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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2013-0016]

RIN 0579-AD81

Importation of Fresh Blueberries From Morocco 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 blueberries from Morocco into the continental United States. As a condition of entry, the blueberries must be produced under a systems approach employing a combination of mitigation measures for two quarantine pests, Ceratitis capitata and Monilinia fructigena, and must be inspected prior to exportation from Morocco and found free of these pests. The blueberries may be imported in commercial consignments only and must be treated with one of two approved postharvest treatments to mitigate C. capitata. The blueberries will have to be accompanied by a phytosanitary certificate with an additional declaration stating that the conditions for importation have been met. This action will allow the importation of blueberries from Morocco while continuing to protect against the introduction of plant pests into the United States.

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

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Wayson, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 851-2036.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in "Subpart–Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-68, 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 December 31, 2013, we published in the Federal Register (78 FR 79634-79636, Docket No. APHIS-2013-0016) a proposal<sup>1</sup> to amend the regulations to allow the importation of fresh blueberries from Morocco into the continental United States. We prepared a pest risk assessment (PRA), titled “Importation of Fresh Fruit of Highbush Blueberry (Vaccinium corymbosum Linnaeus) and its hybrid varieties Southern Highbush Blueberry [V. corymbosum x angustifolium (V. x atlanticum) and V. corymbosum x virgatum] into the Continental United States from Morocco” (March 2012). The PRA evaluated the risks associated with the importation of blueberries into the continental United States from Morocco. Based on the information contained in the PRA, we have determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these quarantine pests. To recommend specific measures to mitigate those risks, we prepared a risk management document (RMD).

Based on the RMD, we proposed to require the blueberries to be produced under a systems approach employing a combination of mitigation measures for two quarantine pests,

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<sup>1</sup> To view the proposed rule, PRA, RMD, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0016>.

Ceratitis capitata and Monilinia fructigena, and inspected prior to exportation from Morocco and found free of those pests. We proposed to require the blueberries to be imported in commercial consignments only and to be treated with one of two approved postharvest treatments to mitigate the risk of C. capitata. We also proposed to require the blueberries to be accompanied by a phytosanitary certificate with an additional declaration stating that the conditions for importation have been met.

We solicited comments concerning the proposed rule for 60 days ending March 3, 2014. We received six comments by that date, all from private citizens. The comments are discussed below.

#### General Comments on Proposed Rule

One commenter stated that the Animal and Plant Health Inspection Service (APHIS) should prohibit the importation of blueberries from other countries into the United States. Another commenter agreed, stating that the distance between Morocco and the United States is great, and therefore, blueberries would need to be picked prematurely, which would negatively affect the quality of the fruit.

Such prohibitions would be beyond the scope of APHIS' statutory authority under the Plant Protection Act (7 U.S.C. 7701 et seq., referred to below as the PPA). Under the PPA, APHIS will prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States.

Additionally, as a signatory to the World Trade Organization Agreement on Sanitary and Phytosanitary Measures, the United States has agreed that any prohibitions it places on the importation of fruits and vegetables will be based on scientific evidence, and will not be

maintained without sufficient scientific evidence. The blanket prohibitions requested by the commenters would not be in keeping with this agreement.

A few commenters expressed concern that the importation of blueberries from Morocco poses a high risk of introducing quarantine pests into the United States.

For the reasons explained in the proposed rule, the RMD, and this final rule, we are confident that the systems approach and other requirements of this final rule will adequately mitigate the risks associated with the importation of blueberries from Morocco.

#### Comment Regarding Inspections for *M. fructigena*

We proposed to include in the regulations that blueberries would have to be inspected in the fields for signs of *M. fructigena* infestation 30 days prior to harvest. This inspection will have to be conducted by the national plant protection organization (NPPO) of Morocco. If *M. fructigena* is detected during the inspection, APHIS would prohibit the importation of blueberries from Morocco into the continental United States from that place of production for the remainder of the growing season. We also proposed that the exportation of blueberries from the rejected place of production may resume in the next growing season if APHIS and the NPPO of Morocco agree that appropriate remedial actions have been taken. If *M. fructigena* is not detected during the field inspections, the NPPO of Morocco must certify that the consignment of blueberries has been inspected again prior to exportation and found free of the fungus.

One commenter stated that inspecting a crop 30 days prior to harvest may not ensure that the crop is free from *M. fructigena*.

We note that in addition to field inspections, which have been shown to be effective, the blueberries are inspected for signs of *M. fructigena* prior to exportation from Morocco and are

re-inspected at the port of entry by U.S. officials. These mitigation options have been used successfully to mitigate the risk of M. fructigena on fruit imported from other countries.

#### Comment Regarding Treatments for C. capitata

To mitigate the risks associated with C. capitata on blueberries from Morocco, we proposed that each consignment of blueberries be treated in accordance with 7 CFR part 305 for C. capitata. Within part 305, § 305.2 provides that approved treatment schedules are set out in the Plant Protection and Quarantine (PPQ) Treatment Manual. As the RMD discusses, there are two approved treatments to reduce the risk of C. capitata: Fumigation with methyl bromide (treatment schedule T101-i-1-1) and cold treatment (treatment schedule T107-a).

One commenter stated that the use of methyl bromide to treat the blueberries for C. capitata would not eliminate the pest from the fruit and would contaminate the fruit, making it unsafe for human consumption.

Fumigation with methyl bromide is an established and proven treatment for blueberries and other fruits and vegetables that is routinely employed to successfully mitigate the risk of C. capitata and other pests. Methyl bromide is approved for use on articles for human consumption. The Environmental Protection Agency sets tolerances, or maximum residue limits, for pesticides used on products for human consumption, and the Food and Drug Administration tests imported fruit and vegetables for compliance with those residue limits.

#### Comment Regarding the Economic Impacts on Small Businesses

A commenter recommended changes to the proposal to address the economic impacts on small business entities relative to the importation of blueberries from Morocco. Specifically, he suggested that we restrict the volume of blueberries imported from Morocco each year and

guarantee the sales price of blueberries from Morocco to be no lower than blueberries produced in the United States.

APHIS does not have the authority to set market price on commodities in the United States, nor can we place quotas or other limitations on the volume of fruits and vegetables imported into the United States.

#### Miscellaneous Changes

In the preamble to the proposed rule, we included the requirement that “30 days prior to harvest, blueberries be inspected in the field by the NPPO of Morocco for signs of M. fructigena infestation.” However, we did not include in the proposed regulations that the NPPO of Morocco would be required to conduct this inspection. For this reason, we are amending paragraph (c) of § 319.56-69 to include this information.

In addition, we stated in proposed paragraph (c) that “the exportation of blueberries from the rejected place of production may resume in the next growing season if an investigation is conducted and APHIS and the NPPO of Morocco agree that appropriate remedial actions have been taken.” In reviewing this statement, we realized that, as worded, it is not clear what entity is responsible for conducting the investigation. While such an investigation must be conducted by the NPPO of Morocco, or by APHIS, or in combination, the point we wished to emphasize was that no exports of blueberries can resume from such places of production until APHIS and the NPPO of Morocco agree that appropriate remedial actions have been taken. For this reason, we are amending this statement in paragraph (c) to reflect our intended emphasis.

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

Note: In our December 2013 proposed rule, we proposed to add the conditions governing the importation of blueberries from Morocco as § 319.56-63. In this final rule, those conditions are added as § 319.56-69.

#### 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 the expected economic impact for U.S small entities of a rule that will allow the importation of fresh blueberries from Morocco into the continental United States. Morocco expects to annually export 360,000 pounds of fresh blueberries to the continental United States. This quantity is equivalent to about one-tenth of 1 percent of U.S. domestic supply (utilized production plus imports minus exports) between 2007 and 2012. We expect shipments to arrive in July and August, during the latter part of the U.S. season. Any impact on U.S. producers is expected to be negligible, given the relatively small quantity that Morocco intends to export to the United States.

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 blueberries to be imported into the continental United States from Morocco. State and local laws and regulations regarding blueberries 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 0579-0421, 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.

2. Section 319.56-69 is added to read as follows:

#### § 319.56-69 Fresh blueberries from Morocco.

Fresh fruit of highbush blueberry (Vaccinium corymbosum L.) and its hybrid varieties southern highbush blueberry [V. corymbosum x angustifolium (V. x atlanticum) and V. corymbosum x virgatum] may be imported into the continental United States from Morocco only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: Ceratitis capitata, the Mediterranean fruit fly, and the fungus Monilinia fructigena Honey ex Whetzel.

- (a) The blueberries may be imported in commercial consignments only.
- (b) The blueberries must be grown at places of production that are registered with the national plant protection organization (NPPO) of Morocco.
- (c) During the growing season, blueberries must be inspected in the field by the NPPO of Morocco for signs of M. fructigena infestation 30 days prior to harvest. If the fungal disease is detected, the NPPO of Morocco must notify APHIS. APHIS will prohibit the importation of blueberries from Morocco into the continental United States from the place of production for the

remainder of the growing season. The exportation of blueberries from the rejected place of production may not resume until APHIS and the NPPO of Morocco agree that appropriate remedial actions have been taken.

(d) Each consignment of blueberries must be treated in accordance with 7 CFR part 305 for C. capitata.

(e) Each consignment of blueberries must be accompanied by a phytosanitary certificate issued by the NPPO of Morocco with an additional declaration stating that the conditions of this section have been met, and that the consignment has been inspected prior to export from Morocco and found free of M. fructigena.

(Approved by the Office of Management and Budget under control number 0579-0421)

Done in Washington, DC, this 23<sup>rd</sup> day of July 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014-17843 Filed 07/29/2014 at 8:45 am; Publication Date: 07/30/2014]