

those programs with which they wish to share information.

(j) *Agreements with programs/ individuals receiving children's free and reduced price meal or free milk eligibility information.*

(1) An agreement with programs or individuals receiving free and reduced price meal or free milk eligibility information is recommended for programs other than Medicaid or SCHIP. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (j)(2) of this section.

(2) The State agency or school food authorities, as appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free and reduced price meal or free milk eligibility information. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or child care institution, as appropriate.

(k) *Penalties for unauthorized disclosure or misuse of information.* In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

Dated: March 1, 2007.

**Nancy Montanez Johner,**

*Under Secretary, Food, Nutrition and Consumer Services.*

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**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 305 and 319

[Docket No. APHIS-2006-0121]

RIN 0579-AC19

#### Importation of Mangoes From India

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations to allow the importation into the continental United States of mangoes from India under certain conditions. As a condition of entry, the mangoes must undergo irradiation treatment and be accompanied by a phytosanitary certificate with additional declarations providing specific information regarding the treatment and inspection of the mangoes and the orchards in which they were grown. In addition, the mangoes will be subject to inspection at the port of first arrival. This action allows for the importation of mangoes from India into the continental United States while continuing to provide protection against the introduction of quarantine pests.

**EFFECTIVE DATE:** March 12, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-8758.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in "Subpart-Fruits and Vegetables" (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 November 17, 2006, we published in the **Federal Register** (71 FR 66881-66888, Docket No. APHIS-2006-0121) a proposal<sup>1</sup> to allow the importation into the continental United States of mangoes from India under certain conditions. As a condition of entry, we

<sup>1</sup>To view the proposed rule and the comments we received, go to <http://www.regulations.gov>, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS-2006-0121, then click "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

proposed that the mangoes would have to be treated with a minimum absorbed dose of 400 gray of irradiation and be accompanied by a phytosanitary certificate certifying that the fruit received the required irradiation treatment. In addition, because the required irradiation treatment would not mitigate the risks posed by the fungi *Cytosphaera mangiferae* and *Macrophoma mangiferae* or the bacterium *Xanthomonas campestris* pv. *mangiferaeindicae*, which we consider to be of medium risk of introduction and dissemination within the continental United States, we proposed additional safeguarding measures. For the two fungi; we proposed three options: (1) The mangoes be treated with a broad-spectrum post-harvest fungicidal dip, (2) the orchard of origin be inspected at a time prior to the beginning of harvest as determined by the mutual agreement between the Animal and Plant Health Inspection Service (APHIS) and the national plant protection organization (NPPO) of India and be found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae*, or (3) the orchard of origin be treated with a broad-spectrum fungicidal application during the growing season, be inspected at a time prior to the beginning of harvest as determined by the mutual agreement between APHIS and the NPPO of India, and the fruit found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae*. For the bacterium *X. campestris* pv. *mangiferaeindicae*, we proposed that the shipment be inspected during preclearance activities and found free of *X. campestris* pv. *mangiferaeindicae*. The required phytosanitary certificate would have to confirm that one of the three measures described above for the fungi and the inspection for the bacterium had been carried out.

We solicited comments concerning our proposal for 60 days, ending January 16, 2007. We received three comments by that date. The first comment was from a private citizen who requested that American businesses be allowed to import fruit from wherever they like without being subject to regulations. Such an approach would present an unacceptable level of risk. As The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) states, the unregulated movement of plant pests, noxious weeds, plants, certain biological control organisms, plant products, and articles capable of harboring plant pests or noxious weeds could present an unacceptable risk of introducing or spreading plant pests or noxious weeds, which is contrary to

APHIS' mission to protect American agriculture. Therefore, the PPA authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States or the dissemination of a plant pest or noxious weed within the United States. The Secretary of Agriculture has delegated this authority to APHIS.

The second comment was from an industry group that offered a correction to the statement in the proposed rule that India contains only one irradiation facility. The commenter stated that there are multiple food irradiation facilities in India, although the commenter did not know of the APHIS certification status of these additional facilities. To our knowledge, India is currently making the necessary adjustments to only one facility to meet the requirements outlined in 7 CFR part 305. Additional irradiation facilities can be evaluated for APHIS certification, if requested by the Government of India.

The third comment was from a representative of the NPPO of India. The commenter asked that APHIS work with the NPPO of India to reduce the cost of the trust fund required by the regulations to pay for the cost of preclearance activities. APHIS acknowledges, and has considered, India's concerns about the cost of the preclearance program and we will work with the NPPO to explore ways to minimize costs.

The commenter also asked that APHIS recognize a secondary government agency, The Agricultural and Processed Food Products Export Development Authority, working on behalf of the NPPO of India to implement the requirement for the registration of packinghouses and orchards within India. This request is consistent with the terms of the operational workplan, which allows the NPPO of an importing country or its designee to conduct inspections, registration, etc.

The commenter also requested that APHIS forward guidelines for the labeling of mango shipments from other countries to the NPPO of India in order to develop its own guidelines. Due to the irradiation requirement for mangoes from India, labeling requirements for shipments of Indian mangoes will be different than mangoes imported from other countries. The use of irradiation on Indian mangoes also means that, in

addition to APHIS labeling requirements, Indian mangoes must also meet Food and Drug Administration labeling requirements. Requirements for the labeling of shipments of mangoes from India will be provided in the operational workplan.

The commenter also suggested limiting the additional declarations on the phytosanitary certificate to a statement regarding the broad spectrum fungicidal dip and pest freedom of shipments. The commenter stated that the additional declarations in the proposed rule were needless due to preclearance activities already requiring pre-export inspection by APHIS. Additional declarations are common on phytosanitary certificates for fruit and vegetable imports and serve to alert APHIS inspectors at the port of entry to specific pests of concern or specific operational procedures that were required to be met before import. While we do not agree with the statement that the additional declarations are needless, we agree that the text of the requirement could be simplified. Therefore, in this final rule, paragraph (e) of § 319.56–2tt requires, with respect to the additional declaration, that the NPPO confirm that (1) The mangoes were subjected to one of the pre- or post-harvest mitigation options described in § 319.56–2tt(b) and (2) the mangoes were inspected during preclearance activities and found free of *Cytosphaera mangiferae*, *Macrophoma mangiferae*, and *Xanthomonas campestris* pv. *mangiferaeindicae*.

The commenter indicated that producers in India may wish to export mango varieties other than, or in addition to, the three varieties mentioned in the proposed rule. We mentioned specific varieties in the proposed rule's economic analysis, but the regulatory text of the proposed rule and this final rule contains no limitations on the varieties of mangoes that will be eligible for importation into the continental United States from India.

The economic analysis in the proposed rule stated that the mango harvest season in India usually begins in April or May and lasts about 2 months. The commenter stated that the harvest season stretches from March to July. The economic analysis in this final rule has been updated to reflect the timeframe provided by the commenter. That change does not affect the conclusions of our analysis.

Finally, the commenter stated that the wrapping of pallet-loads of cartons with polyethylene prior to leaving the treatment facility will not be practical for shipments to the United States because the final palletization of air

shipments would be conducted at the airport. As an alternative, the commenter suggested the use of individual, pest-proof boxes with less than 1.6 mm netting to protect against pests entering the boxes through ventilation holes. The regulations in § 305.31(g)(3)(i)(A) provide for the use of the individual pest-proof boxes suggested by the commenter as a means of protecting treated fruit from reinfestation. However, the wrapping or strapping of pallet-loads of cartons referred to by the commenter is required under regulations in § 305.31(g)(3)(ii) in order to preserve the identity of treated lots, which is something that the commenter's suggestion does not address. We are willing to work with the Indian NPPO to explore alternative ways to preserve the identity of treated lots in accordance with the applicable regulations.

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.

#### 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 harvest season for mangoes from India begins in March. 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 the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the fruits and vegetables regulations to allow the importation into the continental United States of mangoes from India under certain conditions. As a condition of entry, the mangoes must undergo irradiation treatment and be accompanied by a phytosanitary certificate with additional declarations providing specific information regarding

the treatment and inspection of the mangoes and the orchards in which they were grown. In addition, the mangoes will be subject to inspection at the port of first arrival. This action allows for the importation of mangoes from India into the continental United States while continuing to provide protection against the introduction of quarantine pests.

Production of mangoes in the United States is limited to three States: Florida, California, and Hawaii. Due to climatic conditions and expanding urbanization in areas of production, mango-producing acreage is small and production minimal. We rely heavily on imports of fresh mangoes in order to meet consumer demand. The majority of mangoes produced in Florida, California, and Hawaii are destined for local markets, with very limited larger-scale commercial production. The Small Business Administration's (SBA) size standard for mango farming is \$750,000 or less in annual receipts.<sup>2</sup> According to the 2002 Census of Agriculture, there were a total of 623 farms (400 in Florida, 11 in California, and 212 in Hawaii) engaged in mango production. Census data did not include annual sale valuation statistics for mango-producing farms. The exact number of mango farms that would be considered small by SBA standards is unknown. However, based on the small bearing acreage, production principally for local markets, and our dependence on imports to meet domestic demand for mangoes, we would expect the majority of these operations to be classified as small. Below we examine recent production in the three mango-producing States, followed by a discussion of foreign supply.

#### Florida

Over 80 percent of mango acreage in Florida is located in Miami-Dade County, and the remaining acreage is located in surrounding areas. Mango cultivars commonly grown in Florida, which also make up the majority of varieties currently exported to the United States, are 'Tommy Atkins,' 'Keitt,' 'Haden,' and 'Kent.' The 2002 Census of Agriculture states that Florida had 400 mango-producing farms with 1,373 acres.<sup>3</sup> By 2003, the most recent year for which statistics are available,

<sup>2</sup> Table of Size Standards based on NAICS 2002 [Other Noncitrus Fruit Farming: NAICS code 111339]. Washington, DC: U.S. Small Business Administration, effective July 31, 2006.

<sup>3</sup> USDA-NASS. 2002 Census of Agriculture, Table 31. Fruits and Nuts: 2002 and 1997. Washington, DC: National Agricultural Statistics Service, 2002.

the number of acres had dropped to 1,300, a 24 percent decline in 3 years. Recent estimates indicate that the acreage has decreased still further, to a modest 1,000 acres in 2005.<sup>4</sup> Only two new acres of mangoes have been planted in Florida since 2000. In a 1997 production report, the last year these statistics were gathered, a mango crop of 100,000 bushels (5.5 million pounds) was harvested, with a price of \$14.50 per bushel, yielding a total value of \$1.45 million.<sup>5</sup> Due to declining acreage, and consequently reduced harvest yield, production and value statistics are no longer maintained. The majority of mangoes produced in Florida are destined for local farmers' and specialty markets, or sold as green fruit for processing. We are unaware of any larger-scale commercial shipments of fresh mangoes by Florida producers.

#### California

According to the 2002 Census of Agriculture, there were 11 mango-producing farms in California, with an unknown amount of acreage.<sup>6</sup> Until recently, mangoes produced in California were thought to be sold only in local markets. However, recent news reports indicate that there are two commercial mango operations in the Coachella Valley of California that sell their fruit through the Corona College Heights Orange & Lemon Association in Corona, CA.<sup>7</sup> According to the article, the two operations have a combined total of 210 bearing acres, yielding about 275,000 cartons of mangoes (approximately 3.8 million pounds), with a little less than half being certified organic.<sup>8</sup> In addition, one of the growers expects to have an additional 48 acres bearing fruit in 2007. Commercial mango production in California is a relatively new venture, and is expected

<sup>4</sup> Richard J. Campbell, Ph.D. Senior Curator of Tropical Fruit, "International Mango Festival 2005 Curator's Choice Cultivars." Coral Gables, FL: Fairchild Tropical Botanic Garden, page updated May 31, 2005. (<http://www.fairchildgarden.org/horticulture/mangocurators.html>.)

<sup>5</sup> USDA-NASS-FL. Tropical Fruit Acres and Trees. Orlando, FL: Florida Agricultural Statistics Service, December 11, 2002, and May 12, 2003.

<sup>6</sup> The production acreage was withheld to avoid disclosing confidential business information for individual farms.

<sup>7</sup> "Organic Mangos Now Coming Out of California" by Tim Linden. Web site: <http://theproducenews.com/storydetail.cfm?ID=6216>, August 18, 2006.

<sup>8</sup> **Note:** According to a source describing the harvesting and packing of Florida mangoes, a carton can hold 8 to 20 mangoes depending on the size of the fruit, and have a capacity of 14 lbs (6.35 kg) of fruit ([http://www.hort.purdue.edu/newcrop/morton/mango\\_ars.html](http://www.hort.purdue.edu/newcrop/morton/mango_ars.html)).

to grow only gradually. As the article points out, the availability of suitable land for mangoes is limited due to the fruits' susceptibility to frost. For those areas that are not prone to frost, producers are reluctant to switch to mango production from profitable crops such as grapes and citrus because of the heavy initial investments and the long period between first investment and return. The time period between first planting and first production is 5 years for mango trees, so it is not surprising that producers are reluctant to enter into this industry.

#### Hawaii

In 2002, the Census of Agriculture recorded 212 mango-producing farms in Hawaii, but withheld production acreage to avoid disclosing information for individual operations. In 2004, the Hawaiian field office of the National Agricultural Statistics Service (NASS) reported there were 140 farms, with a total of 275 acres of crops, of which 200 acres yielded utilized production of 380,000 pounds, with a sales value of \$350,000. Preliminary reports for 2005 indicate a decrease of 28.5 percent in the number of mango farms to 100, but an increase in total crop acreage to 295. The amount of harvested acres in 2005 was 190, which represents a slight decrease. However, there was a 39.4 percent increase in utilized production, which, combined with a higher farm price per pound, yielded a 40.2 percent increase in total sales value to \$586,000.<sup>9</sup> The amount of commercial production of mangoes in Hawaii is unknown at this time; however, we believe the majority of production is funneled into local markets.

As is evident, U.S. mango production is limited, with most of the fruit sold locally. In fact, official supply and utilization data maintained by USDA's Economic Research Service (ERS) have not recorded domestic production figures since 1998. U.S. consumers are almost entirely dependent on imports to meet domestic demand. Table 1 presents ERS data on the supply and utilization of fresh mangoes, 2002–2005.<sup>10</sup>

<sup>9</sup> USDA-NASS-HI. Hawaii Tropical Specialty Fruits. Honolulu, Hawaii: National Agricultural Statistics Service USDA, Hawaii Field Office, 2004 and 2005 edition.

**Note:** Utilized production may include fresh and processed utilization.

<sup>10</sup> USDA-ERS. Table F-8 Fresh Mangoes: Supply and Utilization, 1980 to date. Washington, DC: Economic Research Service, October 2006.

TABLE 1.—FRESH MANGOES SUPPLY AND UTILIZATION

Year	Utilization				
	Imports	Total supply	Exports	Consumption	
				Total	Per capita
Million pounds					Pounds
2002 .....	580.6	580.6	11.8	568.8	1.97
2003 .....	613.8	613.8	14.5	599.4	2.06
2004 .....	609.2	609.2	17.1	592.1	2.01
2005 .....	575.1	575.1	18.3	556.7	1.88

As is evident from the data, annual consumption of fresh mangoes in 2005 was 1.88 pounds per person, down slightly from a historic high of a little over 2 pounds per person reached in 2003. Industry experts correlate this

decline with lower imports, and believe the downward trend in consumption will be reversed as preliminary data indicates imports were higher in 2006.<sup>11</sup> In 2005, 575.1 million pounds of fresh mangoes were imported into the United

States, which was a decline from the previous year when imports totaled 609.2 million pounds. Table 2 highlights the volume of fresh mango imports for the calendar year 2005 from the top five countries.

TABLE 2.—FRESH MANGO IMPORTS, VOLUME AND VALUE, JANUARY–DECEMBER 2005

Country	Imports 9/1–5/31	Imports 6/1–8/31	Total yearly imports	Value 9/1–5/31	Value 6/1–8/31	Total yearly value
	Million pounds			1,000 dollars		
Mexico .....	169.7	180.7	350.4	\$51,707	\$51,603	\$103,310
Peru .....	65.8	.....	65.8	21,522	.....	21,522
Brazil .....	56.0	1.6	57.6	17,638	585	18,223
Ecuador .....	53.1	.....	53.1	13,476	.....	13,476
Haiti .....	11.4	9.2	20.7	3,886	3,457	7,343
World total .....	382.9	192.1	575.0	113,309	55,808	169,117

Data source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics.

Note: HS Codes used were 0804504040 (mangoes fresh, entered 9/1–5/31) and 0804506040 (mangoes fresh, entered 6/1–8/31).

The 2005 trade statistics indicate fresh mangoes were imported from 13 countries, with the overwhelming majority originating from countries in Central and South America. Although the United States imports mangoes from many countries, Mexico is the major supplier, with a market share of more than 60 percent of the annual import volume, and therefore, essentially 60 percent of the U.S. supply of mangoes. Interestingly, though, Mexico is only the fourth leading producer of mangoes, trailing behind India, China, and Thailand. Its proximity to the United States and participation in the North American Free Trade Agreement (NAFTA) provide advantages over other exporting countries of lower transport costs and reduced or no tariffs.<sup>12</sup>

Although this final rule will allow imports of all mango varieties, according to comments received on the proposed rule, producers in India are currently interested in exporting six

varieties of mangoes to the United States—‘Kesar,’ ‘Alfonse,’<sup>13</sup> ‘Banganpalli,’ ‘Lagra,’ ‘Dussehry,’ and ‘Neelam’—from four States: Andhra Pradesh, Gujarat, Maharashtra, and Uttar Pradesh. Based on a site visit conducted by APHIS officials, we believe the majority of exports would originate from Gujarat and Maharashtra, where there are two and six production areas, respectively, producing ‘Kesar’ and ‘Alfonse’ varieties. Comments received on the proposed rule indicate that the harvest season in India stretches from March to July. According to the request from the Government of India, the quantity of mangoes exported to the United States would be about 100 sea containers per year.<sup>14</sup> With India being the world leader in mango production, and a typical export packinghouse having a shipping capacity of 40–50 metric tons (over 88,000 lbs.) per day for 45–50 days of the harvest season, the amount imported into the United States

would likely only be limited by U.S. market forces. Entry of Indian mangoes into the domestic market would provide increased variety and greater selection for consumers in the continental United States.

The overwhelming majority of mangoes produced domestically are sold in local markets. Even though this final rule will result in an overall increase in fresh mango imports, and thus, an increase in domestic supply, we do not anticipate the price impacts on domestic mango producers to be large. Indian mangoes would primarily compete for market share against other imported mangoes. Based on the higher transportation costs alone, we would expect the price of Indian mangoes to be higher than mangoes coming from countries currently exporting to the United States. Statistics show that in 2004, the export price of Indian mangoes (\$595.95/metric tonne) was 16 percent higher than the export price of

<sup>11</sup> USDA–ERS. Fruit and Tree Nuts Outlook. May 25, 2006.

<sup>12</sup> USDA–ERS. Fruit and Tree Nuts Briefing Room. Updated: October 8, 2004.

<sup>13</sup> This mango variety is also known as ‘Alfonso’.

<sup>14</sup> Source: A Qualitative, Pathway-Initiated Pest Risk Assessment, prepared June 2006 (APHIS).

Note: The average container used to ship mangoes from South America is a 44-foot container, having an average capacity of 22 pallets. Each pallet holds

an average 200 boxes. The average weight of each box is 5.0 kilogram (kg). Thus, the total weight of each container is 200 boxes × 5.0 kg × 22 pallet = 22,000 kg (48,501.70 lbs.). Source: Adly Ibrahim (APHIS).

mangoes from Mexico (\$511.96/metric tonne), our primary supplier.<sup>15</sup>

In order to compete with other countries importing mangoes into the United States, India expects to first target niche and gourmet markets by promoting the mangoes as premium quality fruit. Producers indicated to the APHIS site visit team that initially, the mangoes are expected to be sold through premium catalog sales and/or in specialty and ethnic grocers, after which the mangoes would then be sold in the regular retail sector. Additionally, we expect that India would initially target those geographic areas and markets with high concentrations of Asian and South-Asian persons. According to the United States Census in 2000, 11.9 million people, or 4.2 percent of the population, identified themselves as Asian. The 10 states with the largest Asian demographic in 2000 were California, New York, Hawaii, Texas, New Jersey, Illinois, Washington, Florida, Virginia, and Massachusetts, which combined represent 75 percent of the Asian population in the United States. Regionally, the West and the Northeast have the largest concentrations of Asians. Asian Indians represented the third largest specified Asian group, with a total of 1.9 million people who reported Asian Indian alone or in combination with at least one other race or Asian group.<sup>16</sup>

Usually, economic theory dictates that an overall increase in supply of a particular commodity would trigger downward pressure on price and result in reduced market share for domestic producers of that commodity. However, we believe the effects on domestic producers of this final rule would be minimal, in light of the predominance of imports and the specialty markets that India is expected to target. Other industries that may be affected by this final rule, as categorized in the North American Industry Classification System (NAICS), are Fresh Fruit and Vegetable Merchant Wholesalers (NAICS 424480), Fruit and Vegetable Markets (NAICS 445230), and Mail-Order Houses (NAICS 454113).<sup>17</sup> All of these industries are primarily comprised of small entities. There were 4,644 fruit

and vegetable merchant establishments that operated for the entire year, with 4,436 of them, or 95.5 percent, operating with fewer than 100 employees. Of the 2,257 fruit and vegetable market establishments that operated for the entire year, only 84 of them had sales of over \$5 million, leaving over 96 percent of these establishments with sales less than \$5 million. Lastly, there were 8,224 establishments classified under the NAICS code for mail-order houses, of which 7,319 of them, or about 89 percent, had annual sales of less than \$10 million.<sup>18</sup> All of the above industries may benefit from this final rule by having access to Indian mangoes, which could bolster sales volume and annual revenue. Based on the research we have conducted and the lack of comments on the proposed rule that would suggest otherwise, we expect the benefits of opening the market to Indian mangoes would outweigh any expected costs to domestic producers.

The final rule will only allow the importation of commercial shipments of fresh mangoes from India provided they meet specific phytosanitary requirements. The requirements in this final rule include treatment in India of mango fruit with irradiation using a minimum absorbed dose of 400 gray, and preclearance inspection for those pests not targeted by the irradiation treatment. The NPPO of India will enter into a trust fund agreement with APHIS to provide for all expenses incurred by APHIS while performing preclearance activities, including salaries and administrative, travel, and other incidental expenses. Costs, if any, not covered by the trust fund will be minimal. In addition to irradiation and other preclearance activities, current regulations set out a course of action if, on inspection at the port of arrival, any actionable pest or pathogen is identified. We believe these risk-mitigating phytosanitary measures are sufficient to protect against the introduction of quarantine plant pests into the continental United States associated with the importation of mangoes from India.

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 India. State and local laws and regulations regarding mangoes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### National Environmental Policy Act

An environmental assessment was prepared for, and made available for public comment through, the proposed rule for this rulemaking. No comments regarding the environmental assessment were received during the comment period for the proposed rule. The environmental assessment provides a basis for the conclusion that the importation of mangoes under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.<sup>19</sup> Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through

<sup>15</sup> FAOSTAT—TradeSTAT. Food and Agriculture Organization of the United Nations Trade Databases. (<http://faostat.fao.org>.)

<sup>16</sup> The Asian Population: 2000, Census 2000 Brief. Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, issued February 2002.

<sup>17</sup> SBA size standards are as follows: NAICS code 424480: 100 employees or less; NAICS code 445230: \$6.5 million or less in annual receipts; NAICS code 454113 (Note: includes those operations that engage in direct catalog sales): \$23 million or less in annual receipts.

<sup>18</sup> *Establishment and Firm Size based on 2002 Economic Census*. Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, issued December 2005 (wholesale trade) and November 2005 (retail trade).

<sup>19</sup> Go to <http://www.regulations.gov>, click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS-2006-0121, click on "Submit," then click on the Docket ID link in the search results page. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

**Paperwork Reduction Act**

In accordance with 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 0579-0312.

**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) 734-7477.

**List of Subjects**

*7 CFR Part 305*

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

*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 parts 305 and 319 as follows:

**PART 305—PHYTOSANITARY TREATMENTS**

■ 1. The authority citation for part 305 continues to read as follows:

**Authority:** 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 305.2, the table in paragraph (h)(2)(i) is amended by adding, under India, an entry for mango to read as follows:

**§ 305.2 Approved treatments.**

*	*	*	*	*
(h)	*	*	*	*
(2)	*	*	*	*
(i)	*	*	*	*

Location	Commodity	Pest	Treatment schedule
India	Mango .....	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR

\* \* \* \* \*

**PART 319—FOREIGN QUARANTINE NOTICES**

■ 3. 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.

■ 4. A new § 319.56-2tt is added to read as follows:

**§ 319.56-2tt Conditions governing the entry of mangoes from India.**

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

(a) The mangoes must be treated in India with irradiation by receiving a minimum absorbed dose of 400 Gy in accordance with § 305.31 of this chapter.

(b) The risks presented by *Cytosphaera mangiferae* and *Macrophoma mangiferae* must be addressed in one of the following ways:

(1) The mangoes are treated with a broad-spectrum post-harvest fungicidal dip; or

(2) The orchard of origin is inspected prior to the beginning of harvest as determined by the mutual agreement between APHIS and the national plant protection organization (NPPO) of India and the orchard is found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae*; or

(3) The orchard of origin is treated with a broad-spectrum fungicide during the growing season and is inspected prior to the beginning of harvest as determined by the mutual agreement between APHIS and the NPPO of India and the fruit found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae*.

(c) Each consignment of mangoes must be inspected jointly by APHIS and the NPPO of India as part of the required preclearance inspection activities at a time and in a manner determined by mutual agreement between APHIS and the NPPO of India.

(d) The risks presented by *Cytosphaera mangiferae*, *Macrophoma mangiferae*, and *Xanthomonas campestris* pv. *mangiferaeindicae* must be addressed by inspection during preclearance activities.

(e) Each consignment of fruit must be inspected jointly by APHIS and the

NPPO of India and accompanied by a phytosanitary certificate issued by the NPPO of India certifying that the fruit received the required irradiation treatment. The phytosanitary certificate must also bear two additional declarations confirming that:

(1) The mangoes were subjected to one of the pre- or post-harvest mitigation options described in § 319.56-2tt(b) and

(2) The mangoes were inspected during preclearance activities and found free of *Cytosphaera mangiferae*, *Macrophoma mangiferae*, and *Xanthomonas campestris* pv. *mangiferaeindicae*.

(f) The mangoes may be imported in commercial consignments only. Approved by the Office of Management and Budget under control number 0579-0312)

Done in Washington, DC, this 7th day of March 2007.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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