow the pathway with mango fruit in trade. All of these details and corresponding references are included in the PRA. Therefore, we stand by our determination that the conditions we proposed to mitigate those pathogens are necessary.

One commenter requested that we add two mitigation options for the mango seed weevil (*Sternochetus mangiferae*) for mangoes from specific areas of Australia. The commenter suggests that we accept area freedom from the mango seed weevil for Western Australia and pest free places of production for the mango seed weevil for the Katherine production area of the Northern Territory.

With regard to the proposal for area freedom from the mango seed weevil from Western Australia, we appreciate the information that those areas are historically free of the mango seed weevil and that the States maintain controls on the import of mango fruit from areas of Australia that are not free of this pest. We will request additional information from the commenter, specifically references from scientific literature, information from Australian scientists, and/or State records, to establish that the States are historically free of the mango seed weevil. This additional information would allow us to determine whether to recognize Western Australia as free of the mango seed weevil through the process for recognition of pest-free areas described in § 319.56–5.

With regard to the commenter's request to allow mangoes from pest-free places of production from the Katherine production area of the Northern Territory to be imported into the continental United States, we will evaluate Australia's program for establishing pest-free places of production. If we determine that the program is effective, we will publish our evaluation in the **Federal Register** and request public comment.

One commenter presented evidence that visual inspection to detect scales on the smooth surface of mangoes is sufficient in detecting *Ceroplastes rubens.*

The PRA published with the proposal gave *C. rubens* a High risk rating, which means that mitigation measures beyond visual inspection are strongly recommended. However, we have recently changed the rating criteria in our PRA guidelines for Climate-Host Interaction. Specifically, we no longer count *C. rubens'* survival in USDA Plant Hardiness Zone 11 towards the Climate-Host Interaction risk element rating because that zone comprises approximately 0.1 percent of the United States. Making this change in the PRA for Australian mangoes lowered the overall risk rating for *C. rubens* by one point, from High (27 points) to Medium (26 points). A Medium risk rating indicates that specific phytosanitary measures may be necessary for the pest unless inspection can serve as an effective mitigation.

The soft scale *C. rubens* is a surface pest which is readily visible upon inspection, so no measures other than culling practices in Australia and inspection are necessary to remove this pest from the pathway. Therefore, we will not require irradiation treatment to mitigate *C. rubens.*

We proposed to require mangoes to be treated by irradiation for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, in accordance with 7 CFR part 305. The prescribed 400-gray approved dose for this class of pests was necessary to neutralize *C. rubens.* Because we no

longer consider irradiation for *C. rubens* to be necessary, however, we are instead requiring mangoes to be treated by irradiation for the mango seed weevil and for fruit flies of the family Tephritidae in accordance with 7 CFR part 305. The approved dose for the mango seed weevil, as indicated in the Plant Protection and Quarantine (PPQ) Treatment Manual,[2] is 300 gray. However, if we recognize pest-free areas or pest-free places of production for the mango seed weevil, we would reduce the required dose to 150 gray, which is the approved dose indicated in the PPQ Treatment Manual for fruit flies of the family Tephritidae.

One commenter supported the irradiation of mangoes for inspected pests; however, the commenter requested that irradiation of these commodities be conducted prior to importation into the United States to eliminate the possible risk of pest escape prior to treatment.

As described in the proposed rule, we are requiring mangoes from Australia to be treated with irradiation to neutralize all plant pests of the class Insecta, except pupae and adults of the order Lepidoptera. In part 305, § 305.9 specifies the requirements for the irradiation of imported commodities. These requirements provide effective safeguards for articles irradiated either prior to or after arrival in the United States.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Note: In our October 2011 proposed rule, we proposed to add the conditions governing the importation of mangoes from Australia as § 319.56–54. In this final rule, those conditions are added as § 319.56–60.

Executive Order 12866 and Regulatory Flexibility Act

This final 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 the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The United States produces approximately 3,000 metric tons per year, about one-hundredth of 1 percent of world production. U.S. mango production is concentrated in the States of Florida, Hawaii, California, and Texas and produced primarily for local markets. While U.S. mango production is limited, the United States is the world's leading importer of fresh mangoes, receiving 33 percent of imports worldwide.

Mango imports from Australia are expected to total about 1,200 metric tons per year. This represents approximately 0.5 percent of total U.S. mango imports. The imports from Australia will likely help meet growing demand in all States. While most if not all U.S. mango farms and mango importers are small entities, it is unlikely that additional mango imports of 1,200 metric tons will cause a noteworthy decrease in mango prices or otherwise substantially affect the market, especially given the expanding U.S. demand for this fruit. Moreover, the Australian mango season, mid-September to mid-April, is the opposite of that in the United States; the fresh mangoes imported from Australia will not compete directly with those produced domestically.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows mangoes to be imported into the continental United States from Australia. State and local laws and regulations regarding mangoes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits 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.

Paperwork Reduction Act

The information collection burden associated with the proposed rule was preapproved by the Office of Management and Budget (OMB) under OMB control number 0579–0391. As required by the Paperwork Reduction Act of 1995, APHIS will submit (or has submitted) an Information Collection Request for extension of this approval. Any new information collection requirements are not effective until approval by OMB.

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) 851–2908.

List of Subjects in 7 CFR Part 319

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

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

PART 319—FOREIGN QUARANTINE NOTICES

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

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

■ 2. A new § 319.56–60 is added to read as follows:

§ 319.56–60 Mangoes from Australia.

Mangoes (*Mangifera indica*) may be imported into the continental United States from Australia only under the following conditions:

(a) The mangoes may be imported in commercial consignments only.

(b) The mangoes must be treated by irradiation for the mango seed weevil (*Sternochetus mangiferae*) and fruit flies of the family Tephritidae in accordance with part 305 of this chapter.

(c) The risks presented by *Cytosphaera mangiferae* must be addressed in one of the following ways:

(1) The mangoes are treated with a broad-spectrum post-harvest fungicidal dip;

(2) The mangoes originate from an orchard that was inspected prior to the beginning of harvest during the growing season and the orchard was found free of *C. mangiferae;* or

(3) The mangoes originate from an orchard that was treated with a broad-spectrum fungicide during the growing season and was inspected prior to

[2] The PPQ Treatment Manual may be viewed at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.*

harvest and the mangoes are found free of *C. mangiferae.*

(d) Prior to export from Australia, the mangoes must be inspected by the national plant protection organization (NPPO) of Australia and found free of *Cytosphaera mangiferae, Lasiodiplodia pseudotheobromae, Neofusicoccum mangiferae, Neoscytalidium novaehollandiae, Pseudofusicoccum adansoniae, Phomopsis mangiferae,* and *Xanthomomas campestris* pv. *mangiferaeindicae.*

(e)(1) Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Australia with additional declarations that:

(i) The mangoes were subjected to one of the pre- or post-harvest mitigation options described in paragraph (c) of this section, and

(ii) The mangoes were inspected prior to export from Australia and found free of *C. mangiferae, L. pseudotheobromae, N. mangiferae, N. novaehollandiae, P. adansoniae, P. mangiferae,* and *X. campestris* pv. *mangiferaeindicae.*

(2) If the fruit is treated with irradiation outside the United States, each consignment of fruit must be inspected jointly by APHIS and the NPPO of Australia, and be accompanied by the phytosanitary certificate certifying that the fruit was treated with irradiation in accordance with part 305 of this chapter.

(Approved by the Office of Management and Budget under control number 0579–0391)

Done in Washington, DC, this 13th day of September 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–22786 Filed 9–18–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2013–0650; Notice No. 23–13–01–SC]

Special Conditions: Eclipse, EA500, Certification of Autothrottle Functions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Eclipse EA500 airplane. This airplane as modified by Innovative Solutions and Support (IS&S) will have a novel or unusual design feature(s) associated with the autothrottle system (ATS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 11, 2013.

FOR FURTHER INFORMATION CONTACT: Mark S. Orr, FAA, Programs and Procedures Branch, ACE–114, Small Airplane Directorate, Aircraft Certification Service, 901 Locust; Kansas City, Missouri 64106; telephone (816) 329–4151; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2011, Innovative Solutions and Support (IS&S) applied for a supplemental type certificate for an update to the aircraft software to activate the previously installed autothrottle provisions in the EA500. The EA500 is a pressurized monoplane with provisions for up to six persons (standard seating five people) and may be operated as a single or two pilot aircraft (reference Minimum Flight Crew Limitation, AFM 06–122204 Rev 4 section 2–4). The airplane is operated under 14 CFR part 91 with standard systems installed and under 14 CFR part 135 with additional equipment installed. The Eclipse Model EA500 was certificated under part 23 by the FAA on September 30, 2006 (Type Certificate A00002AC) with autothrottle provisions (i.e., motors and controls) installed yet rendered inactive through ''collaring'' of the ATS motor Electronic Circuit Breaker (ECB). Under the original Type Certification program, no certification credit was received nor the regulatory basis established for the autothrottle functions of the Eclipse Model EA500 aircraft.

Current part 23 airworthiness regulations do not contain appropriate safety standards for autothrottle system (ATS) installations, so special conditions are required to establish an acceptable level of safety. Part 25 regulations contain appropriate safety standards for these systems, so the intent for this project is to apply the language in § 25.1329 for the autothrottle, substituting § 23.1309 and § 23.143 in place of the similar part 25 regulations referenced in § 25.1329.

Type Certification Basis

Under the provisions of § 21.101, IS&S must show that the EA500, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in A00002AC or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in A00002AC are as follows:

14 CFR Part 23 through Amendment 55 (except 14 CFR 23.1303 Amendment 23–62), Part 34 through Amendment 34–3, and Part 36 through Amendment 36–26.

Special Conditions:

23–128–SC for Engine Fire Extinguishing System

23–121–SC for Electronic Engine Control System

23–112A–SC for High Intensity Radiated Fields (HIRF) Protection

Equivalent Levels of Safety Findings:

ACE–02–19: 14 CFR 23.777(d) and 23.781 Fuel Cutoff Control

ACE–05–32: 14 CFR 23.1545(a) and 23.1581(d) for Indicated Airspeeds

ACE–05–34: 14 CFR 23.181(b), Dynamic Stability

ACE–05–35: 14 CFR 23.1353(h), Storage Battery Design and Installation

ACE–05–36: 14 CFR 23.1323(c), Airspeed Indicating System

ACE–06–01: 14 CFR 23.1545(b)(4), Airspeed Indicator

ACE–06–05: 14 CFR part 23, Appendix H, § H23.5, Installation of an Automatic Power Reserve System

ACE–07–04: 14 CFR 23.1545(b)(4), Airspeed Indicator

ACE–08–12, 14 CFR 23.201(b)(2) Wings Level Stall, and 23.203(a), Turning Flight and Accelerated Turning Stalls for flight into known icing (FIKI)

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the EA500 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the EA500 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.