

given the opportunity to provide other documentation.

(h) *Verification reporting and recordkeeping requirements.* By March 1, each local educational agency must report information related to its annual statutorily required verification activity, which excludes verification conducted in accordance with paragraph (c)(7) of this section, to the State agency in accordance with guidelines provided by FNS.

\* \* \* \* \*

Dated: December 8, 2008.

**Nancy Montanez Johner,**

*Under Secretary Food, Nutrition and Consumer Services.*

[FR Doc. E8-29904 Filed 12-17-08; 8:45 am]

BILLING CODE 3410-30-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS-2007-0111]

RIN 0579-AC87

#### Importation of Ash Plants

**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 governing the importation of nursery stock to prohibit or restrict the importation of ash (*Fraxinus* spp.) plants for planting, except seed, from all foreign countries except for certain areas in Canada that are not regulated areas for emerald ash borer. The interim rule was necessary to prevent further introductions of emerald ash borer into the United States and to prevent the artificial spread of this destructive plant pest.

**DATES:** Effective on December 18, 2008, we are adopting as a final rule the interim rule published at 73 FR 54665-54667 on September 23, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Tschanz, Senior Risk Manager, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-5306.

#### SUPPLEMENTARY INFORMATION:

##### Background

The emerald ash borer (EAB, *Agilus planipennis*) is a highly destructive wood-boring insect that attacks ash trees

(*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, and Taiwan, eventually kills healthy ash trees after it bores beneath their bark and disrupts their vascular tissues. We do not know the full extent of the distribution of EAB throughout Asia and in other regions, nor do we know if there are other serious plant pests affecting *Fraxinus* spp. plants for planting present elsewhere in the world.

The regulations in 7 CFR part 319, "Foreign Quarantine Notices," prohibit or restrict the importation of certain plants and plant products to prevent the introduction or dissemination of plant pests and noxious weeds in the United States. In an interim rule<sup>1</sup> effective and published in the **Federal Register** on September 23, 2008 (73 FR 54665-54667, Docket No. APHIS-2007-0111), we amended the regulations in § 319.37-2(a) to prohibit imports of ash (*Fraxinus* spp.) plants for planting, except seed, from all foreign countries, with the exception of areas of Canada that are not regulated for EAB. To reflect that prohibition, we also amended § 319.37-7(a)(3) by removing *Fraxinus* spp. from the list of plants requiring postentry quarantine.

Comments on the interim rule were required to be received on or before November 24, 2008. We received one comment by that date. The comment was from a State entomologist who expressed support for the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

#### 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.

<sup>1</sup>To view the interim rule and the comment we received, go to <http://www.regulations.gov/jdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0111>.

## PART 319—FOREIGN QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 319 and that was published at 73 FR 54665-54667 on September 23, 2008.

Done in Washington, DC, this 12th day of December 2008.

**Kevin Shea,**

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

[FR Doc. E8-30077 Filed 12-17-08; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS-2007-0144]

RIN 0579-AC76

#### Importation of Baby Squash and Baby Courgettes From Zambia

**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 baby squash and baby courgettes from Zambia. As a condition of entry, both commodities must be produced in accordance with a systems approach that includes requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse procedures. Both commodities must also be accompanied by a phytosanitary certificate with an additional declaration stating that the baby squash or baby courgettes have been produced in accordance with the requirements of the systems approach. This action will allow the importation of baby squash and baby courgettes from Zambia into the United States while continuing to provide protection against the introduction of quarantine pests.

**DATES:** Effective Date: January 20, 2009.

**FOR FURTHER INFORMATION CONTACT:** Shirley Wager Page, Branch Chief, 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

319.56–47, 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 May 16, 2008, we published in the **Federal Register** (73 FR 28372–28377, Docket No. APHIS–2007–0144) a proposal<sup>1</sup> to amend the fruits and vegetables regulations to allow the importation into the continental United States of baby squash and baby courgettes from Zambia. As a condition of entry, we proposed to require that both commodities be produced in accordance with a systems approach that would include requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse procedures. We also proposed to require that both commodities be accompanied by a phytosanitary certificate with an additional declaration stating that the baby squash or baby courgettes have been produced in accordance with the proposed requirements.

We solicited comments concerning our proposal for 60 days ending July 15, 2008. We received one comment by that date, from a representative of a State government. The issues raised in that comment are discussed below.

The systems approach we proposed was designed to mitigate, among other quarantine pests, three moths, *Diaphania indica*, *Helicoverpa armigera*, and *Spodoptera littoralis*. The commenter stated that, because these pests are internal feeders, inspection and detection at origin and destination are problematic, and reliance on inspection places the commenter's State at high risk of introduction of these pests. The commenter further stated that the two pests that have the highest unmitigated risk, *H. armigera* and *S. littoralis*, are of great concern in the commenter's State. Yet, the commenter stated, there are no real mitigative measures to exclude these pests other than insect-exclusionary greenhouses; there is no trapping requirement or specific inspection regime to assure there have been no breaches of greenhouses.

Under the final rule, the greenhouses and packinghouses will have to be approved jointly by the Zambian national plant protection organization

(NPPO) and APHIS and designed to be pest-free. In addition, inspection will not be performed solely on the commodities; the greenhouses themselves will be inspected monthly for the presence of the pests. If any quarantine pests are found in a greenhouse, that greenhouse will be prohibited from exporting until corrective action is taken. Thus, we are employing more mitigations than simple commodity inspection to prevent baby squash and baby courgettes imported from Zambia from being infested with these pests.

We have employed measures similar to the ones we proposed to mitigate the risk associated with *H. armigera* and *S. littoralis* in other import programs. For example, the regulations in § 319.56–28(e), which allow the importation of tomatoes from Australia under certain conditions, require greenhouses to be registered with and approved by the Australian NPPO and to be inspected by the Australian NPPO to establish freedom from *H. armigera* and *S. littoralis*. Similar measures are used to mitigate the risk associated with *H. armigera* and *S. littoralis* in the regulations governing the importation of peppers from Korea in § 319.56–42. These measures have been effective at preventing the introduction of *H. armigera* and *S. littoralis* into the United States via the importation of those commodities. We have determined that they will be equally effective when employed to prevent the introduction of these pests via baby squash and baby courgettes from Zambia.

We proposed that the Zambian NPPO or its approved designee be authorized to carry out certain functions. The commenter asked who would be the designee and who would approve the designee.

As discussed in the proposed rule, an approved designee is an entity with which the NPPO creates a formal agreement that allows that entity to certify that the appropriate procedures have been followed. Thus, the NPPO approves an approved designee. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves. APHIS authorizes NPPOs to use designees to perform certain phytosanitary functions in other import programs, such as the cut flower import program described in § 319.74–2.

The commenter stated that the proposal indicates APHIS can monitor the production sites before and during harvest. The commenter further stated that the word “can” is meaningless and recommended that the text in question read “APHIS will monitor the production sites.”

The proposed language specifically stated that APHIS must be allowed to inspect or monitor the greenhouses. We consider this language to be appropriate, as it may not be necessary for APHIS to inspect or monitor the greenhouses in all cases. We will inspect or monitor the greenhouses if we have reason to believe that the risks associated with the quarantine pests might not be effectively mitigated in the greenhouses.

The commenter stated that the use of McPhail traps as a detection tool is problematic, as they have very limited sensitivity in detecting low-level fruit fly populations.

We have determined that McPhail traps are the appropriate type to use for the trapping due to their capacity to catch important fruit fly species of quarantine significance for which no specific lures exist, such as the *Dacus* spp. fruit flies identified as quarantine pests in the pest risk assessment. Accordingly, the risk management document provided along with the proposed rule reflects this. However, the regulations specifically require the use of traps approved by APHIS, meaning that we can change the type of fruit fly trap used if a trap better suited to *Dacus* spp. fruit flies becomes available.

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.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This final 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.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

This analysis examines potential impacts for U.S. small entities from the importation of baby squash and baby courgettes (zucchini) from Zambia into the United States. The analysis is set forth in terms of squash generally. As background, we provide a brief overview of squash production and trade by the United States. This is followed with an estimate of price and welfare effects of the rule based on assumed levels of squash imports from Zambia. Finally, we describe the expected impact on small entities.

<sup>1</sup> To view the proposed rule and the comment we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0144>.

*U.S. Squash Production and Trade*

The United States is a major squash producer and importer.<sup>2</sup> The United States produced 430,100 metric tons (MT) of squash valued at \$229 million in 2006, while imports that year totaled 240,590 MT. Squash production occurs in many States. However, the top 10 States (Georgia, Florida, California, New York, Michigan, Ohio, Texas, North Carolina, Oregon, and New Jersey)

accounted for 98 percent of total cash receipts in 2006.<sup>3</sup>

As shown in table 1, U.S. squash production increased from 398,800 MT in 2002 to 430,100 MT in 2006, an annual growth rate of about 1.6 percent. Similarly, consumption increased from 605,970 MT to 665,730 MT. During the same period, U.S. squash imports increased from 210,930 MT in 2002 to 240,590 MT in 2006. Mexico accounted by far for the largest share of U.S.

imports (95.6 percent), followed distantly by Costa Rica (1.6 percent), and Canada (1.1 percent). Other minor suppliers include Honduras, Panama, New Zealand, Guatemala, and Nicaragua. The United States was a net importer throughout this period, with average annual imports (over 234,000 MT) dwarfing exports (less than 4,300 MT). Imports from Zambia will be small compared to an already large import base.<sup>4</sup>

TABLE 1—U.S. SQUASH PRODUCTION, CONSUMPTION, PRICE, EXPORTS AND IMPORTS, 2002–2006

Year	Production (MT)	Consumption (MT)	Price per MT	Exports in MT	Imports in MT
2002 .....	398,800	605,970	\$882	3,770	210,930
2003 .....	365,650	602,880	1,047	3,810	241,040
2004 .....	401,330	637,650	992	4,090	240,410
2005 .....	378,030	611,090	1,047	4,820	237,880
2006 .....	430,100	665,730	1,157	4,960	240,590
5-year average (2002–2006) .....	394,780	624,670	1,025	4,290	234,170

Sources: USDA/NASS, Vegetables 2006 Summary, January 2007; wholesale prices are from USDA/NASS, Fresh market vegetables prices and yield data, 2002–2006; trade data are from USDA/Foreign Agricultural Service, The Global Trade Atlas: Global Trade Information Services, Inc., Country Edition, August 2007.

*Impact of Potential Fresh Squash Imports*

We estimate the impact of baby squash and baby courgettes imports from Zambia on U.S. production, consumption, and prices using a net trade welfare model. The data used were obtained from the Foreign Agricultural Service (FAS); The Global Trade Atlas: Global Trade Information Services, Inc., Country Edition, August 2007; and United Nations' Food and Agriculture Organization FAOstat data (<http://faostat.fao.org>). The demand and supply elasticities used are -0.66 and 0.12, respectively.<sup>5</sup>

Our analysis is in terms of the overall squash industry of the United States. If

data were available that would allow us to estimate the impact of this rule only in terms of the markets for baby squash and baby courgettes, we would expect the effects to be somewhat larger than those reported here, but still insignificant.

We model three levels of squash exports to the United States from Zambia: (1) 260 MT, average annual global exports of squash by Zambia (2004–2006); (2) 400 MT, the amount of squash that the Government of Zambia has projected would be exported to the United States; and (3) 1,000 MT, a quantity that is 2½ times Zambia's projected exports to the United States.

Table 2 presents the changes that we estimate could result from the final rule.

These include annual changes in U.S. consumption, production, wholesale price, consumer welfare, producer welfare, and net welfare. The medium level of assumed squash exports to the United States of 400 MT (as projected by the Government of Zambia) would result in a decline of \$0.89 per MT in the wholesale price of squash and a fall in U.S. production of 41 MT. Consumption would increase by 359 MT. Producer welfare would decline by \$347,180 and consumer welfare would increase by \$558,240, yielding an annual net benefit of about \$211,060. Other results are as shown in table 2 below.

TABLE 2—ESTIMATED IMPACT OF SQUASH IMPORTS FROM ZAMBIA ON THE UNITED STATES ECONOMY FOR THREE IMPORT SCENARIOS

Assumed annual squash imports, MT .....	<sup>1</sup> 260	<sup>2</sup> 400	<sup>3</sup> 1,000
Change in U.S. consumption, MT .....	234	359	898
Change in U.S. production, MT .....	-26	-41	-102
Change in wholesale price of squash, dollars per MT .....	-\$0.58	-\$0.89	-\$2.22
Change in consumer welfare .....	\$362,820	\$558,240	\$1,396,210
Change in producer welfare .....	-\$225,670	-\$347,180	-\$867,890

<sup>2</sup> Squash can be classified depending on whether it is harvested as immature fruit (summer squash) or mature fruit (winter squash). Summer squash, such as zucchini (also known as courgette), pattypan, and yellow crookneck are harvested and consumed during the growing season, while the skin is still tender and the fruit relatively small. Winter squash such as butternut, hubbard, buttercup, amercup, acorn, spaghetti squash, and pumpkin are harvested at maturity, generally the

end of summer, cured to further harden the skin, and stored in a cool place for eating later. They generally require longer cooking time than summer squash.

<sup>3</sup> USDA/National Agricultural Statistics Service (NASS), Vegetables 2006 Summary, January 2007.

<sup>4</sup> Reliable production data are not available for Zambia. Squash exported to the United States are to be grown in insect-proof, pest-free greenhouses at approved production sites. These sites are in the

process of being constructed. The Zambian Government expects to export around 400 MT of fresh squash to the United States annually. It is not clear whether some additional amount would be produced for export to other countries.

<sup>5</sup> Jaime E. Malaga, Gary W. Williams, and Stephen W. Fuller, "U.S.-Mexico fresh vegetable trade: the effects of trade liberalization and economic growth," *Agricultural Economics*, Vol. 26 (October 2001): 45–55.

TABLE 2—ESTIMATED IMPACT OF SQUASH IMPORTS FROM ZAMBIA ON THE UNITED STATES ECONOMY FOR THREE IMPORT SCENARIOS—Continued

Annual net benefit .....	\$137,150	\$211,060	\$528,330
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**Note:** The baseline data used are 5-year annual averages for production, consumption, prices, exports, and imports, as reported in the last row of table 1. The demand and supply elasticities used are -0.66 and 0.12, respectively (Jaime E. Malaga, Gary W. Williams, and Stephen W. Fuller, "U.S.-Mexico fresh vegetable trade: the effects of trade liberalization and economic growth," *Agricultural Economics*, Vol. 26 (October 2001): 45-55).

- <sup>1</sup> Three-year (2004 to 2006) average total squash exports by Zambia.
- <sup>2</sup> Annual exports of fresh baby squash and baby courgettes to the United States, as projected by the Government of Zambia.
- <sup>3</sup> Two-and-one-half times the projected level of exports of baby squash and baby courgettes by Zambia to the United States.

In all three scenarios, consumer welfare gains would outweigh producer welfare losses. Even in the third scenario, in which we assume imports would total 2½ times the level projected by the Government of Zambia, the decline in producer welfare would represent only about two-tenths of 1 percent of cash receipts received from the sale of domestic squash products. The price decline in this third scenario also would be only about two-tenths of 1 percent. Thus, our analysis indicates that U.S. entities will be unlikely to be significantly affected by this rule.

**Impact on Small Entities**

The Small Business Administration (SBA) has established guidelines for

determining which types of firms are considered to be small entities under the Regulatory Flexibility Act. This rule could affect U.S. producers of fresh vegetables (North American Industry Classification System 111219) and some importers of fresh squash. Vegetable-producing establishments are classified as small if their annual receipts are not more than \$750,000.<sup>6</sup> According to the 2002 Census of Agriculture, there were 11,035 squash operations with production valued at \$288 million. These facilities are considered to be small if their annual receipts are not more than \$750,000. Over 98.6 percent of these operations (10,883) are considered to be small while the rest

(152) are considered large. Based on share of acreage (nearly 60 percent of the total), the small operations had combined annual cash receipts of about \$168 million and an average income of about \$15,500, while the large operations had combined sales of about \$120 million with an average income of about \$787,900. As shown in table 3, the impact of potential squash imports on U.S. producers as a result of this rule will be small. The decrease in producer welfare per small entity is less than \$47, or about 0.30 percent of average annual sales of small entities, when we assume 1,000 MT of squash are exported to the United States from Zambia (2½ times Zambia's projected annual exports).

TABLE 3—ECONOMIC IMPACT OF POTENTIAL SQUASH IMPORTS FROM ZAMBIA ON U.S. SMALL ENTITIES, ASSUMING ANNUAL EXPORTS OF 1,000 MT TO THE UNITED STATES, 2006 DOLLARS

Total decline in producer welfare <sup>1</sup> .....	-\$867,890
Decrease in welfare incurred by small entities <sup>2</sup> .....	-\$506,850
Average decrease per acre, small entities <sup>3</sup> .....	-\$12.18
Average decrease per small entity <sup>4</sup> .....	-\$46.50
Average decrease as percentage of average sales, small entities <sup>5</sup> .....	-0.30 percent

- <sup>1</sup> From table 2.
- <sup>2</sup> Change in producer welfare multiplied by 58.4 percent, the percentage of total acreage planted by producers with annual revenues of not more than \$750,000, that is, small entities. We assume that the change in producer welfare would be proportional to acreage share.
- <sup>3</sup> Decrease in producer welfare for small entities divided by 41,619, the number of acres planted by small entities.
- <sup>4</sup> Average decrease per acre multiplied by 3.82, the average number of acres per small entity.
- <sup>5</sup> Average decrease per small entity divided by \$15,500, the average annual revenue per small entity.

Again, table 3 considers a level of importation that is 2½ times the projected imports of baby squash and baby courgettes; at expected levels of importation, the expected economic impacts would be even smaller. In addition, this analysis assumes that gains to Zambian exporters do not come at the expense of any exporting countries; if any displacement occurs, the impact of the rule would be reduced further.

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 baby squash and baby courgettes to be imported into the United States from Zambia. State and local laws and regulations regarding baby squash and baby courgettes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh vegetables 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 0579-0347.

**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

<sup>6</sup> SBA, Small business size standards matched to the North American Industry Classification System

2002, effective October 2007 (<http://www.sba.gov/size/sizetable2002.html>).

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. A new § 319.56-48 is added to read as follows:

#### § 319.56-48 Conditions governing the entry of baby squash and baby courgettes from Zambia.

Baby squash (*Curcubita maxima* Duchesne) and baby courgettes (*C. pepo* L.) measuring 10 to 25 millimeters (0.39 to 0.98 inches) in diameter and 60 to 105 millimeters (2.36 to 4.13 inches) in length may be imported into the continental United States from Zambia only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Aulacaspis tubercularis*, *Dacus bivitattus*, *Dacus ciliatus*, *Dacus frontalis*, *Dacus lounsburyii*, *Dacus punctatifrons*, *Dacus vertebratus*, *Diaphania indica*, *Helicoverpa armigera*, and *Spodoptera littoralis*.

(a) *Approved greenhouses.* The baby squash and baby courgettes must be grown in Zambia in insect-proof, pest-free greenhouses approved jointly by the Zambian national plant protection organization (NPPO) and APHIS.

(1) The greenhouses must be equipped with double self-closing doors.

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

(3) The greenhouses must be inspected periodically by the Zambian NPPO or its approved designee to ensure that sanitary procedures are employed to exclude plant pests and

diseases and to verify that the screening is intact.

(4) The greenhouses also must be inspected monthly for the quarantine pests listed in the introductory text of this section by the Zambian NPPO or its approved designee, beginning 2 months before harvest and continuing for the duration of the harvest. APHIS must be allowed to inspect or monitor the greenhouses during this period as well. If, during these inspections, any of the quarantine pests listed in the introductory text of this section is found inside the greenhouse, the Zambian NPPO will immediately prohibit that greenhouse from exporting baby squash or baby courgettes to the United States and notify APHIS of the action. The prohibition will remain in effect until the Zambian NPPO and APHIS agree that the risk has been mitigated.

(b) *Trapping for Dacus spp. fruit flies.* Trapping for *Dacus bivitattus*, *Dacus ciliatus*, *Dacus frontalis*, *Dacus lounsburyii*, *Dacus punctatifrons*, and *Dacus vertebratus* (referred to in paragraph (b) of this section, collectively, as *Dacus spp. fruit flies*) is required both inside and outside the greenhouse. Trapping must be conducted beginning 2 months before harvest and continue for the duration of the harvest.

(1) *Inside the greenhouse.* Approved fruit fly traps with an approved protein bait must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of at least two traps per greenhouse. The traps must be serviced at least once every 7 days. If a *Dacus spp. fruit fly* is found in a trap inside the greenhouse, the Zambian NPPO will immediately prohibit that greenhouse from exporting baby squash or baby courgettes to the United States and notify APHIS of the action. The prohibition will remain in effect until the Zambian NPPO and APHIS agree that the risk has been mitigated.

(2) *Outside the greenhouse.* (i) Approved fruit fly traps with an approved protein bait must be placed inside a buffer area 500 meters wide around the greenhouse at a density of 1 trap per 10 hectares, with a total of at least 10 traps. At least one of these traps must be placed near the greenhouse. These traps must be serviced at least once every 7 days.

(ii) No shade trees are permitted within 10 meters of the entry door of the greenhouse, and no fruit fly host plants are permitted within 50 meters of the entry door of the greenhouse. While trapping is being conducted, no fruit fly host material (such as fruit) may be brought into the greenhouse or be

discarded within 50 meters of the entry door of the greenhouse. Ground applications of an approved protein bait spray for the *Dacus spp. fruit flies* must be used on all shade trees and host plants within 200 meters surrounding the greenhouse every 6 to 10 days starting at least 30 days before and during harvest.

(iii) *Dacus spp. fruit fly* prevalence levels lower than 0.7 flies per trap per week (F/T/W) must be maintained outside the greenhouse for the duration of the trapping. If the F/T/W is 0.7 or greater outside the greenhouse, the Zambian NPPO will immediately prohibit that greenhouse from exporting baby squash or baby courgettes to the United States and notify APHIS of the action. The prohibition will remain in effect until the Zambian NPPO and APHIS agree that the risk has been mitigated.

(3) *Records and monitoring.* The Zambian NPPO or its approved designee must maintain records of trap placement, trap servicing, and any *Dacus spp. captures*. The Zambian NPPO must maintain an APHIS-approved quality control program to audit the trapping program. APHIS must be given access to review 1 year's worth of trapping data for any approved greenhouse upon request.

(c) *Packinghouse procedures.* Baby squash and baby courgettes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. No shade trees are permitted within 10 meters of the entry door of the packinghouse, and no fruit fly host plants are permitted within 50 meters of the entry door of the packinghouse. In addition, during packing, no fruit fly host material other than the baby squash and baby courgettes may be brought into the packinghouse, and no fruit fly host material may be discarded within 50 meters of the entry door of the packinghouse. The baby squash or baby courgettes must be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The baby squash or baby courgettes must be packed in insect-proof cartons for shipment to the United States. These cartons must be labeled with the identity of the greenhouse. While packing the baby squash or baby courgettes for export to the United States, the packinghouse may only accept baby squash or baby courgettes from approved greenhouses. These safeguards must remain intact until the arrival of the baby squash or baby courgettes in the United States. If the safeguards do not remain intact, the

consignment will not be allowed to enter the United States.

(d) *Commercial consignments.* Baby squash and baby courgettes from Zambia may be imported in commercial consignments only.

(e) *Phytosanitary certificate.* Each consignment of baby squash and baby courgettes must be accompanied by a phytosanitary certificate of inspection issued by the Zambian NPPO with an additional declaration reading as follows: "These baby squash or baby courgettes were produced in accordance with 7 CFR 319.56–48."

(Approved by the Office of Management and Budget under control number 0579–0347)

Done in Washington, DC, this 12th day of December 2008.

**Kevin Shea,**

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

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 400, 407, and 457

RIN 0563–AB73

#### General Administrative Regulations; Administrative Remedies for Non-Compliance

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the General Administrative Regulations; Administrative Remedies for Non-Compliance to add additional administrative remedies that are available as a result of the enactment of section 515(h) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1515(h)), make such other changes as are necessary to implement the provisions of section 515(h) of the Act, and to clarify existing administrative remedies.

**DATES:** *Effective Date:* This rule is effective January 20, 2009.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Cynthia Simpson, Director, Appeals, Litigation and Legal Liaison Staff, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 4619, Stop 0806, Washington, DC 20250, telephone (202) 720–0642.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

#### Paperwork Reduction Act of 1995

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

#### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, 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.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. All similarly situated participants are required to comply with the same standard of conduct contained in the Act, the regulations published at 7 CFR chapter IV, the crop policies, and the applicable procedures. For example, any producer, whether growing 10 acres or 10,000 acres, submits the same documentation for insurance and for a claim. All agents, whether selling and servicing five policies or a hundred and five policies, are required to perform the

same tasks for each. The consequences for failure to comply with the standards of conduct are also the same for all participants and other persons regardless of the size of their business. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

#### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith.

#### Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background

This rule finalizes changes made to 7 CFR part 400, subpart R, Administrative Remedies for Non-Compliance that was published by FCIC on May 18, 2007, as a notice of proposed rulemaking in the **Federal Register** at 72 FR 27981–27988. In the Administrative Remedies for Non-Compliance, FCIC proposed to include provisions in its regulation that were enacted with the passage of the Agricultural Risk Protection Act of 2000 (ARPA). Through the enactment of section 515(h) of the Act in ARPA, Congress significantly strengthened FCIC's ability to combat fraud, waste and abuse by establishing a strong system of administrative actions that are now applicable to all participants in the Federal crop insurance program.

Now, producers, agents, loss adjusters, insurance providers and their employees and contractors, and any