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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2015-0052]

RIN 0579-AE26

Importation of Fresh Persimmons From New Zealand Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of fruits and vegetables to allow the importation of fresh persimmons from New Zealand into the United States. As a condition of entry, the persimmons must be produced in accordance with a systems approach that includes requirements for orchard certification, orchard pest control, post-harvest safeguards, fruit culling, traceback, sampling, and treatment with either hot water or modified atmosphere treatment. The persimmons will also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were produced under, and meet all the components of, the systems approach and were inspected and found to be free of quarantine pests in accordance with the requirements. This action allows the importation of fresh persimmons from New Zealand while continuing to protect against the introduction of plant pests into the United States.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Senior Regulatory Policy Specialist, IRM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2103.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart–Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-79, 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 August 26, 2016, we published in the *Federal Register* (81 FR 58870-58873, Docket No. APHIS-2015-0052) a proposal¹ to amend the fruits and vegetables regulations to allow the importation of fresh persimmons (*Diospyros kaki* Thunb.) from New Zealand into the United States. As a condition of entry, the persimmons would have to be produced in accordance with a systems approach that includes requirements for orchard certification, orchard pest control, post-harvest safeguards, fruit culling, traceback, sampling, and treatment with either hot water or modified atmosphere treatment. The persimmons would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were produced under, and meet all the components of, the systems approach and were inspected and found to be free of quarantine pests in accordance with the proposed requirements.

We solicited comments concerning our proposal for 60 days ending October 25, 2016. We received two comments by that date, from a private citizen and the national plant protection organization (NPPO) of New Zealand. One commenter generally objected to the importation of

¹ To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0052>.

all fruits and vegetables into the United States, but did not otherwise address any issues germane to the proposal. The other comment is discussed in greater detail below.

In paragraph (d)(3) of the proposal, we proposed to require that diseased or insect-infested fruit and fruit with surface pests be culled either before or during packing and removed from the packinghouse. We also proposed to require that the culling include any damaged or deformed fruit. The NPPO of New Zealand stated that the removal of deformed fruit is a grading concern rather than a phytosanitary issue.

We disagree. As explained in the proposed rule, deformed fruit is more susceptible to infestation, as is damaged fruit.

In paragraph (d)(4), we proposed to require that shipping containers be marked to identify the place of production and packinghouse from which the consignment of fruit originated. The NPPO of New Zealand asked for clarification of the term “final shipping container,” which we used in the preamble of the proposed rule. The NPPO stated that each individual packed unit of New Zealand persimmons will be marked to identify the place of production and packinghouse from which the packed unit of fruit originated.

Our use of the term “final shipping container” was intended to refer to the individually packed units of the consignment and not the container in which the individually packed units are shipped. We have amended the text of paragraph (d)(4) to clarify that.

In paragraph (e), we proposed to require that inspectors from the NPPO of New Zealand visually inspect a sample of fruit from each consignment at a rate jointly agreed upon by the Animal and Plant Health Inspection Service (APHIS) and the NPPO of New Zealand, and cut fruit to inspect for quarantine pests that are internal feeders. The NPPO of New Zealand stated

that, because there are no quarantine pests that are internal feeders on persimmons in New Zealand, cutting of fruit is not necessary.

As described in the pest risk assessment, there are seven Lepidoptera pests of quarantine significance present in New Zealand that could be introduced into the United States through the importation of fresh persimmons. The larvae of some or all of these pests, which are classified as leafroller moths, may bore into the fruit and feed internally. Evidence of infestation, including entrance holes and frass, would easily be detected during visual inspection except for the extensive calyx on persimmon fruit. Therefore, we proposed to require fruit cutting as an addition to visual inspection. We agree that fruit cutting is not necessary as long as the area of the fruit under the calyx is thoroughly examined for the presence of internally feeding pests. Therefore, we are amending the language in paragraph (e) to state that fruit cutting will be required only when visual evidence of internally feeding insects is discovered.

In paragraph (c)(2), we proposed to require that the NPPO of New Zealand or its approved designee visit and inspect the places of production monthly beginning at blossom drop and continuing until the end of the shipping season for quarantine pests. In paragraph (f), we also proposed that the persimmons be treated with hot water treatment or with modified atmosphere treatment by being packed in semi-permeable polymeric bags and stored at 0 °C for a minimum of 28 days. The NPPO of New Zealand stated that, because the persimmons will undergo a 28-day cold treatment prior to export, by the time persimmons are shipped, there will not be any persimmons in the place of production to inspect.

We agree with the commenter and are amending paragraph (c)(2) to state that inspection of places of production will continue until the end of the harvest season rather than the end of the shipping season.

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 Orders 12866 and 13771 and Regulatory Flexibility Act

This final 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. Further, because this rule is not significant, it is not a regulatory action under Executive Order 13771.

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 on the Regulations.gov website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

APHIS is amending the regulations in 7 CFR 319.56, to allow the importation of fresh persimmon fruit (*Diospyros kaki*) into the entire United States from New Zealand subject to a systems approach. Most U.S. persimmon production takes place in California, where the 2011 value of production totaled about \$13.6 million. The most recent data on U.S. persimmon imports show a total value of about \$4.4 million in 2015.

The wholesale value of the persimmon fruit for which New Zealand has requested import access will be about \$90,000 initially. The value of future imports is forecast to reach about \$330,000, or about 2 percent of the U.S. persimmon market.

The Small Business Administration's (SBA) small-entity standard for entities involved in fruit farming is \$750,000 or less in annual receipts (NAICS 111339). It is probable that most or all U.S. persimmon producers are small businesses by the SBA standard. We expect any impact

of the rule for these entities will be minimal, given New Zealand's expected small share of the U.S. persimmon market.

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

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, which were filed under 0579-0456, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the *Federal Register* providing notice of what action we plan to take.

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 final rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

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. Section 319.56-80 is added to read as follows:

§ 319.56-80 Persimmons from New Zealand.

Fresh persimmons (*Diospyros kaki* Thunb.) may be imported into the United States only under the conditions described in this section. These conditions are designed to prevent the introduction of the quarantine pests *Colletotrichum horii* B. Weir & P.R. Johnst., *Cnephasia jactatana* (Walker), *Cryptosporiopsis actinidiae* P.R. Johnst., M.A. Manning & X. Meier, *Ctenopseustis herana* (Felder and Rogenhofer), *Ctenopseustis obliquana* (Walker), *Epiphyas*

postvittana (Walker), *Planotortrix excessana* (Walker), *Sperchia intractana* (Walker), and *Stathmopoda skelloni* (Butler).

(a) *Operational workplan.* The national plant protection organization (NPPO) of New Zealand must provide an operational workplan to APHIS that details the activities that the NPPO of New Zealand will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The operational workplan must include and describe the quarantine pest survey intervals and other specific requirements as set forth in this section.

(b) *Commercial consignments.* Persimmons from New Zealand may be imported in commercial consignments only.

(c)(1) *Place of production requirements.* All places of production that participate in the export program must be approved by and registered with the New Zealand NPPO in accordance with the requirements of the operational workplan.

(2) The NPPO of New Zealand or its approved designee must visit and inspect the places of production monthly beginning at blossom drop and continuing until the end of the harvest season for quarantine pests. Appropriate pest controls must be applied in accordance with the operational workplan. If the NPPO of New Zealand finds that a place of production is not complying with the requirements of this section, no fruit from the place of production will be eligible for export to the United States until APHIS and the NPPO of New Zealand conduct an investigation and appropriate remedial actions have been implemented.

(d)(1) *Packinghouse requirements.* All packinghouses that participate in the export program must be approved by and registered with the New Zealand NPPO in accordance with the requirements of the operational workplan.

(2) During the time the packinghouse is in use for exporting persimmons to the United States, the packinghouse may only accept persimmons from registered approved places of production and the fruit must be segregated from fruit intended for other markets.

(3) All diseased or insect-infested fruit and fruit with surface pests must be culled either before or during packing and removed from the packinghouse. Culling must also include any damaged or deformed fruit.

(4) Boxes or other containers in which the fruit is shipped must be marked to identify the place of production where the fruit originated and the packinghouse where it was packed.

(5) The NPPO of New Zealand must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of the systems approach. If the NPPO of New Zealand finds that a packinghouse is not complying with the requirements of this section, no fruit from the packinghouse will be eligible for export to the United States until APHIS and the NPPO of New Zealand conduct an investigation and appropriate remedial actions have been implemented.

(e) *Sampling.* Inspectors from the NPPO of New Zealand must inspect a biometric sample of the fruit from each consignment at a rate jointly agreed upon by APHIS and the NPPO of New Zealand. The inspectors must visually inspect for quarantine pests listed in the operational workplan required by paragraph (a) of this section and must cut fruit to inspect for the Lepidoptera pests of concern when visual signs of the internal feeders are present. If quarantine pests are detected in this inspection, the consignment will be prohibited entry into the United States.

(f) *Treatment.* Each consignment of persimmons must be subjected to a post-harvest treatment by either:

(1) *Hot water treatment.* The persimmons are held for 20 minutes in hot water at 50 °C (122 °F); or

(2) *Modified atmosphere treatment.* The persimmons are packed in semi-permeable polymeric bags and stored at 0 °C for a minimum of 28 days.

(g) *Phytosanitary certificate.* Each consignment of persimmons must be accompanied by a phytosanitary certificate of inspection issued by the New Zealand NPPO with an additional declaration stating that the fruit in the consignment were grown, packed, and inspected and found to be free of quarantine pests in accordance with the requirements of the systems approach.

(Approved by the Office of Management and Budget under control number 0579-0456)

Done in Washington, DC, this 27th day of September 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

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