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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2010-0024]

RIN 0579-AD38

Importation of Pomegranates From Chile Under a Systems Approach

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 pomegranates from Chile, subject to a systems approach. Under this systems approach, the fruit would have to be grown in a place of production that is registered with the national plant protection organization of Chile and certified as having a low prevalence of Brevipalpus chilensis. The fruit would have to undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit would have to be inspected in Chile at an approved inspection site. Each consignment of fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of Brevipalpus chilensis based on field and packinghouse inspections. This action will allow for the safe importation of fresh pomegranates from Chile using mitigation measures other than fumigation with methyl bromide.

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

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart–Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-54, 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 within the United States.

On March 16, 2011, we published in the Federal Register (76 FR 14320-14323, Docket No. APHIS-2010-0024) a proposal<sup>1</sup> to amend the regulations by allowing pomegranates and figs from Chile to be imported into the United States subject to a systems approach. Under this systems approach, the fruit would have to be grown in a place of production that is registered with the national plant protection organization of Chile and certified as having a low prevalence of Brevipalpus chilensis. The fruit would have to undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit would have to be inspected in Chile at an approved inspection site. Each consignment of fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of Brevipalpus chilensis based on field and packinghouse inspections.

We solicited comments concerning our proposal for 60 days ending May 16, 2011. We received 28 comments by that date. They were from private citizens, port terminal operators,

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<sup>1</sup> To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0024>.

fruit wholesalers, producers, importers, exporters, trade associations, and representatives of State and foreign governments.

Several of the comments we received were focused on figs, with the commenters raising concerns about the efficacy of the systems approach in addressing the risks associated with figs grown in Chile. In order to allow us more time to consider those issues without delaying action on approving the use of the systems approach for pomegranates, we have decided to not finalize the proposed provisions related to the importation of figs from Chile at this time, but may do so in a subsequent action. This final rule only addresses the comments we received on the proposed importation of pomegranates from Chile.

Twenty-two of the commenters supported the proposed rule in its entirety. One comment concerning the importation of Chilean pomegranates did not raise any issues related to the pest risk analysis or proposed rule. The remaining comments on the importation of pomegranates are discussed below by topic.

One commenter opposed the use of the methods described in the proposed rule to mitigate the potential entry of the quarantine pest Brevipalpus chilensis (Acari: Tenuipalpidae) into the commenter's State until a pest-free track record is established in shipments of pomegranate from Chile that are received in areas that are lower risk than the commenter's State for the pest's establishment in the United States.

The mitigation measures for B. chilensis on pomegranates from Chile have been previously evaluated and proven effective in mitigating the risks presented by B. chilensis on other commodities from Chile, and we will continuously monitor the effectiveness of those mitigations with port-of-entry inspections. We do not consider it necessary to restrict the

distribution of pomegranates from Chile when proven mitigations are available to mitigate the pest risk and will be required as a condition of importation.

One commenter asked that the proposed rule be revised to specify that Chilean pomegranates may not be imported into Hawaii in order to protect locally grown pomegranate crops.

We proposed that pomegranates from Chile would only be eligible for importation into the continental United States. By definition, the continental United States encompasses the lower 48 states, Alaska, and the District of Columbia, while excluding Hawaii. Our permitting process will allow us to effectively implement the distribution limitation, as it currently does for many other commodities that are not allowed to be imported into Hawaii.

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 change discussed in this document.

Note: In our March 2011 proposed rule, we proposed to add the conditions governing the importation of pomegranates from Chile as § 319.56-51. In this final rule, those conditions are added as § 319.56-56.

#### Executive Order 12866 and Regulatory Flexibility Act

This 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. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see footnote 1 for a link to Regulations.gov).

Pomegranates may be imported into the continental United States when fumigated with methyl bromide. This rule will allow the importation of fresh pomegranate fruit from Chile using a systems approach to pest risk mitigation. Under this systems approach, the fruit will be grown in a place of production that is registered with the Government of Chile and certified as having a low prevalence of B. chilensis. The fruit will undergo pre-harvest sampling and post-harvest inspection. Each consignment of fruit will be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of B. chilensis based on field and packinghouse inspections.

Entities potentially affected by the rule are U.S. pomegranate fruit growers. They are classified within the industry Other Non-citrus Fruit Farming, for which the Small Business Administration's small entity standard is annual sales of not more than \$750,000. Annual receipts for this industry averaged about \$112,000 in 2007, well below the small-entity standard.

While most U.S. pomegranate operations are small, they are not expected to be significantly affected by the rule. Relatively small quantities of pomegranates are expected to be imported from Chile because of this rule, equivalent to less than 4 percent of the estimated U.S. production of pomegranates consumed domestically in recent years. Moreover, Chilean pomegranates will be imported during the U.S. off-season. The counter-seasonality will preclude negative price impacts for U.S. producers. Off-season availability of pomegranates from Chile may help broaden demand for this fruit, thereby benefiting domestic producers over time.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

## Executive Order 12988

This final rule allows fresh pomegranates to be imported into the continental United States from Chile. State and local laws and regulations regarding fresh pomegranates imported under this rule will be preempted while the fruit is in foreign commerce. Fresh pomegranates are generally imported for immediate distribution and sale to the consuming public and would 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 0579-0375. Because we are not finalizing the provisions in the proposed rule related to the importation of figs from Chile, this approval covers only the information collection and recordkeeping requirements associated with the importation of pomegranates from Chile.

## E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 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 § 319.56-56 is added to read as follows:

§ 319.56-56 Fresh pomegranates from Chile.

Fresh pomegranates (*Punica granatum*) may be imported into the continental United States from Chile under the following conditions:

(a) Production site registration. The production site where the fruit is grown must be registered with the national plant protection organization (NPPO) of Chile. Harvested pomegranates must be placed in field cartons or containers that are marked to show the official registration number of the production site. Registration must be renewed annually.

(b) Low-prevalence production site certification. The fruit must originate from a low-prevalence production site to be imported under the conditions in this section. Between 1 and 30 days prior to harvest, random samples of fruit must be collected from each registered production site under the direction of the NPPO of Chile. These samples must undergo a pest detection and evaluation method as follows: The fruit must be washed using a flushing method, placed in a 20-mesh sieve on top of a 200-mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The process must then be

repeated. The contents of the 200-mesh sieve must then be placed on a petri dish and analyzed for the presence of live Brevipalpus chilensis mites. If a single live B. chilensis mite is found, the production site will not qualify for certification as a low-prevalence production site. Each production site may have only one opportunity per season to qualify as a low-prevalence production site, and certification of low prevalence will be valid for one harvest season only. The NPPO of Chile will present a list of certified production sites to APHIS.

(c) Post-harvest processing. After harvest, all damaged or diseased fruits must be culled at the packinghouse and must be packed into new, clean boxes, crates, or other APHIS-approved packing containers. Each container in which the fruit is packed must have a label identifying the registered production site where the fruit originated and the packing shed where it was packed.

(d) Phytosanitary inspection. Fruit must be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile following any post-harvest processing. A biometric sample must be drawn and examined from each consignment. Pomegranates in any consignment may be shipped to the continental United States under the conditions of this section only if the consignment passes inspection as follows:

(1) Fruit presented for inspection must be identified in the shipping documents accompanying each lot of fruit to specify the production site or sites in which the fruit was produced and the packing shed or sheds in which the fruit was processed. This identification must be maintained until the fruit is released for entry into the United States.

(2) A biometric sample of the boxes, crates, or other APHIS-approved packing containers from each consignment will be selected by the NPPO of Chile, and the fruit from these boxes, crates, or other APHIS-approved packing containers will be visually inspected for quarantine pests. A portion of the fruit must be washed with soapy water and the collected filtrate must be

microscopically examined for B. chilensis. If a single live B. chilensis mite is found during the inspection process, the certified low-prevalence production site where the fruit was grown will lose its certification.

(e) Phytosanitary certificate. Each consignment of fresh pomegranates must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of Brevipalpus chilensis based on field and packinghouse inspections.

(Approved by the Office of Management and Budget under control number 0579-0375)

Done in Washington, DC, this 11<sup>th</sup> day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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