

a complaint by filing an appeal with the General Counsel within 25 days after service of the Regional Director's decision. A Charging Party shall serve a copy of the appeal on the Regional Director. The Office of the General Counsel shall serve notice on the Charged Party that an appeal has been filed.

(d) *Extension of time.* The Charging Party may file a request, in writing, for an extension of time to file an appeal, which shall be received by the General Counsel not later than 5 days before the date the appeal is due. A Charging Party shall serve a copy of the request for an extension of time on the Regional Director.

(e) *Grounds for granting an appeal.* The General Counsel may grant an appeal when the appeal establishes at least one of the following grounds:

(1) The Regional Director's decision did not consider material facts that would have resulted in issuance of complaint;

(2) The Regional Director's decision is based on a finding of a material fact that is clearly erroneous;

(3) The Regional Director's decision is based on an incorrect statement of the applicable rule of law;

(4) There is no Authority precedent on the legal issue in the case; or

(5) The manner in which the Region conducted the investigation has resulted in prejudicial error.

(f) *General Counsel action.* The General Counsel may deny the appeal of the Regional Director's refusal to issue a complaint, or may grant the appeal and remand the case to the Regional Director to take further action. The General Counsel's decision on the appeal states the grounds listed in paragraph (e) of this section for denying or granting the appeal, and is served on all the parties. Absent a timely motion for reconsideration, the decision of the General Counsel is final.

(g) *Reconsideration.* After the General Counsel issues a final decision, the Charging Party may move for reconsideration of the final decision if it can establish extraordinary circumstances in its moving papers. The motion shall be filed within 10 days after the date on which the General Counsel's final decision is postmarked. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The decision of the General Counsel on a motion for reconsideration is final.

§ 2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.

(a) *Bilateral informal settlement agreement.* Prior to issuing a complaint, the Regional Director may afford the Charging Party and the Charged Party a reasonable period of time to enter into an informal settlement agreement to be approved by the Regional Director. When a Charged Party complies with the terms of an informal settlement agreement approved by the Regional Director, no further action is taken in the case. If the Charged Party fails to perform its obligations under the approved informal settlement agreement, the Regional Director may institute further proceedings.

(b) *Unilateral informal settlement agreement.* If the Charging Party elects not to become a party to an informal settlement agreement which the Regional Director concludes effectuates the policies of the Federal Service Labor-Management Relations Statute, the agreement may be between the Charged Party and the Regional Director. The Regional Director, on behalf of the General Counsel, shall issue a letter stating the grounds for approving the settlement agreement and declining to issue a complaint. The Charging Party may obtain review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.11(c) and (d). The General Counsel shall take action on the appeal as set forth in § 2423.11(e)–(g).

§§ 2423.13–2423.19 [Reserved]

Dated: November 24, 1998.

Joseph Swerdzewski,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 98–31763 Filed 11–27–98; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 97–005–2]

Fruit From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation

treatment at an approved facility. Treatment may be conducted either in Hawaii or in non-fruit fly supporting areas of the mainland United States. The fruit will also have to meet certain additional requirements, including packaging requirements. We are also allowing durian to be moved interstate from Hawaii if the durian is inspected and found free of certain plant pests. In addition, we are allowing certain varieties of green bananas to move interstate from Hawaii under certain conditions intended to ensure the bananas' freedom from plant pests, including fruit flies. These actions will relieve restrictions on the movement of these fruits from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Staff Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables from Hawaii. The regulations are necessary to prevent the spread of dangerous plant diseases and pests that occur in Hawaii, including the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), the Oriental fruit fly (*Bactrocera dorsalis*), and the Malaysian fruit fly (*Bactrocera latifrons*). These types of fruit flies are collectively referred to in this document as “fruit flies.”

On June 10, 1998, we published in the **Federal Register** (63 FR 31675–31678, Docket No. 97–005–1) a proposal to allow abiu (*Pouteria caimito*), atemoya (*Annona squamosa* x *A. cherimola*), longan (*Dimocarpus longan*), rambutan (*Nephelium lappaceum*), and sapodilla (*Manilkara zapota*) to be moved interstate from Hawaii if, among other things, the fruits undergo irradiation treatment in accordance with § 318.13–4f of the regulations. We also proposed to allow durian (*Durio zibethinus*) to be moved interstate from Hawaii if it is inspected and found free of plant pests. In addition, we proposed to allow green bananas (*Musa* spp.) of the cultivars “Williams,” “Valery,” and dwarf

"Brazilian" to be moved interstate from Hawaii under certain conditions.

We solicited comments concerning our proposal for 60 days ending August 10, 1998. We received five comments by that date. They were from representatives of industry and State governments. One commenter supported the proposal rule in its entirety. The remaining four commenters expressed concerns about portions of the proposed rule. Their concerns are discussed below.

Comment: The proposed rule should require each irradiation facility to have in place a set of standard operating procedures before the facility is approved by the Animal and Plant Health Inspection Service (APHIS).

Response: In order to be approved by APHIS, each irradiation facility must meet certain operating standards and enter into a compliance agreement with APHIS, in accordance with § 318.13-4f(b)(2)(iii). Therefore, no changes to the proposal appear necessary in response to this comment.

Comment: Treatment record requirements should be clarified for Hawaiian fruits treated by irradiation on the mainland United States. Section 318.13-4f(b)(4)(i)(C) specifies that fruits irradiated in Hawaii for subsequent interstate movement are required to be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment. It is not clear, however, whether Hawaiian fruits treated by irradiation on the mainland United States are subject to comparable labeling requirements. In order to maintain the identity of a shipment treated at any location and to expedite inspections at the port of destination, all irradiated Hawaiian fruits, whether treated in Hawaii or on the mainland United States, should be subject to these same labeling requirements. In addition, all irradiated Hawaiian fruit should be accompanied by a document or labeling that provides information on the absorbed minimum dose of irradiation.

Response: In Hawaii, irradiated shipments could, if treated or handled improperly, be reinfested with fruit flies. Therefore, we established certain labeling requirements for shipments of fruits and vegetables irradiated in Hawaii to aid in traceback if those shipments were found to contain fruit flies upon arrival on the mainland United States. Since the mainland United States does not have established populations of fruit flies, and irradiation facilities will be located in non-fruit fly-supporting areas of the mainland, the risk of reinfestation of shipments irradiated on the mainland United

States is, at best, negligible. Therefore, we do not believe that it is necessary to require similar labeling of shipments irradiated on the mainland United States.

Further, it is standard procedure for irradiation facilities to supply the person who commissions the irradiation of fruit or vegetables with a document stating the minimum absorbed dose of the irradiation treatment. Therefore, we do not feel that it is necessary to label boxes with that information.

Comment: APHIS should require that irradiated fruit be labeled so that consumers can easily differentiate irradiated fruit from organically grown fruit.

Response: The labeling of irradiated fruit falls under the jurisdiction of the Food and Drug Administration (FDA). Under the FDA's regulations at 21 CFR 179.26(c), concerning irradiated foods not in package form (e.g., loose fresh fruits and vegetables), an irradiation logo and phrase (e.g., "Treated with radiation" or "Treated by irradiation") must be displayed to the purchaser of the food either by labeling of the bulk container plainly in view; a counter sign, card, or other appropriate device bearing the required information; or individual labels on each item of food. In any case, the information must be prominently and conspicuously displayed to purchasers. Therefore, no changes to the proposal appear necessary in response to this comment.

Comment: APHIS should reconsider its proposal to allow durian and green bananas to move interstate to the mainland United States without a quarantine treatment. Durian and green bananas both have the potential to carry pink hibiscus mealybug (*Maconellicoccus hirsutus*) (PHM). PHM occurs in Hawaii, attacks more than 200 different plants, and is considered to be a serious threat to American agriculture. Inspection is not sufficient to mitigate the risk of the introduction of PHM on durian and green bananas from Hawaii.

Response: We consider PHM a serious plant pest, but we disagree that inspection is not sufficient to mitigate the risk of the introduction of PHM on durian and green bananas from Hawaii. PHM is easily detectable by inspection because when fruits are infested with PHM, they are covered, to at least some degree, with the white waxy coating of the mealybug, which is clearly visible on fruits and vegetables. We successfully inspect a variety of untreated commodities, including avocados, bananas, citrus fruits, peppers, and tomatoes, imported into the United States from many different countries for the presence of PHM.

Therefore, we are making no changes to the proposal in response to this comment.

Comment: This proposal should be postponed until it is determined whether Hawaii will build an irradiation facility. If Hawaii does not build its own irradiation facility, there will be no irradiated Hawaiian fruit to move interstate under the provisions outlined in the proposal.

Response: This rule allows abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation treatment at an approved facility in Hawaii or in non-fruit fly supporting areas of the mainland United States. Therefore, the presence of an irradiation facility in Hawaii is not necessary to enable Hawaiian fruits to move interstate under this rule.

Comment: It is unclear from the proposal whether untreated abiu, atemoya, longan, rambutan, and sapodilla moving from Hawaii to the mainland United States for irradiation treatment may move into or through all States on the mainland or just certain States. Allowable ports of entry should be identified in advance and should be consistent with those ports considered safe for the entry of other untreated fruit fly host shipments intended for cold treatment upon arrival.

Response: In accordance with § 318.13-4f(b)(1), all untreated fruits and vegetables moving from Hawaii to the mainland United States for irradiation treatment may not move into or through the States of Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia, except that certain movements are allowed through Dallas/Fort Worth, TX. Dallas/Fort Worth is authorized as an approved stop for air cargo, and as a transloading location for shipments that arrive by air and then are loaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route. We are considering allowing untreated fruits and vegetables moving from Hawaii to the mainland United States for irradiation treatment to move to other locations on the mainland United States where cold treatment of fruit flies has been approved. If it appears that movement to these additional locations would be appropriate, we will propose that change in the **Federal Register**.

Comment: Citrus should be added to the list of fruit approved for movement interstate from Hawaii with irradiation treatment.

Response: We are currently reviewing data to determine the pest risk associated with the movement of irradiated citrus from Hawaii to the mainland United States. If, after review, it appears that citrus may safely move interstate from Hawaii with irradiation treatment, we will propose that change in the **Federal Register**.

Comment: Because green bananas are not a fruit fly host, pest-proof containers or cartons should not be required for the interstate movement of green bananas from Hawaii.

Response: Because research shows that harvested bananas gradually become susceptible to fruit fly infestation, we believe that it is necessary to require a measure of protection against possible infestation. However, we agree that producers should have flexibility in the way that they meet this requirement. Therefore, in this final rule, § 318.13–4i(d) will read: “The bananas must be safeguarded from fruit fly infestation from the time that they are packaged for shipment until they reach the port of arrival on the mainland United States.” This will allow producers to use either pest-proof shipping cartons, pest-proof shipping containers (e.g., air or sea containers), or other means, such as loading the bananas into a cold storage facility or packing the bananas in a carton fully covered by plastic or netting, to ensure that harvested bananas are protected from fruit fly infestation.

Comment: Green bananas of the cultivars ‘Grand Nain’ and standard ‘Brazilian’ should be allowed to move interstate from Hawaii to the mainland United States under the same provisions outlined in the proposal for certain other cultivars of green bananas.

Response: We agree. At the time that we were developing our proposal, it was our understanding that “Grand Nain” and standard “Brazilian” bananas were either not grown commercially in Hawaii or were grown in such limited quantities in Hawaii that there would be no interest in moving them interstate to the mainland United States. Therefore, we omitted these cultivars of green bananas from our proposal. This comment, however, makes it clear that there is interest in moving these cultivars of green bananas to the mainland United States. Research conducted concurrently with research on the other cultivars of green bananas proposed for interstate movement from Hawaii indicates that green bananas of the cultivars “Grand Nain” and standard “Brazilian” can be safely moved interstate under the same conditions outlined in the proposal for green bananas of the cultivars

“Williams,” “Valery,” and dwarf “Brazilian.” Therefore, in this final rule, § 318.13–4i includes green bananas of the cultivars “Grand Nain” and standard “Brazilian.”

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with 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. 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 allowing abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation treatment at an approved facility. Treatment may be conducted either in Hawaii or in non-fruit fly supporting areas of the mainland United States. The fruit will also have to meet certain additional requirements, including packaging requirements. We are also allowing durian to be moved interstate from Hawaii if the durian is inspected and found free of certain plant pests. In addition, we are allowing certain varieties of green bananas to move interstate from Hawaii under certain conditions intended to ensure the bananas’ freedom from plant pests, including fruit flies.

The mainland United States has very limited, if any, quantities of abiu, atemoya, durian, longan, rambutan, and sapodilla for sale to consumers. Three of these specialty fruits—abiu, durian, and rambutan—are not grown commercially on the mainland United States; atemoya, longan, and sapodilla are grown commercially on the mainland United States but only in relatively small quantities. All mainland production of atemoya, longan, and sapodilla occurs in the State of Florida. It is estimated that Florida’s annual production of

atemoya amounts to approximately 80,000 pounds; of longan, approximately 2 million pounds; of sapodilla, approximately 350,000 pounds.

Unlike the other fruits listed in this document, bananas are generally not considered to be specialty fruits. Also unlike the other fruits, the mainland United States has abundant quantities of bananas, including green bananas, for sale to consumers. However, virtually all bananas sold in the United States are imported. Less than 1 percent of the U.S. supply of bananas is produced domestically, and only a minuscule portion of domestic production occurs on the mainland United States, in Florida and California. In 1992, Florida produced 158,662 pounds of bananas. Production data for California is not available, but production in California is estimated to be much less than in Florida, given that in 1992 there were only 2 banana-producing farms in California and 67 in Florida. Hawaii accounted for the remainder of domestic banana production in 1992, with a total of 12,570,831 pounds. Based on data for 1992, therefore, Hawaii accounts for nearly all of the banana production in the United States.

It is estimated that there are fewer than 100 farms growing tropical specialty fruits in Florida, and virtually all of these farms are located in the southern part of the State. Information is not available on the gross receipts for each of these farms, but since the farms are generally less than 5 acres in size, it is reasonable to assume that most are small entities under Small Business Administration (SBA) standards. We do not expect the interstate movement of abiu, atemoya, durian, longan, rambutan, and sapodilla to affect these fruit producers for several reasons. First, as discussed earlier, three of the six specialty fruits are not grown commercially on the mainland United States. Second, the demand for the remaining three specialty fruits that are produced in Florida is strong, particularly among Asian Americans on the mainland United States. Florida currently has no difficulty selling all of the atemoya, longan, and sapodilla that it produces. Third, Hawaiian fruit will likely be marketed primarily in western States on the mainland while Florida’s fruits are sold primarily in eastern States. Therefore, Hawaii’s specialty fruits will likely be in little direct competition with Florida’s specialty fruits.

As discussed above, in 1992, 67 farms in Florida and 2 farms in California produced bananas. Like the specialty fruit growers, most banana-producing

farms in Florida and California are assumed to be small entities under SBA standards. However, any interstate movement of green bananas from Hawaii should have little or no impact on banana producers on the mainland United States. This is due to the relatively small volume of bananas that may be moved interstate from Hawaii. Even in the unlikely event that Hawaii moved all of its production interstate, Hawaii's bananas would still account for less than 1 percent of the mainland U.S. supply.

We expect that fruit growers in Hawaii will benefit from the interstate movement of abiu, atemoya, durian, green bananas, longan, rambutan, and sapodilla from Hawaii because these growers will have new outlets for their products. In 1995, the State of Hawaii produced 1,250,800 pounds of specialty tropical fruit (of all varieties) with a value of \$987,100. Three varieties of fruit—carambola, litchi, and specialty pineapple—accounted for 74 percent of Hawaii's 1995 production. The remaining 26 percent, or approximately 325,000 pounds of fruit, consisted of all other varieties of fruit grown in Hawaii, including the six specialty fruits named in this document. Also, in 1992, Hawaii produced 12,570,831 pounds of bananas, with a value of \$5.2 million.

In 1995, 115 farms in the State of Hawaii grew at least one variety of specialty tropical fruit. However, information on which of those farms grew one or more of the six specialty fruits named in this document is not available. Information is also not available on the gross receipts for each of the 115 farms. In all likelihood, most of the 115 farms are small entities because data for all 2,019 Hawaiian farms whose revenues are derived primarily from the sales of fruit and/or tree nuts show that 99 percent are small entities under SBA standards.

The production of tropical specialty fruit is growing rapidly in Hawaii. The State's 1995 production level represents an increase of approximately 126 percent, or 698,100 pounds, over the 1994 level of 552,700 pounds. Carambola and specialty pineapple accounted for more than 80 percent of the increase. The increase in production of tropical specialty fruit is expected to continue, as a response to the decline in the sugar industry and to the recent availability of prime agricultural lands in the State of Hawaii. In 1995, Hawaiian growers devoted 415 acres to tropical specialty fruits, 6 percent more acreage than in 1994. It is estimated that by the year 2000, Hawaii will be producing 2.6 million pounds of tropical specialty fruits annually, more

than double the 1995 level. If Hawaiian growers move 200,000 pounds of each of the six specialty fruits named in this document interstate annually, using the 1995 average per pound value of all tropical specialty fruits produced in Hawaii (on all 115 farms) of \$.79, the collective annual sales of the fruit would generate \$948,000. This amounts to \$8,243 per farm when divided equally among the 115 farms growing specialty tropical fruit.

In 1992, bananas were produced on 700 farms in Hawaii, and a total of 1,506 acres were devoted to banana production on those farms. Although data for individual farms in Hawaii that produce bananas is not available, most are probably small entities by SBA standards because, as mentioned earlier, data for all 2,019 Hawaiian farms whose revenues are derived primarily from the sales of fruit and/or tree nuts show that 99 percent are small entities under SBA standards. However, we do not expect this rule to have a significant impact on Hawaiian banana producers. Even if those producers were to move interstate the equivalent of half of the 1992 banana production (6.3 million pounds), the combined revenues from such sales would amount to \$2.6 million dollars, an average of only \$3,681 per farm.

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 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its

decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

Lists of Subjects in 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Incorporation by reference, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, we are amending 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 318.13–2 [Amended]

2. In § 318.13–2, paragraph (b), the list of fruits and vegetables is amended by adding, in alphabetical order, “Durian (*Durio zibethinus*).”

3. In § 318.13–4f, paragraphs (a) and (b)(4)(iii) are revised to read as follows:

§ 318.13–4f Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii.

(a) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for the following fruits and vegetables: Abiu, atemoya, carambola, litchi, longan, papaya, rambutan, and sapodilla.

(b) * * *

(4) * * *

(iii) Litchi and longan from Hawaii may not be moved interstate into Florida. All cartons in which litchi or longan are packed must be stamped “Not for importation into or distribution in FL.”

* * * * *

4. A new § 318.13–4i is added to read as follows:

§ 318.13–4i Administrative instructions; conditions governing the movement of green bananas from Hawaii.

Green bananas (*Musa* spp.) of the cultivars “Williams,” “Valery,” “Grand Nain,” and standard and dwarf “Brazilian” may be moved interstate from Hawaii with a certificate issued in accordance with §§ 318.13–3 and 318.13–4 of this subpart if the bananas meet the following conditions:

(a) The bananas must be picked while green and packed for shipment within 24 hours after harvest. If the green bananas will be stored overnight during

that 24-hour period, they must be stored in a facility that prevents access by fruit flies;

(b) No bananas from bunches containing prematurely ripe fingers (i.e., individual yellow bananas in a cluster of otherwise green bananas) may be harvested or packed for shipment;

(c) The bananas must be inspected by an inspector and found free of plant pests as well as any of the following defects: prematurely ripe fingers, fused fingers, or exposed flesh (not including fresh cuts made during the packing process); and

(d) The bananas must be safeguarded from fruit fly infestation from the time that they are packaged for shipment until they reach the port of arrival on the mainland United States.

Done in Washington, DC, this 19th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-31714 Filed 11-27-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 97-011-2]

Importation of Coffee

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising the regulations for importing coffee by removing unnecessary text, updating references to officials of the Animal and Plant Health Inspection Service, and clarifying the requirements for moving samples of unroasted coffee through Hawaii and Puerto Rico to other destinations and the prohibitions on importing coffee berries or fruits. These nonsubstantive changes will make the regulations easier to read and understand, thereby facilitating compliance.

EFFECTIVE DATE: December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1231, (301) 734-6799; or e-mail: Peter.M.Grosser@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations contained in 7 CFR 319.73 through 319.73-4, "Subpart—Coffee" (referred to below as the coffee regulations), restrict the importation of coffee from foreign countries and localities. The coffee regulations are intended to prevent the introduction of coffee berry borers *Hypothenemus hampei* (Ferrari) and a rust disease caused by the fungus *Hemileia vastatrix* (Berkeley and Broome) into Hawaii and Puerto Rico, where coffee is commercially grown.

On May 9, 1997, we published in the **Federal Register** (62 FR 25561-25562, Docket No. 97-011-1) a proposal to amend the coffee regulations by removing unnecessary text, updating references to officials of the Animal and Plant Health Inspection Service (APHIS), and making other nonsubstantive changes to clarify the requirements for moving samples of unroasted coffee through Hawaii and Puerto Rico to other destinations. In addition, we proposed to amend the coffee regulations to clarify that coffee fruits or berries are prohibited importation into all parts of the United States because they present a significant risk of introducing the Mediterranean fruit fly, which attacks a wide range of host material grown throughout the United States.

We solicited comments concerning our proposal for 60 days ending July 8, 1997. We received two comments by that date. One was from a State government official and the other was a representative of the coffee industry. Their concerns are addressed below.

Importation of Coffee Berries and Fruit for Research and Analytical Purposes

One commenter stated that it was his understanding that restricted articles such as coffee berries and fruits may be imported into the United States under certain conditions for research and analytical purposes. He therefore suggested that the coffee regulations include a provision that provides an exemption for coffee berries and fruits being imported for research and analytical purposes.

Seeds of all kinds when in pulp, including coffee berries or fruits, may be imported into the United States for research and analytical purposes by the United States Department of Agriculture under the conditions listed in § 319.37-2(c). We agree that this provision should be made clear in the coffee regulations. Therefore, in order to avoid confusion, and to facilitate compliance with the coffee regulations, we are including a reference in the revised coffee

regulations to the scientific and experimental importation provisions currently contained in § 319.37-2(c).

Importation of Green Coffee and Coffee Nursery Stock into Hawaii

We received a comment from an official of Hawaii's Department of Agriculture that recommends new requirements for the importation of green coffee beans and coffee nursery stock into that State. We intend to consider the comment further and consult with Hawaii's State Department of Agriculture about the recommendations. However, the recommendations are outside the scope of our original proposal. Therefore, any changes we make in response to those recommendations will have to be the subject of a subsequent rulemaking.

We are also clarifying the proposed § 319.73-4, "Costs," to clearly indicate that costs for the listed services will be borne by the owner, importer, or agent of the owner or importer, including a broker.

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.

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.

This final rule updates and clarifies the regulations for importing coffee into the United States and for moving samples of unroasted coffee through Hawaii and Puerto Rico in transit to other destinations. This rule makes no substantive changes in import or transit requirements. Therefore, it should have no economic impact on any United States entities, whether large or small.

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