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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2011-0028]

RIN 0579-AD61

Importation of Fresh Bananas from the Philippines 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 bananas from the Philippines into the continental United States. As a condition of entry, the bananas will have to be produced in accordance with a systems approach that will include requirements for importation of commercial consignments, monitoring of fruit flies to establish low-prevalence places of production, harvesting only of hard green bananas, and inspection for quarantine pests by the national plant protection organization of the Philippines. The bananas will also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were grown, packed, and inspected and found to be free of quarantine pests in accordance with the proposed requirements. This action will allow the importation of bananas from the Philippines while continuing to protect against the introduction of plant pests into the United States.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Jones, Regulatory Coordination Specialist, PPQ, RPM, RCC, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 851-2289.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in "Subpart–Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-57, 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 within the United States.

On April 16, 2012, we published in the Federal Register (77 FR 22510-22514, Docket No. APHIS-2011-0028) a proposal<sup>1</sup> to amend the regulations to allow the importation of bananas from the Philippines into the continental United States. We proposed to allow the importation of bananas from the Philippines into the continental United States only if they were produced in accordance with a systems approach. The proposed systems approach included requirements for:

- Registration, monitoring, and oversight of places of production;
- Trapping for the fruit flies Bactrocera musae, B. occipitalis, and B. philippinensis to establish low-prevalence places of production;
- Covering bananas with pesticide bags during the growing season;
- Harvesting only of hard green bananas;
- Requirements for culling, safeguarding, and identifying the fruit; and
- Inspection by the NPPO of the Philippines for quarantine pests.

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<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0028>.

We also proposed to require bananas from the Philippines to be accompanied by a phytosanitary certificate with an additional declaration stating that the bananas were grown, packed, and inspected in accordance with the proposed requirements.

On May 30, 2012, we published in the Federal Register (77 FR 31829-31830, Docket No. APHIS-2011-0028) a notice<sup>2</sup> of availability of an environmental assessment (EA) entitled “Importation of Bananas (Musa spp.) from the Philippines into the Continental United States” (April 2012). The EA assesses the potential environmental impacts associated with allowing the importation of fresh bananas from the Philippines into the continental United States.

We solicited comments concerning our proposal for 60 days ending June 15, 2012, and concerning the EA for 30 days ending June 29, 2012. We received four comments by the close of those comment periods. They were from a representative of a State government, an organization of State plant regulatory officials, and private citizens. One of the commenters supported the proposed rule. Another commenter opposed the importation of bananas from the Philippines, but did not present any specific concerns or identify any particular reasons for opposing the importation. The issues raised by the other commenters are discussed below.

One commenter requested that the bananas from the Philippines be inspected carefully at the port of entry for all 16 pests of concern identified in the pest risk assessment (PRA) that accompanied the proposed rule.

Under paragraph (b) of § 319.56-3, all consignments of fruits and vegetables are subject to inspection at the port of entry. Inspectors will monitor for all pests listed in the PRA. In addition, bananas will be inspected at the port of entry to verify that they are at the proper stage of ripeness.

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<sup>2</sup> The notice and EA are also available at the Web address in footnote 1.

One commenter opposed the importation of bananas from the Philippines, stating that it would increase the risk of accidental or incidental introduction of the fruit flies B. musae, B. occipitalis, and B. philippinensis into the United States.

APHIS considers the multiple layers of safeguards sufficient to mitigate the risk posed by the fruit flies B. musae, B. occipitalis, and B. philippinensis. These mitigations are based on those currently used in Central and South America for export of bananas to the United States. APHIS interception records going back to 1983 indicate that there have been no interceptions of fruit flies in commercially produced bananas from Central and South America. Two additional mitigations (fruit fly trapping and population control) were added specifically for the Philippine bananas program to address fruit fly risk. We have determined, for the reasons specified in the risk management document that accompanied the proposed rule, that these measures will effectively mitigate the risk of accidental or incidental introduction of the fruit flies or any pest of concern identified in the PRA.

We are making two editorial changes to § 319.56-58 in order to increase the clarity of the requirements. Proposed paragraph (d) stated that during the growing period, if a pesticide bag falls off or is torn, the fruit in that bag may not be exported to the United States. We are adding the words “that had been” after “fruit” to clarify that the fruit that is no longer in the bag cannot be exported from the Philippines to the United States.

Proposed paragraph (e)(2) stated that harvested bananas must be placed in field cartons or containers that are marked to show the official registration number of the production site. However, paragraph (a)(2) refers to “places of production” rather than production sites. Thus, we are amending paragraph (e)(2) to indicate that cartons or containers should be marked with the official registration number of the place of production.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, with the two editorial changes discussed above.

Note: In our April 2012 proposed rule, we proposed to add the conditions governing the importation of bananas from the Philippines as § 319.56-57. In this final rule, those conditions are added as § 319.56-58.

#### Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register.

Immediate implementation of this rule is 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 and others in the marketing chain to benefit from the availability of bananas from an additional source. 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 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 analysis examines impacts for U.S. small entities if fresh bananas are imported from the Philippines into the continental United States. Commercial production of bananas in the United States takes place in Hawaii, where most if not all of the banana farms are small entities. These producers will be little affected by the final rule given the large quantity of bananas

already imported by the United States and the relatively small quantity expected to be imported from the Philippines. The United States is clearly a minor producer but a major importer of bananas. Compared to the volume of current imports, the quantity of bananas expected to be imported from the Philippines is negligible. In addition, bananas from the Philippines will not be allowed entry into Hawaii.

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 bananas to be imported into the United States from the Philippines. State and local laws and regulations regarding bananas 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.

#### National Environmental Policy Act

An EA and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of bananas from the Philippines into the continental United States, under the conditions specified in this rule, 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 EA and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (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' NEPA Implementing Procedures (7 CFR part 372).

The EA and finding of no significant impact may be viewed on the Regulations.gov Web site.<sup>3</sup> Copies of the environmental assessment and finding of no significant impact are also 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 copies are requested to call ahead on (202) 799-7039 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579-0394, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the Federal Register providing notice of what action we plan to take.

#### 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

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<sup>3</sup> The EA and finding of no significant impact are available at the Web address in footnote 1.

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 § 319.56-58 is added to read as follows:

§ 319.56-58 Bananas from the Philippines.

Bananas (Musa spp., which include M. acuminata cultivars and M. acuminata x M. balbisiana hybrids) may be imported into the continental United States from the Philippines only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: Bactrocera musae (Tryon), Bactrocera occipitalis (Bezzi), and Bactrocera philippinensis (Drew and Hancock), fruit flies; Ceroplastes rubens (Maskell), the red wax scale; Coccus viridis (Green), the green scale; Sybra alternans (Wiedemann), a longhorned beetle; Dymicoccus neobrevipes (Beardsley), the gray pineapple mealybug; Geococcus coffeae (Green), the coffee root mealybug; Maconellicoccus hirsutus (Green), the hibiscus mealybug; Planococcus lilacinus (Cockerell), the coffee mealybug; Planococcus minor (Maskell), the pacific mealybug; Pseudococcus cryptus (Hempel), the cryptic

mealybug; Rastrococcus invadens (Williams), the mango mealybug; and Rastrococcus spinosus (Robinson), the Philippine mango mealybug.

(a) General requirements. (1) The national plant protection organization (NPPO) of the Philippines must provide an operational workplan to APHIS that details the activities that the NPPO of the Philippines will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section.

(2) Bananas must be grown at places of production that are registered with the NPPO of the Philippines and that meet the requirements of this section. Registration must be renewed annually.

(3) Bananas must be packed for export to the United States in packinghouses that meet the requirements of this section.

(4) Bananas from the Philippines may be imported in commercial consignments only.

(b) Monitoring and oversight. (1) The NPPO of the Philippines must visit and inspect registered places of production monthly, starting at least 3 months before harvest begins and continuing through the end of the shipping season, to verify that the growers are complying with the requirements of this section and follow pest control guidelines, when necessary, to reduce quarantine pest populations. When trapping is required under paragraph (c) of this section, the NPPO of the Philippines must also verify that the growers are complying with the requirements in that paragraph and must certify that each place of production has an effective fruit fly trapping program. Any personnel conducting trapping under paragraphs (c) of this section must be trained and supervised by the NPPO of the Philippines. APHIS may monitor the places of production as necessary to ensure compliance.

(2) If the NPPO of the Philippines finds that a place of production or packinghouse is not complying with the requirements of this section, no fruit from the place of production or

packinghouse will be eligible for export to the United States until APHIS and the NPPO of the Philippines conduct an investigation and appropriate remedial actions have been implemented.

(3) The NPPO of the Philippines must retain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(c) Fruit fly trapping to establish places of production with low pest prevalence.

Beginning at least 3 months before harvest begins and continuing through the end of the harvest, trapping must be conducted in registered places of production with at least 1 trap per 0.2 square kilometers to demonstrate that the places of production have a low prevalence of Bactrocera spp. fruit flies. APHIS-approved traps baited with APHIS-approved plugs must be used and serviced at least once every 2 weeks. During the trapping, when traps are serviced, if fruit flies are trapped at a particular place of production at cumulative levels above 2 flies per trap per day, pesticide bait treatments must be applied in the affected place of production in order for the place of production to remain eligible to export bananas to the United States. The NPPO of the Philippines must keep records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS inspectors upon request. If no Bactrocera spp. larvae have been found in the inspections required in paragraph (h) of this section by February 9, 2015, the activities described in this paragraph are no longer required.

(d) Bagging requirements. Plastic bags impregnated with pesticides must cover the bananas. During the growing period, if a pesticide bag falls off or is torn, the fruit that had been in that bag may not be exported to the United States.

(e) Harvesting requirements. (1) Bananas must be harvested at a hard green stage and inspected at the port of entry to determine that:

(i) Bananas shipped by air are still green upon arrival in the United States;

(ii) Bananas shipped by sea are either green upon arrival in the United States or yellow but firm.

(2) Harvested bananas must be placed in field cartons or containers that are marked to show the official registration number of the place of production. The identification of the place of production must be maintained from the time when the fruit leaves the place of production until the fruit is released for entry into the United States.

(f) Post-harvest processing. After harvest, all damaged or diseased fruit must be culled at the packinghouse. Fruit must be washed with a high pressure water spray, and washed with soap and water.

(g) Packinghouse requirements. (1) Packinghouses must prevent the entry of pests with a double-door entry system designed to exclude quarantine pests of concern.

(2) Bananas for export must be packed into new, clean boxes, crates or other packing materials. Bananas intended for export to the United States must be labeled with the name and location for the packinghouse, and segregated from bananas intended for other markets.

(3) The shipping documents accompanying the consignment of bananas from the Philippines that are exported to the United States must include the official registration number of the place of production at which the bananas were grown and must identify the packinghouse in which the fruit was processed and packed. This identification must be maintained until the fruit is released for entry into the United States.

(4) The packinghouse operations for export of bananas must be monitored by the NPPO of the Philippines.

(h) NPPO of the Philippines inspection. (1) Following any post-harvest processing, inspectors from the NPPO of the Philippines must certify that bananas were harvested at the hard green stage.

(2) Inspectors from the NPPO of the Philippines must inspect a biometric sample of the fruit from each place of production at a rate to be determined by APHIS. The inspectors must visually inspect for quarantine pests listed in the introductory text of this section and must cut fruit to inspect for quarantine pests that are internal feeders. If Bactrocera spp. fruit flies are found upon inspection, the export program will be suspended until an investigation has been conducted by APHIS and the NPPO of the Philippines and appropriate mitigations have been implemented. If other quarantine pests are detected in this inspection, the consignment will be destroyed and the registered place of production will be rejected from the export program.

(i) Phytosanitary certificate. Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of the Philippines that contains an additional declaration stating that the bananas in the consignment were grown, packed, and inspected in accordance with the systems approach in 7 CFR 319.56-58.

(Approved by the Office of Management and Budget under control number 0579-0394)

Done in Washington, DC, this 4<sup>th</sup> day of February 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013-02775 Filed 02/06/2013 at 8:45 am; Publication Date: 02/07/2013]