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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2015-0098]

RIN 0579-AE27

Importation of Fresh Persimmon with Calyxes From Japan Into the 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 persimmon with calyxes from Japan into the United States. As a condition of entry, the persimmon must be produced in accordance with a systems approach that includes requirements for orchard certification, orchard pest control, post-harvest safeguards, fruit culling, traceback, and sampling. The persimmons will also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were produced under, and meet all the components of, the agreed upon systems approach and were inspected and found to be free of quarantine pests. This action will allow the importation of fresh persimmons with calyxes from Japan while continuing to protect against the introduction of plant pests into the United States.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Senior Regulatory Policy Coordinator, Regulatory Policy and Coordination, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2103.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart–Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-78, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

On August 30, 2016, we published in the *Federal Register* (81 FR 59522-59526, Docket No. APHIS-2015-0098) a proposal<sup>1</sup> to amend the regulations to allow the importation of fresh persimmon with calyxes from Japan into the United States under a systems approach that includes requirements for orchard certification, orchard pest control, post-harvest safeguards, fruit culling, traceback, and sampling.

We solicited comments concerning our proposal for 60 days ending October 31, 2016. We received three comments by that date, from members of the public and the Hawaii Department of Agriculture (HDOA). The comments are discussed below.

One commenter requested that we not allow any biological materials into the United States to eliminate the risks associated with exotic plant pests and diseases. Another commenter asked if the demand for persimmon with calyxes was high enough in the United States to justify

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<sup>1</sup> To view the proposed rule, pest risk analysis (PRA), risk management document (RMD), and the comments we received, go to <https://www.regulations.gov/docket?D=APHIS-2015-0098>.

the risks associated with the importation of the fruit from Japan. The commenter suggested that our resources would be better invested in the domestic production of fresh persimmon fruit.

Under the Plant Protection Act (PPA), APHIS' primary charge with regard to international import trade is to identify and manage the phytosanitary risks associated with importing commodities. When we determine that the risk associated with the importation of a commodity can be successfully mitigated, it is our responsibility to make provisions to import that commodity. For the reasons explained in the RMD and the proposed rule, we have determined that the phytosanitary measures required by this rule are sufficient to mitigate the risks associated with the importation of persimmons from Japan.

The HDOA requested that fresh persimmon with calyxes from Japan be fumigated with an appropriate and effective chemical prior to importation to mitigate the risks associated with several pests like *Pseudococcus cryptus* and *Scirtothrips dorsalis*, which are two pests associated with Japanese persimmon that are found in certain regions of Hawaii. Alternatively, the HDOA requested that the proposal only apply to the continental United States, keeping in place the prohibition on the importation of persimmon with calyxes from Japan into Hawaii.

The PRA rated *P. cryptus* and *S. dorsalis* as having 'High' risk for all of the United States (including Hawaii). The risk mitigation measures considered this and concluded that the systems approach was adequate to address the risk associated with the importation of persimmon with calyxes from Japan and, therefore, fumigation is not a necessary mitigation option. As discussed in the RMD, the pest control used for persimmons in Japan will follow the guidelines jointly agreed to by APHIS and the national plant protection organization (NPPO) of Japan and will include inspections and oversight. These guidelines are mandatory for persimmon producers in Japan who wish to export their persimmons to the United States. As such, we have

determined that the systems approach will be effective at mitigating the risk of these quarantine pests following the pathway and being introduced into Hawaii or any other State and that it is not necessary to limit consignments to the continental United States.

The HDOA also noted that persimmons in Hawaii are commercially produced and cultivated as a specialty crop, with the fruit retailing locally for higher than the projected price of persimmons from Japan, which could negatively impact Hawaii's persimmon industry.

The U.S. Department of Agriculture's weekly records on advertised fruit and vegetable retail prices confirm that retail prices of fresh persimmon sold in Hawaii sharply increase every January, generally from below \$2 per pound in December to over \$5 per pound in January. However, given Japan's premium export prices and limited export volumes, impacts of the rule on retail prices of fresh persimmon in Hawaii are expected to be minor.

The HDOA expressed concern that proposed § 319.56-76(c)(2) does not explain how persimmons produced in accordance with the regulations would be segregated from persimmons that are not produced in accordance with those requirements. Additionally, the HDOA expressed concern that the sanitation practices of packinghouses that process different lots of persimmons are omitted from the requirements.

The NPPO of Japan and APHIS will develop an operational workplan that details the activities that the packinghouses will carry out to meet the requirements of the systems approach. The operational workplan will include detailed segregation and sanitation protocols to ensure that all consignments intended for importation into the United States are free from quarantine pests and disease.

Therefore, for the reasons discussed in the proposed rule, we are adopting the proposed rule as a final rule without change.

NOTE: In the proposed rule, the system approach for persimmons with calyxes from Japan was designated as § 319.56-76; however, that section has since been utilized. Therefore, the systems approach will be added as § 319.56-79.

#### Executive Orders 12866 and 13771 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. Further, because this rule is not significant, it does not trigger the requirements of Executive Order 13771.

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.

Most U.S. persimmon production takes place in California, where 2013 production totaled about 35,700 metric tons (MT) valued at about \$40 million, triple the 2011 level of production. U.S. persimmon imports in 2014 totaled 1,757 MT valued at about \$3 million, \$2 million of which were imported from Israel and \$0.4 million from Spain. The United States is a net exporter of fresh persimmon, with the value of exports totaling about \$6 million in 2014.

Japan's persimmon acreage and production have been gradually declining over the last decade. A very small percentage of Japan's persimmon (about 0.2 percent of production) was exported in 2014, totaling about 578 MT and valued at \$2.4 million, primarily to Southeast Asia. The average export price of fresh persimmon from Japan was \$4.13 per kilogram (KG) in 2014. This price is considerably higher than the average price paid by the United States for fresh

persimmon imports, about \$1.70 per KG in 2014, and the average farm-gate price for persimmon produced in California, about \$1.11 per KG in 2013. The wide price differential between persimmon exported from Japan and persimmon imported or produced by the United States suggests that the competitiveness of persimmon from Japan in the U.S. market will be limited.

Japan's Ministry of Agriculture, Forestry and Fisheries expects 30 to 50 MT of fresh persimmons to be exported to the United States in the first year, and the same or additional amounts in following years. This level of imports, valued at about \$124,000 to \$207,000 based on the average export price of \$4.13 per KG in 2014, would have little economic impact on U.S. entities, large or small, all the more so given their likely high price compared to the average price of persimmons imported from elsewhere.

The Small Business Administration's (SBA) small-entity standard for entities involved in fruit farming is \$750,000 or less in annual receipts (NAICS 111339). It is probable that most or all U.S. persimmon producers are small businesses by the SBA standard. We expect any impact of the rule for these entities will be minimal, given Japan's expected small share of the U.S. persimmon market.

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 persimmon with calyxes to be imported into the United States from Japan. State and local laws and regulations regarding persimmon with calyxes 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 new requirements included in this final rule, which were filed under 0579-0455, 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 Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

#### 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 319.56-79 is added to read as follows:

§ 319.56-79 Persimmons with calyxes from Japan.

Fresh persimmons (*Diospyros kaki* Thunb.) may be imported into the United States only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Adisciso kaki* Yamamoto, a fungus; *Colletotrichum horii* B. Weir & P.R. Johnst, a fungus; *Conogethes puntiferalis* (Guenée), a yellow peach moth; *Crisicoccus matsumotoi* (Siraiwa), a mealybug; *Cryptosporiopsis kaki* (Hara) Weinlm, a fungus; *Homonopsis illotana* (Kennel), a moth; *Lobesia aeolopa* (Meyrick), a moth; fungi *Mycosphaerella nawae* Hiura & Ikata, *Pestalotia diospyri* Syd. and P. Syd., *Pestalotiopsis acaciae* (Thumen) Yokoyama & Kaneko, *Pestalotiopsis crassiuscula* Steyaert, *Phoma kakivora* Hara, and *Phoma loti* Cooke; *Ponticulothrips diospyrosi* (Haga & Okajima), a thrip; *Pseudococcus cryptus* (Hempel), a mealybug; *Scirtothrips dorsalis* (Hood), a thrip; *Stathmopoda masinissa* (Meyrick), a moth; *Tenuipalpus zhizhilashviliae* (Reck), a mite; and *Thrips coloratus* (Schmutz), a thrip.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of Japan must provide an operational workplan to APHIS that details the activities that the NPPO of Japan will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The operational workplan must include and describe the quarantine pest survey intervals and other specific requirements as set forth in this section.

(2) *Commercial consignments.* Persimmons from Japan may be imported in commercial consignments only.

(b) *Places of production requirements.* (1) All places of production that participate in the export program must be approved by and registered with the Japan NPPO.

(2) The NPPO of Japan must visit and inspect the place of production monthly beginning at blossom drop and continuing until the end of the shipping season for quarantine pests.

Appropriate pest controls must be applied in accordance with the operational workplan. If the NPPO of Japan finds that a place of production is not complying with the requirements of this section, no fruit from the place of production will be eligible for export to the United States until APHIS and the NPPO of Japan conduct an investigation and appropriate remedial actions have been implemented.

(3) Harvested fruit must be transported to the packinghouse in containers marked to identify the place of production from which the consignment of fruit originated.

(c) *Packinghouse requirements.* (1) All packinghouses that participate in the export program must be approved by and registered with the Japanese NPPO.

(2) During the time the packinghouse is in use for exporting persimmons to the United States, the packinghouse may only accept persimmons from registered approved production sites and the fruit must be segregated from fruit intended for other markets.

(3) All damaged or diseased fruit must be culled at the packinghouse.

(4) Boxes or other containers in which the fruit is shipped must be marked to identify the place of production where the fruit originated and the packinghouse where it was packed.

(5) The NPPO of Japan must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of the systems approach. If the NPPO of Japan finds that a packinghouse is not complying with the requirements of this section, no fruit

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

(d) *Sampling*. Inspectors from the NPPO of Japan must inspect a biometric sample of the fruit from each consignment at a rate to be determined by APHIS. The inspectors must visually inspect for quarantine pests listed in the operational workplan required by paragraph (a) of this section and must cut fruit to inspect for quarantine pests that are internal feeders. If quarantine pests are detected in this inspection, the consignment will be prohibited from export to the United States.

(e) *Phytosanitary certificate*. Each consignment of persimmons must be accompanied by a phytosanitary certificate of inspection issued by the Japan NPPO with an additional declaration stating that the fruit in the consignment were grown, packed, and inspected and found to be free of pests in accordance with the requirements of 7 CFR 319.56-79.

(Approved by the Office of Management and Budget under control number 0579-0455)

Done in Washington, DC, this 6<sup>th</sup> day of September 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

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