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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2007-0153]

RIN 0579-AC88

Importation of Eggplant from Israel

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 commercial consignments of fresh eggplant from Israel. As a condition of entry, the eggplant must be grown under 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. The eggplant must be accompanied by a phytosanitary certificate issued by the Israeli national plant protection organization with an additional declaration confirming that the eggplants have been produced in accordance with those requirements. This action will allow for the importation of commercial consignments of fresh eggplant from Israel into the United States while continuing to provide protection against the introduction of quarantine pests.

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

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart-Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-48, 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 12, 2008, we published in the Federal Register (73 FR 66807-66811, Docket No. APHIS-2007-0153) a proposal<sup>1</sup> to allow the importation into the continental United States of commercial consignments of fresh eggplant from Israel if they were produced in accordance with a systems approach. The proposed systems approach included the following measures:

- Growing the eggplant in pest-exclusionary structures;
- Trapping both inside and outside the pest-exclusionary structures for Ceratitis capitata (Mediterranean fruit fly, or Medfly);
- Packinghouse procedures designed to exclude quarantine pests.

In addition, we proposed to require all consignments of eggplant from Israel to be accompanied by a phytosanitary certificate with a declaration stating that the eggplant had been produced in accordance with the proposed requirements.

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<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0153>.

We solicited comments concerning our proposal for 60 days, ending January 12, 2009. We received three comments by that date. They were from private citizens and the Israeli national plant protection organization (NPPO). They are discussed below.

One commenter expressed concern that the quarantine pests associated with eggplant from Israel may be a serious health threat to Americans.

The commenter provided no specific information regarding the health risk posed by these pests. We have determined that these pests pose no human health risk.

We proposed to require that any vents or openings in the pest-exclusionary structures (other than the double self-closing doors) be covered with 1.6 mm or smaller screening in order to prevent the entry of pests into the pest-exclusionary structure. One commenter expressed concern that one quarantine pest identified in the pest risk analysis (PRA) prepared for the proposed rule, Scirtothrips dorsalis, may be small enough to pass through the 1.6 mm screening and stated that the structures should completely exclude S. dorsalis. This commenter also questioned whether inspection would be an effective mitigation for S. dorsalis, noting its small size.

As noted in the proposed rule, the thrips species is at least partially discouraged by the physical barrier of the 1.6 mm mesh. Also, thrips are external feeders and would most likely be detected during inspection of the pest-exclusionary structures. Under the final rule, pest-exclusionary structures will be inspected monthly for the six quarantine pests beginning 2 months before harvest and continuing for the duration of the harvest, and each consignment of eggplant will be inspected for all quarantine pests, including S. dorsalis, by the Israeli NPPO. These inspections are completed by trained inspectors who are looking for these quarantine pests specifically. Based on our experience inspecting for S. dorsalis and other external feeders, we

have determined that inspection will be an effective mitigation against S. dorsalis in eggplant from Israel.

One commenter stated that the proposed rule incorporated preventative measures to prevent pest infestation, but did not include very many secondary checks for pests.

As noted earlier, the systems approach includes inspections to verify freedom from quarantine pests at multiple points during the production process. These inspections begin 2 months before harvest and continue throughout the entire shipping process.

We proposed to require trapping for Medfly in the agricultural region along the Arava Highway 90 and in the residential area of Paran. One commenter stated that trapping for Medfly is carried out in all agricultural regions in the Arava as well as in all the residential areas, including Paran.

This trapping is consistent with our proposed requirements, and an expansion of the trapping area will not affect the trapping requirements that we included in the proposed rule.

One commenter addressed supporting documents provided with the proposal. For example, the risk management document (RMD) discussed the use of McPhail traps for trapping Medfly. The commenter stated that Israel currently uses Tephri traps.

While the RMD specifically referred to McPhail traps, we proposed to allow any APHIS-approved traps to be used in the trapping for Medfly. The Tephri trap, which is a modified McPhail trap, is approved for use by APHIS under this final rule.

The RMD referred to “fruit fly material” not being permitted within 50 meters of the entry door of the packinghouse. This commenter requested further clarification on the term “fruit fly material.”

This refers to any organic material that could become host material for the fruit fly. The proposed rule correctly referred to “fruit fly host material.” The omission of the word “host” in the RMD was a typographical error.

The PRA referred to Israel using Malathion bait to control fruit fly populations. The commenter stated that the Israeli NPPO currently uses a sterile insect treatment program.

This program is complementary to the Malathion bait spray. No changes to the proposed rule are necessary in response to this comment.

One commenter stated that it would take decades for Israeli eggplant growers to make a profit under the proposed regulations and that the benefit to Israeli growers is small compared to the risk the United States is taking on by importing eggplant.

In accordance with the Plant Protection Act (7 USC 7701 et seq.), we base our decisions to allow the importation of fruits and vegetables on whether the risk associated with their importation can be successfully mitigated, not on economic issues such as whether exporting eggplant is a profit-making venture for farmers in Israel. The systems approach we proposed will effectively mitigate the pest risk associated with the importation of eggplant from Israel.

One commenter asked how importing eggplant from Israel would affect the U.S. relationship with current trading partners in eggplant (specifically China and India).

The economic analysis in the proposed rule reported that China and India are world leaders in the production of eggplant, and it appears that the commenter took that to mean that the United States imports eggplant from those countries, which is not the case. The importation into the United States of eggplant from China and India is not currently authorized. That being said, we do not expect that allowing the importation of eggplant from Israel will negatively affect our trading relationships with any of the countries that currently export eggplant to the United

States, as Israel is a small exporter of eggplant. In 2006, Israel's exports of commercial shipments were valued at only \$20,000. This value is only 0.05 percent of the value of U.S. eggplant imports in 2006.

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.

NOTE: In our November 2008 proposed rule, we proposed to add the conditions governing the importation of eggplant from Israel as § 319.56-48. In this final rule, those conditions are added as § 319.56-49.

#### 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 eggplant from Israel under certain conditions. As a condition of entry, the eggplant must be grown under a systems approach that will include requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse procedures. The eggplant must be accompanied by a phytosanitary certificate issued by the Israeli NPPO with an additional declaration confirming that the eggplant have been produced in accordance with those requirements. This action will allow for the importation of commercial consignments of fresh eggplant from Israel into the United States while continuing to provide protection against the introduction of quarantine pests.

Eggplant, which is native to India and Pakistan, is a warm-season crop that is sensitive to cool temperatures. World production of eggplant is highly concentrated, with 83 percent of

output by the top two producers, China (55 percent) and India (28 percent), and with the United States a distant 20th in production.

According to the 2002 Census of Agriculture, there were 50,000 farms in 47 States that may produce, among other vegetables, some eggplant, but only about 4 percent of the 50,000 farms reported harvesting eggplant. In all, about 7,000 acres are devoted to eggplant production in the United States, with 72 percent of eggplant production taking place in 11 counties in 4 States: California, Florida, Georgia, and New Jersey (table 1). In addition, 63 percent of the number of acres planted in eggplant in the United States are in these four States. Production at a much lower level takes place in other States including Hawaii, Michigan, and New York.

Table 1.–2006 State-level production of eggplants in the United States

States/counties	Eggplant production (metric tons)	Number of acres planted with eggplant
California (Fresno and Riverside)	17,690.11	1,364
Florida (Palm Beach, Hillsborough, Dade)	15,875.74	1,174
Georgia (Colquitt, Echols, Lowndes)	14,870.75	1,100
New Jersey (Gloucester, Cumberland, Atlantic)	11,748.05	800
Sum of 4 States	60,184.65 (72% of production)	4,438 (63% of planted area )
United States	83,914.61	7,000

Source: United States Department of Agriculture (USDA), Economic Research Service (ERS), Vegetables and Melons Situation and Outlook Yearbook, December 2006; U.S. Census of Agriculture, 2002.

Despite a per-capita consumption rate of less than 1 pound, the United States is the leading importer of eggplant in the world, accounting for 20 percent of world eggplant import volume.<sup>2</sup> The next largest eggplant importers are France with 15 percent, Syria with 12 percent, Germany with 11 percent, and Canada with 9 percent of world eggplant import volume. These 5 countries account for 67 percent of world eggplant imports. The remaining 33 percent of world

<sup>2</sup> USDA, ERS, Vegetables and Melons Outlook/VGS-318/December 14, 2006 (pages 23-27).

eggplant imports is divided among the rest of the world. Between 2004 and 2006, the United States imported on average \$45 million worth of eggplant (table 2).

Most U.S. eggplant imports enter during the cooler months of the year. Florida is the only domestic shipper during the winter.<sup>3</sup>

Table 2. -- U.S. trade of fresh eggplants, 2004-2006

	U.S. imports	U.S. exports	Net imports
	(Value in thousand dollars)		
2004	\$49,028	\$8,148	\$40,880
2005	\$45,981	\$8,735	\$37,246
2006	\$39,986	\$8,943	\$31,043
	(Quantities in metric tons)		
2004	49,768.4	9,669.1	40,099.3
2005	54,096.8	9,660.5	44,436.3
2006	49,065.0	9,626.2	39,438.8

Source: U.S. Department of Commerce, Bureau of Census, as reported by Global Trade Information Services. Note: Based on the Harmonized Schedules 070930.

#### Impact on Small Entities

U.S. entities that could be affected by this rule are domestic producers of fresh eggplant and wholesalers that import fresh eggplant. Businesses producing fresh eggplant are classified in the North American Industry Classification System (NAICS) within the category of other vegetable (except potato) and melon farming (NAICS 111219). The Small Business Administration's (SBA) small-entity standard for this category is \$750,000 or less in annual receipts. While available data do not provide the number of U.S. eggplant-producing entities or information on the size distribution of U.S. eggplant-producing entities, it is reasonable to assume that the majority of the operations are small by SBA standards, based on the fact that the average vegetable farm is small.

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<sup>3</sup> On average, during 2004-06, the winter season (January-March) accounted for 55 percent of U.S. eggplant imports; the spring season (April-June) accounted for 20 percent; the summer season (July-September) accounted for 5 percent; and, the fall season (October-December) accounted for 31 percent.

Israel is a small exporter of eggplant. For example, in 2006 Israel's exports of commercial shipments of fresh eggplant were valued at only \$20,000. This value is only 0.05 percent of the value of U.S. eggplant imports in 2006 (nearly \$40 million). In other words, even if all of Israel's 2006 worldwide eggplant exports are diverted entirely to the United States, they will represent a negligible share of total U.S. imports and an even smaller share of the U.S. eggplant supply.

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 eggplant to be imported into the United States from Israel. State and local laws and regulations regarding eggplant 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 0579-0350.

## 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 citizens' 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 § 319.56-49 is added to read as follows:

§ 319.56-49 Eggplant from Israel.

Eggplant (*Solanum melongena* L.) may be imported into the continental United States from Israel only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Ceratitis capitata*, *Eutetranychus orientalis*, *Helicoverpa armigera*, *Nipaeococcus viridis*, *Scirtothrips dorsalis*, and *Spodoptera littoralis*.

(a) Approved pest-exclusionary structures. The eggplant must be grown in pest-exclusionary structures in approved production sites in the Arava Valley of Israel by growers registered with the Israeli national plant protection organization (NPPO). Initial approval of the production sites must be completed jointly by the Israeli NPPO and APHIS.

(1) The pest-exclusionary structures must be equipped with double self-closing doors.

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

(3) The pest-exclusionary structures must be inspected periodically by the Israeli 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 pest-exclusionary structures also must be inspected monthly for the quarantine pests listed in the introductory text of this section by the Israeli NPPO or its approved designee, beginning 2 months before harvest and continuing for the duration of the harvest. APHIS must be granted access to inspect or monitor the pest-exclusionary structures during this period as well. If, during these inspections, any quarantine pests listed in the introductory text of this section are found inside a pest-exclusionary structure, the Israeli NPPO will immediately prohibit that pest-exclusionary structure from exporting eggplant to the continental United States and notify APHIS of the action. The prohibition will remain in effect until the Israeli NPPO and APHIS agree that the risk has been mitigated.

(b) Trapping for Medfly. Trapping for Mediterranean fruit fly (Medfly, Ceratitidis capitata) is required both inside and outside the pest-exclusionary structures. Trapping must begin 2 months before harvest and continue for the duration of the harvest.

(1) Inside the pest-exclusionary structures. APHIS-approved fruit fly traps with an approved protein bait must be placed inside the pest-exclusionary structures at a density of four traps per hectare, with a minimum of at least two traps per pest-exclusionary structure. The traps must be serviced at least once every 7 days. If a single Medfly is found in a trap inside a pest-exclusionary structure, the Israeli NPPO will immediately prohibit that pest-exclusionary structure from exporting eggplant to the continental United States and notify APHIS of the action. The prohibition will remain in effect until the Israeli NPPO and APHIS agree that the risk has been mitigated.

(2) Outside the pest-exclusionary structures. (i) No shade trees are permitted within 10 meters of the entry door of the pest-exclusionary structures, and no fruit fly host plants are permitted within 50 meters of the entry door of the pest-exclusionary structures. While trapping is being conducted, no fruit fly host material (such as fruit) may be brought into the pest-exclusionary structures or be discarded within 50 meters of the entry door of the pest-exclusionary structures.

(ii) A treatment jointly approved by the Israeli NPPO and APHIS must be applied for the duration of the eggplant harvest in the areas of the Arava Valley where fruit fly host material occurs in backyards.

(iii) Trapping for Medfly must be conducted by the Israeli NPPO or its approved designee throughout the year in the agricultural region along the Arava Highway 90 and in the residential area of Paran.

(iv) Trapping records must be kept and made available for APHIS review upon request.

(c) Packinghouse procedures. The eggplant must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. While packing the eggplant for export to the continental

United States, the packinghouse may only accept eggplant from approved pest-exclusionary structures. 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. The eggplant must be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Packinghouse procedures must include culling of any visibly damaged, overripe, or infested eggplant. The eggplant must be packed in either individual insect-proof cartons or boxes labeled with the specific place of origin or non-insect-proof cartons or boxes that are covered by insect-proof mesh or plastic tarpaulins. Covered non-insect-proof cartons or boxes must be placed in shipping containers that have identification labels indicating the specific place of origin. These safeguards must remain intact until the arrival of the eggplant in the continental United States or the consignment will not be allowed to enter the continental United States.

(d) Commercial consignments. Eggplant from Israel may be imported in commercial consignments only.

(e) Phytosanitary certificate. Each consignment of eggplant must be accompanied by a phytosanitary certificate of inspection issued by the Israeli NPPO with an additional declaration reading as follows: "The eggplant in this consignment has been grown in an approved production site and inspected and found free of the pests listed in 7 CFR 319.56-49."

(Approved by the Office of Management and Budget under control number 0579-0350)

Done in Washington, DC, this 28<sup>th</sup> day of May 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2009-12929 Filed 06/02/2009 at 8:45 am; Publication Date: 06/03/2009]