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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2011-0060]

RIN 0579-AD59

Importation of Fresh Citrus Fruit From Uruguay, Including Citrus Hybrids and Fortunella spp.,  
Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of several varieties of fresh citrus fruit, as well as Citrus hybrids and the Citrus-related genus Fortunella, from Uruguay into the continental United States. As a condition of entry, the fruit will have to be produced in accordance with a systems approach that includes requirements for importation in commercial consignments, pest monitoring and pest control practices, grove sanitation and packinghouse procedures designed to exclude the quarantine pests, and treatment. The fruit also will have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of Uruguay with an additional declaration confirming that the fruit is free from all pests of quarantine concern and has been produced in accordance with the systems approach. These actions will allow for the importation of fresh citrus fruit, including Citrus hybrids and the Citrus-related genus Fortunella, from Uruguay while continuing to protect the United States against the introduction of plant pests.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Meredith C. Jones, Senior Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851-2289.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart–Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-58, 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.

On February 6, 2013, we published in the Federal Register (78 FR 8435-8441, Docket No. APHIS-2011-0060) a proposal<sup>1</sup> to amend the regulations concerning the importation of fruits and vegetables to allow the importation of several species of fresh Citrus and Fortunella fruit<sup>2</sup> (“citrus fruit”) from Uruguay into the continental United States. We also prepared a pest risk assessment (PRA)<sup>3</sup> that evaluated the risks associated with the importation of these species of fresh citrus fruit from Uruguay into the continental United States and identified six pests of

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<sup>1</sup>To view the proposed rule, supporting and related documents, including the economic analysis, and comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0060-0001>.

<sup>2</sup>Included are sweet oranges (Citrus sinensis (L.) Osbeck), lemons (C. limon (L.) Burm. f.), four species of mandarins (C. reticulata Blanco, C. clementina Hort. ex Tanaka, C. deliciosa Ten., and C. unshiu Marcow, Citrus hybrids), and two species of the Citrus-related genus Fortunella (F. japonica Thunb. Swingle and F. margarita (Lour.) Swingle).

<sup>3</sup>“Importation of Fresh Citrus Fruit, including Sweet Orange (Citrus sinensis (L.) Osbeck), lemons (C. limon (L.) Burm. f.), four species of mandarins (C. reticulata Blanco, C. clementina Hort. ex Tanaka, C. deliciosa Ten., and C. unshiu Marcow, Citrus hybrids, and two species of the Citrus-related genus Fortunella (F. japonica Thunb. Swingle and F. margarita (Lour.) Swingle), concerning the importation of fresh citrus from Uruguay into the Continental United States” (Dec. 16, 2012). To view this document, see footnote 1.

quarantine significance in Uruguay that could be introduced into the United States through the importation of citrus fruit. These included two fruit flies, Anastrepha fraterculus (South American fruit fly) and Ceratitis capitata (Mediterranean fruit fly, or Medfly); two moths, Cryptoblabes gnidiella (the honeydew moth) and Gymnandrosoma aurantianum (citrus fruit borer); one fungus (Elsinoë australis, causal agent of sweet orange scab, or SOS); and a pathogen (Xanthomonas citri subsp. citri, or Xcc, causal agent of citrus canker).

In order to provide an appropriate level of phytosanitary protection against the pests of quarantine concern associated with the importation of fresh citrus fruit from Uruguay into the continental United States, we proposed requirements in a risk management document (RMD) for fresh citrus fruit from Uruguay to be produced in accordance with a systems approach that included the following requirements: Fruit must be imported only in commercial consignments; the Uruguayan national plant protection organization (NPPO) must provide a workplan to the Animal and Plant Health Inspection Service (APHIS) that details the activities that the Uruguayan NPPO will, subject to APHIS' approval of the workplan, carry out to meet the proposed requirements; pest monitoring and control practices must be conducted; grove sanitation and packinghouse procedures must be designed to exclude quarantine pests; and the fruit must be treated in accordance with 7 CFR part 305 and the Plant Protection and Quarantine (PPQ) Treatment Manual.<sup>4</sup> We also proposed to require consignments of citrus fruit from Uruguay to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit in the consignment is free of all pests of quarantine concern and has been produced in accordance with the requirements of the systems approach.

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<sup>4</sup> [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf).

We solicited comments on our proposal for 60 days ending April 8, 2013. We received 55 comments by that date. They were from U.S. and Uruguayan fruit growers, packers, shippers, and importers/exporters; scientific, trade, and economic development organizations; two U.S. Senators; a State department of agriculture; an association of State departments of agriculture; a Uruguayan school of agronomy; U.S. port storage, drayage, and general logistics providers; municipal governments, and members of the public. Forty-three commenters supported the action we proposed. The remaining comments are discussed below by topic.

### General Comments

Two commenters asked why APHIS is assuming the risk of introducing plant pests from Uruguay when sufficient fresh citrus fruit is already available in the United States.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), we have the authority to prohibit or restrict the importation of plants and plant products only when necessary to prevent the introduction into or dissemination of plant pests or noxious weeds within the United States. We have determined that fresh citrus fruit from Uruguay may be safely imported into the continental United States under the conditions we are adding to the regulations.

One commenter stated that the rule provided no specific information about how the proposed systems approach would be implemented and therefore opposed importation of fresh citrus fruit from Uruguay until its effectiveness could be validated. The commenter recommended that, in the future, APHIS engage key stakeholders in similar rulemakings much earlier in the process and provide them with more information.

We are making no changes based on the comment. The systems approach requirements we proposed include practices that have effectively mitigated the risk of identical and similar citrus pests in other countries. We provided several occasions for stakeholders to provide input

into this rulemaking, including sharing the draft pest risk assessment and holding teleconference meetings with key industry stakeholders in September 2010 and November 2011.

Several commenters stated that shipments of fresh citrus fruit from Uruguay could pose a pest risk to Hawaii if imported into the continental United States and subsequently shipped from the mainland into Hawaii.

We are making no changes in response to this comment. We proposed that fresh citrus fruit from Uruguay would only be eligible for importation into the continental United States, which excludes Hawaii. Our permitting process will allow us to effectively implement the distribution limitation, as it currently does for many other commodities that are not allowed to be imported into Hawaii.

#### Comments on the PRA

One commenter stated that the PRA prepared for this rule dismisses Guignardia citricarpa, the causal agent of citrus black spot (CBS), as a disease of concern. The commenter also stated that a 2010 risk analysis, in which APHIS assessed citrus fruit as a pathway for the introduction of CBS,<sup>5</sup> provides incomplete knowledge of how the disease develops and spreads. As support, the commenter cited detections of CBS in Florida beyond the original 2010 occurrence and the apparent ineffectiveness of mitigation efforts to prevent the disease's spread. The commenter stated that the latency of lesions on fruit moving from CBS-contaminated areas in Florida to processing facilities could be one reason for its continued spread, and concluded from this that applying the mitigations for fresh citrus fruit from Florida to fresh citrus fruit imported from Uruguay may not be adequate.

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<sup>5</sup> Risk assessment of Citrus spp. fruit as a pathway for the introduction of Guignardia citricarpa Kiely, the organism that causes Citrus Black Spot disease. United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ), Center for Plant Health Science and Technology (CPHST), December 2010.

We noted in the proposed rule that a previous version of the PRA listed CBS as a quarantine pathogen present in Uruguay and likely to follow the pathway, but that we subsequently removed this pathogen from the list because, as we determined in the 2010 peer-reviewed risk analysis, fresh citrus fruit is not epidemiologically significant as a pathway for the introduction of CBS. Since the publication of the 2010 risk analysis, we have found no research that challenges that conclusion.

The risk analysis identified the importation and movement of propagative material and shipments containing leaves and plant debris from infected areas as the most likely means by which CBS is transmitted. However, because APHIS regulations restrict the importation and domestic movement of propagative material and leaves, it is unlikely that CBS would enter the United States via these articles in commercial shipments.

The risk analysis also identified fruit as a possible means by which CBS could be spread, although for successful transmission of CBS from fruit with lesions to susceptible hosts, several events must occur: Infected fruit must arrive in an area with hosts available and conducive for infection and disease development; the host needs to be in a susceptible physiological stage for infection to occur; spores of the causal organism must be produced on the fruit; fruit with lesions containing the causal organism must be released from the lesions in a stage that can cause infection leading to disease; water contaminated with pycnidiospores must be brought into contact with susceptible host tissue in a susceptible stage for infection; and finally, specific weather conditions conducive for infection to occur must coincide with these events and persist for a sufficient period of time. The risk assessment determined the overall likelihood to be low that the pathogen would find a suitable host with susceptible tissue and incite disease even if

infected fruit were to arrive in an area with available hosts and climatic conditions were favorable for disease development.

With regard to the commenter's concern over detections of CBS beyond where it originally occurred in Florida, we have not determined the cause of these occurrences. They could be the result of the fungus spreading via wind or plant debris from the original infection site. They could also have escaped detection while delimiting the first infection, or from new infections arising independently of the first infection. Regardless of the cause of these infections, results from targeted CBS surveys and multi-pest surveys conducted by APHIS and the State of Florida as part of the Citrus Health Response Program indicate that current mitigations have slowed the spread of CBS in the affected areas. We maintain that the evidence and conclusions of the 2010 risk analysis with respect to transmission of CBS via the movement of fruit from infected areas are not invalidated by the occurrence of CBS in Florida, nor does its occurrence there change our understanding or management of CBS development or spread. For these reasons, we believe that it is extremely unlikely that the cause of CBS spread in Florida could be fruit moving from CBS-affected areas in that State to processing facilities.

The same commenter also challenged our finding in the 2010 risk analysis that conditions required for conidia to survive on post-harvest fruit and introduce CBS into domestic growing areas do not normally exist in California. The commenter stated that several coastal production areas in California maintain viable climates for the introduction and spread of CBS and noted that the North Carolina State University-APHIS Plant Pest Forecast System (NAPPFAS) indicates that, over a 10-year period, enough days had appropriate climatic conditions to allow CBS to be introduced. The commenter specifically questioned the statement in the CBS risk analysis that low rainfall in the western United States is not conducive to CBS development,

noting that summer thunderstorms in southern California can provide an ideal environment for a short period of time for CBS to occur and become established there. The commenter added that if CBS were to be introduced into citrus production areas in the United States, it could not be effectively managed because the Environmental Protection Agency prohibits use of the necessary fungicides.

Based on our analysis of data from NAPPFASST, we concluded in the CBS risk analysis that, unlike Florida, California has a climate generally unsuitable for CBS disease development. Moreover, ideal climatic conditions are only one of many factors necessary for CBS to be transmitted via the movement or importation of commercial shipments of fresh fruit. As we have noted above, several specific biological, environmental, and physiological conditions have to occur in conjunction with infected fruit coming into direct proximity to a susceptible host, a confluence of events unlikely to occur simultaneously, particularly in California.

Finally, the same commenter stated that the role of conidia in survival and spread of CBS is poorly understood and that if asexual propagules such as conidia are being produced at high numbers, different environmental conditions may play a critical role in the survival of the organism. The commenter stated that these propagules should not be ignored as part of the disease cycle and that the CBS risk analysis did not consider the unknown.

We disagree with the commenter. The disease lifecycle of CBS is well studied, and the literature informs our understanding of both the sexual and asexual forms of this fungus and the roles they play in disease spread, as described in the 2010 risk analysis. The number of conidia or asexual spores produced is mediated by the environment and host tissue, and the amount of inoculum associated with the fruit does not change our understanding of how the inoculum spreads from fruit imported for consumption to the natural environment and establishes itself.

As we have noted above, disease occurrence requires several biological, environmental, and physiological conditions to occur at the precise time that an infected citrus fruit is placed in direct proximity to a susceptible host.

We conclude that the combination of conditions necessary for introduction and spread of G. citricarpa via the regulated pathway of commercially produced fruit imported from Uruguay is unlikely to occur. For this reason, we conclude that citrus fruit is not epidemiologically significant as a pathway for the introduction of G. citricarpa.

#### Grove Monitoring and Pest Control

One commenter stated that the proposed systems approach requirement to monitor traps at 2-week intervals for A. fraterculus and C. capitata is inadequate. The commenter added that this interval is inconsistent with other systems approach methodologies required for these or similar pests.

We disagree with the commenter that the trap monitoring intervals indicated in the proposed systems approach are inadequate or inconsistent with those used in other systems approaches to mitigate A. fraterculus, C. capitata, and similar pests. In accordance with North American Plant Protection Organization (NAPPO) standards,<sup>6</sup> trap servicing and monitoring intervals are either 1 week or 2 weeks depending on the bait and type of trap used. Traps baited for C. capitata are normally monitored at 2-week intervals. Accordingly, we noted in the proposed rule that APHIS-approved fruit fly traps baited with APHIS-approved plugs would have to be used and serviced at least once every 2 weeks. If circumstances changed and more

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<sup>6</sup> NAPPO Regional Standards for Phytosanitary Measures, RSPM 17: Guidelines for the Establishment, Maintenance and Verification of Fruit Fly Pest Free Areas in North America (October 18, 2010): <http://www.nappo.org/en/data/files/download/PDF/RSPM17-Rev05-10-10-e.pdf>.

frequent monitoring were necessary, revised monitoring arrangements could be agreed to between APHIS and the NPPO of Uruguay and added to the bilateral workplan.

Two commenters stated that the use of a minimum of two traps per square mile within citrus production areas in Uruguay is inadequate for detecting localized fruit fly infestations. Another commenter stated that two traps per square kilometer is inadequate and jeopardizes the integrity of the systems approach.

We consider the trap density specified in the proposed systems approach to be adequate for pest detection. In the proposed rule, we stated that the systems approach would actually require at least two traps per square kilometer, not per square mile as stated by two commenters. We note that one square mile is equivalent to approximately 2.5 square kilometers, so five traps per square mile would be roughly equivalent to two traps per square kilometer. This arrangement in the systems approach is consistent with the trap density of five Jackson traps per square mile recommended in the APHIS Mediterranean Fruit Fly Action Plan.<sup>7</sup> Moreover, the International Atomic Energy Agency fruit fly trapping manual,<sup>8</sup> a widely used international reference, specifies two to four traps per square kilometer, and the NAPPO standard on fruit fly trapping indicates that three traps per square mile (equivalent to fewer than two traps per kilometer) is adequate in commercial fruit production areas. If circumstances changed so that adjustments to trap density were necessary, such adjustments could be agreed to between APHIS and the NPPO of Uruguay and added to the bilateral workplan.

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<sup>7</sup> [http://www.aphis.usda.gov/import\\_export/plants/manuals/domestic/downloads/medfly\\_action\\_plan.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/domestic/downloads/medfly_action_plan.pdf).

<sup>8</sup> Trapping Guidelines for Area-Wide Fruit Fly Programmes (IAEA, Vienna, 2003): [http://www-pub.iaea.org/MTCD/publications/PDF/TG-FFP\\_web.pdf](http://www-pub.iaea.org/MTCD/publications/PDF/TG-FFP_web.pdf).

## Orchard Sanitation

A commenter stated that the proposed requirements for disposal of plant debris and fallen fruit in Uruguayan groves are not as stringent as our domestic requirements. To support this statement, the commenter referred to requirements in Federal Order No. DA-2012-30 that include specific requirements for disposal of bagged plant debris from an area in Texas quarantined for citrus greening.<sup>9</sup>

The requirements in the Federal Order cited by the commenter pertain to a domestic quarantine intended to control an outbreak of citrus greening. Disposal of plant debris in an area where citrus greening is present can spread the disease if not done properly. The systems approach we proposed for importation of fresh citrus fruit from groves in Uruguay does not require identical sanitation measures for plant debris as those indicated in the Federal Order because citrus greening does not occur in Uruguay.

The systems approach for citrus fruit from Uruguay does require that places of production in Uruguay be kept free of fallen fruit and plant debris, in order to reduce potential pest pressure in the orchards.

## Packinghouse Procedures

A commenter stated that the fruit handling requirements regarding crop diseases in the proposed systems approach are not as stringent as our domestic requirements. As an example, the commenter stated that safeguarding during transportation to the packinghouse in Uruguay only requires the fruit to be packed in insect-proof cartons or containers, or covered with insect proof mesh or a plastic tarpaulin, while some States have developed detailed standards for cargo areas within transport vehicles.

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<sup>9</sup> Issued August 9, 2012: [http://nationalplantboard.org/docs/spro/spro\\_citrus\\_greening\\_2012\\_08\\_09.pdf](http://nationalplantboard.org/docs/spro/spro_citrus_greening_2012_08_09.pdf)

We are making no changes based on this comment. While the safeguarding requirements noted in the comment are actually intended to protect citrus fruit against fruit flies and not crop diseases, the safeguarding requirements proposed for citrus fruit grown in Uruguay are equivalent to those in the regulations for interstate movement of citrus from quarantined areas in the United States. They also include requirements that the fruit will have to be safeguarded by an insect-proof mesh, screen, or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing. Our domestic citrus disease quarantine programs do not require any post-harvest safeguarding enroute to the packinghouse.

One commenter stated that, with regard to the proposed packinghouse requirement for washing, brushing, and surface disinfection of the citrus fruit in accordance with 7 CFR part 305, we provide no indication of whether these mitigations will rid fruit of citrus greening.

We noted above that citrus greening does not occur in Uruguay; additionally, commercially shipped fruit free of leaves and other plant parts is not a pathway for the introduction of citrus greening.

#### Port-of-Entry Inspection

Three commenters stated that APHIS port-of-entry inspections are insufficient to detect infestations of fruit flies in fruits and vegetables from countries with inadequate detection protocols and recommended that citrus fruit from Uruguay not be granted entry until the proposed systems approach can be validated or adjusted to address the accidental or incidental introduction of fruit flies.

APHIS maintains adequate port-of-entry inspection capabilities as one of several mitigation measures to reduce the risk of introducing fruit flies and other plant pests into the United States. The mitigation measures in the systems approach for A. fraterculus and

C. capitata, which include grove trapping, safeguarding of fruit while in transit and during packing, and treatment in accordance with 7 CFR part 305, have been shown to effectively reduce the risks presented by these pests on citrus fruit and other commodities from other countries.

With respect to detection protocols, beyond the measures required in the systems approach, the NPPO of Uruguay continually surveys for quarantine pests of concern for importing countries through pre-harvest inspection of export fruit. These pre-harvest surveys are conducted on 100 percent of plants in all the places of production registered for export. We therefore consider the NPPO of Uruguay to have sufficient detection protocols, and we are confident that it will perform them in accordance with the systems approach produced by Uruguay and agreed to by APHIS.

#### Economic Considerations

One commenter asked how much it will cost to implement the systems approach measures and who will pay for them.

The costs for implementing the systems approach will be borne by citrus producers in Uruguay and the NPPO of Uruguay. Section 319.56–6 of the regulations sets forth provisions for establishing trust fund agreements with NPPOs to cover costs incurred by APHIS when APHIS personnel must be physically present in an exporting country or region to facilitate exports. Costs will depend on the services required. The systems approach may require APHIS personnel to monitor treatments if they are conducted in Uruguay. Port-of-entry inspections conducted by APHIS or U.S. Customs and Border Protection staff are typically supported by user fees.

Another commenter stated that APHIS has argued in previous import proposals that domestic production would be unaffected because the majority of domestic tonnage is harvested in the fall, winter, and spring months and would be unaffected by so-called “counter-seasonal” imports. The commenter stated that this argument is invalid due to the year-round marketing of citrus harvested domestically.

We made no mention of counter-seasonal effects in the initial economic analysis for this rule, or in the final economic analysis.

Uruguay did not provide APHIS with projections of the quantities of fresh citrus varieties it expects to export to the United States under this rule. Our basis for estimating quantities that may be exported is Uruguay’s recent history of exports to other countries, assuming that some percentage of those exports will be diverted to the newly opened U.S. market. In the longer term, there may also be an overall increase in Uruguay’s fresh citrus exports to all countries, including the United States, depending on costs and profitability.

Uruguay’s citrus exports are equivalent to a small fraction of U.S. citrus production. Imports from Uruguay will compete against U.S. imports from other countries as well as domestic production. Most likely, there will be some relatively small net increase in the U.S. supply of fresh citrus varieties, as well as some displacement of the quantity of citrus imported from other countries and produced domestically. The economic analysis does consider possible changes in net supply; the potential impact of the rule on U.S. producers is described in greater detail in the economic analysis supporting the rule.

The same commenter disagreed with our statement in the economic analysis that “any product displacement that may occur because of the proposed rule would be largely borne by other foreign suppliers of fresh citrus.” The commenter stated that because foreign suppliers will

not abandon their market share when Uruguayan citrus fruit is imported into the United States, citrus supply will exceed demand, prices will fall, and domestic producers will suffer greater economic losses due to higher production cost requirements.

We acknowledge that the statement in the economic analysis for the proposed rule may have overstated possible reductions in market share (product displacement) for current foreign suppliers of fresh citrus to the United States. U.S. producers may also lose some portion of their market shares. However, product displacement that may occur as a result of fresh citrus imports from Uruguay can be expected to be borne in proportion to domestic and foreign suppliers' existing market shares because all suppliers, foreign and domestic, are price-takers. In addition, non-price factors may ultimately determine a consumer's preference for foreign or domestically grown fresh citrus. We do not have information to determine whether foreign or domestic fruit is more likely to be displaced by imports from Uruguay, so we take the position that product displacement would be proportional to market share.

Product displacement, if any, will vary by citrus variety and will be moderated by expanding U.S. demand. During the same period, per capita consumption of fresh orange, mandarin, and lemon varieties increased by an average of 0.21 percent, 3.42 percent, and 5.25 percent, respectively. The entry of fresh citrus from a new source may displace citrus production in the United States, as well as fresh citrus imports from foreign sources like Mexico, Chile, Spain, and others. However, a sizeable displacement of fresh citrus from any source with an existing market share is unlikely given the increase in domestic consumption.

The same commenter disagreed with our determination that adoption of the rule would not result in any significant economic effect on a substantial number of small entities.

We find it unlikely that the rule will have a significant economic impact on U.S. fresh citrus markets, given Uruguay's recent history of citrus production and exports. While Uruguay ranks in the top 20 to 25 of the world's exporters of fresh citrus, Uruguay accounted for 1 percent or less of fresh citrus exports by variety. Total citrus production in Uruguay in 2011 was 270,367 metric tons, which is less than 3 percent of U.S. production. Uruguay's total fresh orange and lemon exports in 2011 were 66,007 and 13,885 metric tons, respectively, which is less than 3.2 percent of U.S. production and 1 percent of total world exports of those same fresh varieties. Uruguay exported 37,542 metric tons of fresh mandarin varieties in 2011, which is approximately 8 percent of U.S. production and less than 1 percent of total world exports of fresh tangerine varieties. Only a fraction of Uruguay's fresh citrus exports are likely to be diverted from established markets to the United States, particularly in the near term, given the advantages of maintaining and expanding its existing market linkages. Given these considerations, we do not anticipate a significant economic impact associated with fresh citrus from Uruguay.

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.

Note: In our February 2013 proposed rule, we proposed to add the conditions governing the importation of citrus from Uruguay as § 319.56-58. In this final rule, those conditions are added as § 319.56-59.

#### 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.

APHIS responded to a request from the NPPO of Uruguay for USDA authorization to allow the importation of specified fresh citrus varieties into the continental United States. U.S. entities that may be impacted by imports of fresh citrus from Uruguay are producers and packers of fresh oranges, lemons, tangerines, and mandarin varieties. Fresh oranges (including Navel, Valencia, Temple and other varieties) are produced in California (87 percent), Florida (11 percent), and Texas (2 percent). Lemons are produced in California (97 percent) and Arizona (3 percent). Tangerines and mandarins (including tangelos and tangors) are produced in California (76 percent), Florida (23 percent), and Arizona (less than 1 percent). Louisiana commercially produces a variety of Satsuma that is mostly sold locally.

Impacts of this rule on U.S. entities will be dependent upon the quantity of fresh citrus imported from Uruguay and the substitutability of these fresh citrus varieties for U.S.-grown citrus varieties. Historically, Uruguay has produced less than 3 percent of total U.S. citrus production, including processed citrus. Uruguay's total fresh orange and lemon exports in 2011 were 66,007 and 13,885 metric tons, respectively, which is less than 3.2 percent of U.S. production of those same fresh varieties. Uruguay exported 37,542 metric tons of fresh mandarin varieties in 2011, which is approximately 8 percent of U.S. production of fresh tangerine varieties. We anticipate that exports directed to the U.S. domestic market would be a small fraction of Uruguay's total exports of these fresh citrus fruits based on availability and currently established export markets in Europe and Russia. Given the small quantity expected to be imported from Uruguay, it is very unlikely that there will be a significant impact on the U.S.

markets for fresh oranges, lemons, tangerines and mandarin varieties. Given the sizable amounts of fresh lemons and mandarins, for example, imported by the United States and the fact that the time of year that citrus is produced in Uruguay is the same as that for current South American sources, we expect that any product displacement that may occur because of this rule will be largely borne by other foreign suppliers of fresh citrus.

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 fresh citrus fruit to be imported into the continental United States from Uruguay. State and local laws and regulations regarding fresh citrus 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

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 0579-0401, 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 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.

#### Subpart—Citrus Fruit [Amended]

2. In Subpart--Citrus Fruit, in the note below the subpart heading, remove the words "fruit and vegetable quarantine No. 56 (§§ 319.56 to 319.56-8)" and add the words "Subpart--Fruits and Vegetables of this part" in their place.

3. Section 319.28 is amended as follows:

a. By redesignating paragraphs (d) through (j) as paragraphs (e) through (k), respectively, and adding a new paragraph (d).

b. By revising newly redesignated paragraph (g).

The addition and revision read as follows:

§ 319.28 Notice of quarantine.

\* \* \* \* \*

(d) The prohibition does not apply to sweet oranges (Citrus sinensis (L.) Osbeck), lemons (C. limon (L.) Burm. f.), mandarins (C. reticulata Blanco, C. clementina Hort. ex Tanaka, C. deliciosa Ten., and C. unshiu Marcow), Citrus hybrids, Fortunella japonica (Thunb.) Swingle, and F. margarita (Lour.) Swingle, from Uruguay that meet the requirements of 7 CFR 319.56-59.

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(g) Importations allowed under paragraphs (b) through (e) of this section shall be subject to the permit and other requirements under the regulations in Subpart--Fruits and Vegetables of this part.

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4. A new § 319.56-59 is added to read as follows:

§ 319.56-59 Fresh citrus fruit from Uruguay.

Sweet oranges (Citrus sinensis (L.) Osbeck), lemons (C. limon (L.) Burm. f.), mandarins (C. reticulata Blanco, C. clementina Hort. ex Tanaka, C. deliciosa Ten., and C. unshiu Marcow), Citrus hybrids, Fortunella japonica (Thunb.) Swingle, and F. margarita (Lour.) Swingle may be imported into the continental United States from Uruguay only under the conditions described in this section. These species are referred to collectively in this section as “citrus fruit.” These conditions are designed to prevent the introduction of the following quarantine pests:

Anastrepha fraterculus, Ceratitis capitata, Cryptoblabes gnidiella, Elsinoë australis, Gymnandrosoma aurantianum, and Xanthomonas citri subsp. citri.

(a) Commercial consignments. Citrus fruit from Uruguay may be imported in commercial consignments only.

(b) General requirements. (1) The national plant protection organization (NPPO) of Uruguay must provide a bilateral workplan to APHIS that details the activities that the Uruguayan NPPO will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. APHIS will be directly involved with the Uruguayan NPPO in monitoring and auditing implementation of the systems approach.

(2) All places of production and packinghouses that participate in the export program must be registered with the Uruguayan NPPO.

(3) The fruit must be grown at places of production that meet the requirements of paragraphs (d) and (e) of this section.

(4) The fruit must be packed for export to the United States in a packinghouse that meets the requirements of paragraph (f) of this section. The place of production where the fruit was grown must remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process. Boxes containing fruit must be marked with the identity and origin of the fruit. Safeguarding in accordance with paragraph (f)(3) of this section must be maintained at all times during the movement of the fruit to the United States and must be intact upon arrival of the fruit in the United States.

(c) Monitoring and oversight. (1) The Uruguayan NPPO must visit and inspect registered places of production monthly, starting at least 30 days before harvest and continuing until the

end of the shipping season, to verify that the growers are complying with the requirements of paragraphs (d) and (e) of this section.

(2) In addition to conducting fruit inspections at the packinghouses, the Uruguayan NPPO must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of paragraph (f) of this section.

(3) If the Uruguayan NPPO finds that a place of production or packinghouse is not complying with the relevant 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 Uruguayan NPPO conduct an investigation and appropriate remedial actions have been implemented.

(d) Grove monitoring and pest control. Trapping must be conducted in the places of production to demonstrate that the places of production have a low prevalence of A. fraterculus and C. capitata. If the prevalence rises above levels specified in the bilateral workplan, remedial measures must be implemented. The Uruguayan NPPO must keep records of fruit fly detections for each trap and make the records available to APHIS upon request. The records must be maintained for at least 1 year.

(e) Orchard sanitation. Places of production must be maintained free of fallen fruit and plant debris. Fallen fruit may not be included in field containers of fruit brought to the packinghouse to be packed for export.

(f) Packinghouse procedures. (1) The packinghouse must be equipped with double self-closing doors at the entrance to the packinghouse and at the interior entrance to the area where fruit is packed.

(2) Any vents or openings (other than the double self-closing doors) must be covered with 1.6 mm or smaller screening in order to prevent the entry of pests into the packinghouse.

(3) Fruit must be packed within 24 hours of harvest in a pest-exclusionary packinghouse or stored in a degreening chamber in a pest-exclusionary packinghouse. The fruit must be safeguarded by an insect-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Fruit must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States. These safeguards must remain intact until the arrival of the fruit in the continental United States or the consignment will not be allowed to enter the United States.

(4) During the time the packinghouse is in use for exporting citrus fruit to the continental United States, the packinghouse may only accept fruit from registered places of production.

(5) Culling must be performed in the packinghouse to remove any symptomatic or damaged fruit. Fruit must be practically free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit.

(6) Fruit must be washed, brushed, surface disinfected in accordance with part 305 of this chapter, treated with an APHIS-approved fungicide in accordance with labeled instructions, and waxed.

(g) Treatment. (1) Citrus fruit other than lemons may be imported into the continental United States only if it is treated in accordance with part 305 of this chapter for A. fraterculus and C. capitata.

(2)(i) Lemons may be shipped without a treatment if harvested green and if the phytosanitary certificate accompanying the lemons contains an additional declaration stating that the lemons were harvested green between May 15 and August 31.

(ii) If the lemons are harvested between September 1 and May 14, or if the fruit is harvested yellow, the lemons must be treated in accordance with part 305 of this chapter for C. capitata.

(h) Phytosanitary certificate. Each consignment of citrus fruit must be accompanied by a phytosanitary certificate of inspection issued by the Uruguayan NPPO stating that the fruit in the consignment is free of all pests of quarantine concern and has been produced in accordance with the requirements of the systems approach in 7 CFR 319.56-59.

(Approved by the Office of Management and Budget under control number 0579-0401)

Done in Washington, DC, this 28th day of June, 2013 .

Kevin Shea

Administrator, Animal and Plant Health Inspection Service.

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