

kernels in several wheat fields in western Young County, adjacent to Throckmorton County. Initial surveys indicate that Karnal bunt is also present in other fields in the area we are regulating, and that the spread of the disease to the infected fields may have occurred as a result of the movement of contaminated seed into the area or through the movement into the area of cattle that may have grazed in infected fields. Until we are able to determine the extent of this new infection by conducting detection and delimiting surveys, it is essential that we delineate a large enough regulated area to include any fields for which there is a reasonable possibility of infection.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent Karnal bunt from spreading to noninfected areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 533 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

2. In § 301.89–3, paragraph (f), under the heading for “Texas”, add two new entries in alphabetical order to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

Texas

* * * * *

Throckmorton County. The entire county.

Young County. The entire county.

Done in Washington, DC, this 8th day of June, 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–14942 Filed 6–13–01; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 93–131–2]

Importation of Mangoes From the Philippines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables to allow the importation of mangoes from Guimaras Island in the Republic of the Philippines, subject to inspection and the completion of a prescribed vapor heat treatment. We believe that this action is warranted because there appears to be no significant pest risk associated with the importation of mangoes from Guimaras Island in the Philippines under these circumstances. This action will relieve restrictions on the importation of mangoes from the Philippines without presenting a significant risk of introducing plant pests into the United States.

EFFECTIVE DATE: June 14, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

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

On January 22, 2001, we published in the **Federal Register** (66 FR 6488–6491, Docket No. 93–131–1) a proposal to amend the regulations to allow the importation of mangoes from Guimaras Island in the Republic of the Philippines, subject to inspection and the completion of a prescribed vapor heat treatment.

We solicited comments concerning our proposal for 60 days ending March 23, 2001. We received four comments by that date. They were from a State agriculture agency, a foreign government, and a firm representing foreign governmental and nongovernmental organizations.

Two of the commenters suggested several editorial changes to the background section of the proposed rule. Those suggested changes did not, however, relate to the regulatory provisions of § 319.56–2ii or our rational basis for those provisions, so there is no need to make any changes in this final rule as a result of those comments.

With regard to the trust fund agreement provided for by § 319.56–2ii(f), one commenter recommended that the agreement be similar to those that Animal and Plant Health Inspection Service (APHIS) has previously arranged with the Governments of Japan and the Republic of Korea and offered specific examples of the types of expenses that should be covered. While the commenter's suggestions may, in fact, be reflected in the actual trust fund agreement that we arrange with the Republic of the Philippines Department of Agriculture (RPDA), it is not necessary to amend § 319.56–2ii(f) as a result of that comment, as that portion of the final rule simply provides for the use of a trust fund agreement as one element of the mango import program. Specific details such as those suggested by the commenter will be worked out between APHIS and the RPDA before the trust fund agreement is signed.

One commenter opposed the proposed rule based on the risk presented by the fruit fly *Bactrocera philippinensis* and stated that the mangoes should be prohibited from being imported through ports of entry in Florida and should not be sold or distributed in that State. The commenter noted that *B. philippinensis* had been detected in two Florida cities in 1998, which, given that *B. philippinensis* occurs only in the Philippines, suggests that infested fruit had been moved from the Philippines to Florida. The commenter stated that his agency would be willing to reconsider its position on the proposed rule if Philippine efforts to suppress and eventually eradicate *B. philippinensis* prove successful.

In the proposed rule, we noted that several plant pests, including the mango seed weevil (*Sternonchetus mangiferae*) and fruit flies of the genus *Bactrocera*, are known to attack mangoes in the Philippines. While Guimaras Island has been shown to be free of the mango seed weevil, no claims were made as to the freedom of Guimaras Island from fruit flies. Indeed, our concerns about two fruit fly species *B. occipitalis* and *B. philippinensis* led us to propose the vapor heat treatment requirement for the mangoes found in § 319.56–2ii(b) of this final rule. That vapor heat treatment has been shown, through confirmatory tests

conducted by the Department's Agricultural Research Service, to be effective in mitigating the risk presented by *B. occipitalis* and *B. philippinensis*. Given the availability and required application of an effective treatment for the fruit flies of concern and the freedom of Guimaras Island from the mango seed weevil, we do not believe that it is necessary or justifiable to prohibit the movement into Florida of mangoes grown and shipped in accordance with the requirements of this rule.

With regard to the economic analysis contained in the proposed rule, one commenter asked how we could conclude that the importation of mangoes from the Philippines would not further damage the economics of Florida mango production, given that State's overwhelming share of domestic production (97 percent) and the negative effects that weather, disease, and falling prices have had on Florida mango producers.

Our conclusions with regard to the potential effects of mango imports from the Philippines were based on several factors. First, while Florida did indeed account for about 97 percent of domestic production in 1997, domestic production accounted for only about 1.5 percent of the total U.S. mango supply that year; the amount of mangoes imported in 1997 (186,530 metric tons) was nearly 66 times greater than the amount of mangoes produced domestically (2,829 metric tons). Between 1997 and 1999, U.S. mango imports increased by more than 17 percent, and it is reasonable to assume that the growth in U.S. mango imports will continue, with Guimaras Island being but one more foreign source. Moreover, we noted that little of Florida's mango crop now enters the national market to compete with fresh fruit imports, as most of the production is either consumed fresh within Florida or is processed into chutney or other products; these markets are unlikely to be affected by the availability of an additional source of imported fresh mangoes. Based on these considerations, we concluded that the importation of mangoes from Guimaras Island, the amount of which is expected to be very small compared to current import levels, would not significantly affect U.S. mango producers.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the

provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for mangoes from the Philippines is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends the regulations governing the importation of fruits and vegetables by allowing, under certain conditions, the importation of mangoes from the Philippines into the United States.

Analysis

Nearly all of the mangoes consumed in the United States are imported. Mexico is the source of most U.S. mango imports, supplying between 75 percent and 85 percent of all imported mangoes in each of the 5 years between 1995 and 1999. Other major sources are Brazil, Ecuador, and Peru.

The quantity of imported mangoes has grown steadily and rapidly in recent years. Over the 5-year period 1995 through 1999, mango imports increased at an annual rate of about 9 percent (table 1). During this same period, the average value of imported mangoes fell from about \$0.85 per kg to about \$0.65 per kg. These data suggest a high level of market competition among those countries supplying mangoes to the U.S. market.

TABLE 1.—QUANTITY AND VALUE OF U.S. MANGO IMPORTS, 1995–1999

Year	Metric tons	Value (in millions)
1995	141,673	\$121.01
1996	171,349	103.81
1997	186,530	119.07
1998	197,587	132.43
1999	218,941	142.99

Source: USDA, National Agricultural Statistics Service.

U.S. production of mangoes has primarily been in southern Florida, with a smaller quantity grown in Hawaii and a negligible amount produced in California. According to the 1997 Census of Agriculture, there were 218 mango farms in Florida, 171 in Hawaii, and 2 in California. The total domestic harvest that year was about 2,829 metric tons, of which about 97 percent was produced in Florida and about 3 percent produced in Hawaii. There are no U.S. mango exports.

Florida's mango producers suffered a severe setback in 1992, when Hurricane Andrew destroyed many of the trees. According to the Florida Agricultural Statistics Service, bearing acres fell from 2,500 in 1992 to 1,400 in 1993. Bearing acres reported for 1997 also stood at 1,400 acres. Yields have also declined sharply, from 160 bushels per acre in 1992 to 71 bushels per acre in 1997, due in part to bloom and disease problems at fruit set. Consequently, the value of Florida's mango production in 1997, \$1.45 million, was only one-third of the value of production in 1992, \$4.28 million.

The Florida Agricultural Statistics Service has not reported on mango production since 1997, a reflection of the industry's decline. Little of the State's crop now enters the national market to compete with fresh fruit imports. Most of the production is either consumed fresh within Florida or is processed into chutney or other products.

The quantity of mangoes that may be imported into the United States from Guimaras Island as a result of this rule is not known. According to data from the Philippines' Bureau of Agricultural Statistics, about 2,106 metric tons were produced in Guimaras in 1993. Production jumped to 10,740 metric tons in 1994, reached a high of 16,440 metric tons in 1996, declined to 12,736 metric tons in 1997, and stood at 10,041 metric tons in 1998. Data for the years following 1998 were not available, but our experience with mango production on Guimaras leads us to believe that current production levels there are similar those prior to 1998. The proportion of Guimaras' mango production that is represented by export-grade fruit is not available. While specific data for exports from Guimaras are likewise not available, the Philippines already has well-established export markets in at least a dozen countries, with the largest amount of exports going to Hong Kong, Japan, and Singapore. The Philippines can be expected to continue to serve those established export markets as well as its domestic markets. If half of Guimaras'

1997 production (*i.e.*, 6,368 metric tons) was exported to the United States, it would represent an amount roughly double that which was harvested domestically in that year (1997 being the last year for which Florida mango production data were reported). However, given the large quantity of mangoes imported from Mexico and other countries, 6,368 metric tons represent only about 3.3 percent of what the U.S. supply was in 1997, and an even smaller proportion of today's supply; between 1997 and 1999, U.S. mango imports increased by more than 17 percent.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. Whether affected entities may be considered small depends on their annual gross receipts. Annual receipts of \$750,000 or less is the small entity criterion set by the Small Business Administration for establishments primarily engaged in "other noncitrus fruit farming" (NAICS code 111339). As noted previously, Florida accounted for about 97 percent of mango production in 1997, thus mango producers in that State are the entities most likely to be affected by this rule. Most, if not all, mango producers in Florida are small entities. According to information provided by the University of Florida's Institute of Food and Agricultural Sciences (IFAS), about 10 to 15 growers manage the bulk of the producing mango acreage in Florida. According to IFAS, about 25 percent of Florida growers produce mangoes alone, while the remaining 75 percent are diversified operations growing other tropical fruits in addition to mangoes. Florida growers occupy niche markets in the State by providing green fruit for processing into chutney and other products and by providing fresh, untreated, tree-ripened fruit for consumption. The introduction of Philippine mangoes into the larger U.S. market is expected to have little to no impact on Florida producers who occupy those niche markets, as the Philippine producers are not expected to be shipping green fruit for processing and would be unable to provide untreated, tree-ripened fruit to U.S. markets.

Conclusion

U.S. mango imports dwarf domestic production. Mango imports during the late 1990's expanded annually by amounts several times greater than the quantity likely to be imported from Guimaras Island. It is reasonable to assume that the growth in U.S. mango imports will continue, with Guimaras Island but one more foreign source. We

do not expect that the economic effects of this rule on U.S. entities, large or small, will be significant.

The importation of mangoes from Guimaras Island is not expected to significantly affect U.S. mango producers. The amount imported will be very small compared to current import levels. Moreover, much of Florida's harvest (the source of 97 percent of domestic production in 1997) is consumed within that State or is processed into chutney and other products; these markets are unlikely to be affected by the availability of an additional source of imported fresh mangoes.

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 United States from the Philippines. State and local laws and regulations regarding mangoes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh mangoes 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 the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0172.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, 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. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

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

§ 319.56–2ii Administrative instructions: conditions governing the entry of mangoes from the Philippines.

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

(a) *Limitation of origin.* The mangoes must have been grown on the island of Guimaras, which the Administrator has determined meets the criteria set forth in § 319.56–2(e)(4) and § 319.56–2(f) with regard to the mango seed weevil (*Sternonchus mangiferae*).

(b) *Treatment.* The mangoes must be subjected to the following vapor heat treatment for fruit flies of the genus *Bactrocera*. The treatment must be conducted in the Philippines under the supervision of an inspector.

(1) Size the fruit before treatment. Place temperature probes in the center of the large fruits.

(2) Raise the temperature of the fruit by saturated water vapor at 117.5 °F (47.5 °C) until the approximate center of the fruit reaches 114.8 °F (46 °C) within a minimum of 4 hours.

(3) Hold fruit temperature at 114.8 °F (46 °C) for 10 minutes.

(4) During the run-up time, temperature should be recorded from each pulp sensor once every 5 minutes. During the 10 minutes holding time, temperature should be recorded from each pulp sensor every minute. During the last hour of the treatment, which includes the 10-minute holding time, the relative humidity must be maintained at a level of 90 percent or higher. After the fruit are treated, air cooling and/or drench cooling are optional.

(c) *APHIS inspection.* Mangoes from the Philippines are subject to inspection under the direction of an inspector, either in the Philippines or at the port of first arrival in the United States. Mangoes inspected in the Philippines are subject to reinspection at the port of first arrival in the United States as provided in § 319.56–6.

(d) *Labeling.* Each box of mangoes must be clearly labeled in accordance with § 319.56–2(g).

(e) *Phytosanitary certificate.* Each shipment of mangoes must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains additional declarations stating that the mangoes were grown on the island of Guimaras and have been

treated for fruit flies of the genus *Bactrocera* in accordance with paragraph (b) of this section.

(f) *Trust Fund Agreement.* Mangoes that are treated or inspected in the Philippines may be imported into the United States only if the Republic of the Philippines Department of Agriculture (RPDA) has entered into a trust fund agreement with APHIS. That agreement requires the RPDA to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection services in the Philippines during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement requires the RPDA to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the RPDA to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more mangoes will be treated or inspected in the Philippines. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the RPDA or held on account until needed, at the RPDA's option.

(g) *Department not responsible for damage.* The treatment for mangoes prescribed in paragraph (b) of this section is judged from experimental tests to be safe. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment.

Done in Washington, DC, this 8th day of June 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–14937 Filed 6–08–01; 4:39 pm]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 98–091–2]

Noxious Weeds; Permits and Interstate Movement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations to clearly state that a permit is required for the movement of noxious weeds interstate, as well as into or through the United States. Prior to the interim rule, the regulations provided for the issuance of permits for movements of noxious weeds into or through the United States, but did not explicitly address interstate movements. This action is necessary to help prevent the artificial interstate spread of noxious weeds into noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, National Weed Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5708.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on July 29, 1999 (64 FR 41007–41010, Docket No. 98–091–1), we amended the regulations in 7 CFR part 360 (referred to below as the regulations) to clearly state that a permit is required for the movement of noxious weeds interstate, as well as into or through the United States. Prior to the interim rule, the regulations provided for the issuance of permits for movements of noxious weeds into or through the United States, but did not explicitly address interstate movements.

The interim rule was necessary to help prevent the artificial interstate spread of noxious weeds into noninfested areas of the United States. The interim rule aligned our interstate movement regulations with our import requirements and is consistent with our obligations under international trade agreements.

Comments on the interim rule were required to be received on or before September 27, 1999. We received six comments by that date. The comments were from State Governments, plant and seed producers, a trade association, and an environmental advocacy organization. Four of those commenters generally supported the interim rule. One commenter opposed the rule. One commenter submitted data on two Federal noxious weeds. We have carefully considered these comments, which are discussed below by topic.