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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2015-0015]

RIN 0579-AE13

Importation of Fresh Cherimoya Fruit From Chile Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow the importation of fresh cherimoya fruit from Chile into the continental United States in accordance with a systems approach as an alternative to the current required treatment. Commercial consignments of fresh cherimoya fruit are currently authorized entry into all ports of the United States from Chile subject to a mandatory soapy water and wax treatment. The systems approach includes requirements for production site registration, low pest prevalence area certification, post-harvest processing, and inspection at the packinghouse. The fruit will also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate with an additional declaration stating that the consignment was produced in accordance with the regulations. Fresh cherimoya fruit that does not meet the conditions of the systems approach or is imported into locations outside the continental United States will continue to be allowed to be imported into the United States subject to the current soapy water and wax treatment. This will allow for the importation of fresh cherimoya fruit from Chile while continuing to provide protection against the introduction of plant pests into the continental United States.

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

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

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-81, referred to below as the regulations or the fruits and vegetables regulations), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Currently, pursuant to 7 CFR 319.56-4(a), fresh cherimoya (*Annona cherimola*) fruit from Chile may be imported into the United States provided that the shipment has undergone a soapy water and wax treatment (T102-b) in accordance with the Plant Protection and Quarantine Treatment Manual to mitigate against infestation by the false red mite (*Brevipalpus chilensis*), is accompanied by a permit, and subjected to inspection and shipping procedures.

On April 4, 2016, we published in the *Federal Register* (81 FR 19060-19063, Docket No. APHIS-2015-0015) a proposal[1] to amend the regulations to also allow for the importation of fresh cherimoya fruit from Chile into the continental United States provided that fruit is produced in accordance with a systems approach, as an alternative to the currently required treatment.

[1] To view the proposed rule, supporting documents, and the comments we received, go to http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0015.

We solicited comments concerning our proposal for 60 days ending June 3, 2016. We received 26 comments by that date. They were from importers, exporters, distributors, organizations, private citizens, and representatives of State and foreign governments. Of these, 17 were supportive of the proposed action. The remainder are discussed below, by topic.

Pest Risk Mitigations

An issue of concern to several commenters was the potential introduction of the false red mite into the United States via infested fresh cherimoya fruit from Chile. One commenter stated that the post-harvest procedures noted in the pest risk assessment (PRA) of blowing fruit with compressed air to remove dust and insects, along with selection and manual packing of the fruit, would be insufficient to reliably remove pests from the pathway of fresh fruit imported into the continental United States. Another commenter also was concerned about the testing of only two or three fruit samples from each registered production site, wanting to ensure that sample sizes would be large enough to prevent pest-infested fruit from entering citrus and grape production areas in the United States. This commenter suggested incorporating an additional checkpoint test for false red mite on random fruit samples in the packaging sites prior to clearance for export.

We note that the mitigations mentioned by the first commenter are standard industry practices, not the mitigations for false red mite (though the standard industry practices may remove some mites from the pathway). Chile will be allowed to export fresh cherimoya fruit to the United States subject to either a soapy water and wax treatment (as currently allowed), or through a systems approach based on low pest prevalence. Orchard and packinghouse inspections will be required to verify and maintain place of production freedom from false red mite. Chile is currently using the same systems approach for a number of other commodities (e.g. citrus, baby kiwi, pomegranate, and kiwi) with a high success rate, and there have been almost no findings of false red mite associated with the importation of susceptible commodities

from Chile at U.S. ports of entry. Chile will be taking 100 samples from each production site to verify low prevalence; these samples will undergo pest detection and evaluation using a washing method where the fruit will be 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 will then be repeated. Then the sieve contents will undergo microscopic analysis to detect the presence of false red mite. Each shipment of fruit destined for the United States also will be sampled for false red mite, usually amounting to 150 fruit, using the same washing method. Contrary to the second commenter's assertion, many more than two or three samples will be taken to verify that false red mite is not present. The sampling will be done in Chile under the supervision of APHIS preclearance employees. The sampling rate for the fruit is designed to detect a 2 percent or greater infestation rate with 95 percent confidence.

One commenter questioned why the alternative conditions for the importation of cherimoyas was being proposed and asked if it was a reflection of cost, stating that cost-saving measures alone should not be adopted if they increase the potential for greater phytosanitary risk.

The original soapy water and wax treatment for cherimoya is older than the systems approach. Chile requested the systems approach as an option for fresh cherimoya fruit being exported to the continental United States, and we have determined that it provides an equivalent level of phytosanitary security.

One commenter expressed support for the proposed rule with the caveat that any treatments conducted be equivalent to those required domestically, and that any imported fruit not meeting proper standards upon arrival in the United States receive additional treatment so as not to waste the fruit.

The Tripartite Agreement on Phytosanitary Cooperation between USDA, Chilean Association of Fresh Fruit Exporters, and the Agriculture and Livestock Service of the Chilean

Ministry of Agriculture has been in operation since 1982. This agreement requires that all fruit exported to the United States be shipped from Chile with the required phytosanitary certification (preclearance program). Under the preclearance program, the national plant protection organization (NPPO) of Chile must provide an operational workplan to APHIS that details the activities that the NPPO of Chile will, subject to APHIS' approval of the workplan, carry out to comply with our regulations governing the import or export of a specific commodity. Operational workplans establish procedures and guidance for the day-to-day operations of specific import/export programs, specify how phytosanitary issues are dealt with in the exporting country, and make clear who is responsible for dealing with those issues. APHIS and the NPPO of Chile have an existing operational workplan for commodities imported into the United States pursuant to a systems approach; this current operational workplan will be revised to reflect the contents of this final rule. USDA offices in Chile make possible the supervision of all phytosanitary aspects of each export shipment, whether fumigated, treated with soapy water and wax, or inspected, thus providing the necessary quarantine assurances to the U.S. market. All activities related to implementation of system approaches for export are directly supervised by USDA personnel. There is sufficient oversight for all treatment of fruit bound for export from Chile to the United States.

If a commodity arrives in the United States and is found to be infested with a quarantine pest, treatment will be offered only if there is an APHIS-approved treatment available. For fresh cherimoya fruit from Chile, the only approved treatment for false red mite is the soapy water and wax treatment, which must be performed in the country of origin. As there is no APHIS-approved treatment option for infested fresh cherimoya fruit at U.S. ports of entry at this time, consignments found to be infested with quarantine pests would have to be re-exported or destroyed.

Another commenter requested that fresh cherimoya fruit produced under this systems approach not be shipped into certain States due to the exotic pest-conducive environments in the Chilean production area, which in turn would place a high risk of infestation on the States' broad range of fruit and vegetable crops.

We do not agree with this commenter. Though not unprecedented, taking this kind of action for such a minor commodity would be unusual. APHIS believes that the proposed systems approach mitigations are sufficient to provide phytosanitary protection. As previously indicated, the systems approach currently is being used for citrus, baby kiwi, pomegranate, and kiwi with a high success rate, with almost no interceptions of false red mite at U.S. ports of entry. Furthermore, from 1984 to 2013 there have been no interceptions of *Brevipalpus chilensis* on cherimoya from Chile.[2]

Following post-harvest processing, fresh cherimoya fruit must undergo inspection and sampling to check for the presence of false red mites. Two commenters stated that checking for the pest presence in fruit should be done only in the final stages of the process during the preclearance program inspection. One of these commenters also expressed concern regarding the use of biometric sampling instead of the 2 percent currently used for phytosanitary inspections of fresh cherimoya fruit. The commenter stated that this represented a larger number of fruit and therefore would result in a greater loss of boxes from commercial batches if sampled fruit is to be discarded.

During the preclearance program inspection in Chile, any consignments containing false red mite will be rejected and the production sites will be removed from the program for the rest of that harvest season. Production sites will have to requalify as low prevalence before they can ship in the next season. With respect to the issue of biometric sampling, the proposed method is

[2] See footnote 1 for a link to the Commodity Import Evaluation Document.

not destructive sampling. Once the biometric sample is drawn from each consignment of fruit, the fruit will be visually inspected for quarantine pests and a portion of the biometric sample must be washed with soapy water. The collected filtrate after washing must then be microscopically examined for the presence of false red mite. Fruit samples that do not contain false red mite can simply be washed and placed back into their boxes. APHIS will select the sampling rate based on the hypergeometric distribution; normally to find a 2 percent pest population, 150 fruits will be inspected. Except for very small shipments, a 2 percent straight sample will require sampling more fruit than the hypergeometric distribution would require. Again, we note that this is not destructive sampling, but merely a wash for mite, after which, uninfested fruits would be returned to their boxes.

Economic Impacts

One commenter expressed concern that the proposed regulation does not provide a monetary assessment or a prediction of how the regulation would impact the price of fruit.

We do not have information on whether the systems approach allowed by this rule will lower the cost of exporting fresh cherimoya fruit from Chile to the United States, in comparison to the current soapy water and wax treatment for false red mite, or on the extent to which any cost savings may be passed on to U.S. importers. We expect cost savings due to this rule will be minimal. We also expect any increase in the quantity of fresh cherimoya fruit imported from Chile because of this rule to be limited, given that over 80 percent of Chile's fresh cherimoya fruit exports are already destined for the United States. If modest price or quantity effects for fresh cherimoya fruit imports from Chile do occur, impacts for U.S. producers will be slight because of different marketing seasons. As reported by the Agricultural Marketing Resource

Center,[3] the marketing season for fresh California cherimoya fruit usually starts in January and lasts until May. Fresh cherimoya fruit imports from South America (mainly from Chile) are usually in the fall.

Miscellaneous

We have made minor, nonsubstantive changes to clarify a few provisions in the regulatory text. These editorial changes do not substantively affect the import requirements.

Therefore, for the reasons given in the proposed rule and 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 final 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.

Over 80 percent of Chile's fresh cherimoya fruit exports are to the United States. Any economic impact of this rule for U.S. entities will be minor because the volume of fresh cherimoya fruit imported from Chile is not expected to change significantly. Any effect on fresh cherimoya fruit prices received by U.S. producers will be all the more muted because of the difference in marketing seasons. As previously indicated, the Agricultural Marketing Resource

[3] This information may be viewed on the internet at http://www.agmrc.org/commodities-products/fruits/cherimoya/.

Center reports that the season for fresh California cherimoya fruit usually starts in January and lasts until May. Fresh cherimoya fruit from South America (mainly from Chile) usually is imported in the fall.

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 cherimoya fruit to be imported into the continental United States from Chile under a systems approach. State and local laws and regulations regarding fresh cherimoya fruit 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 requirements included in this final rule, which were filed under control number 0579-0444, 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 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 319.56-82 is added to read as follows:

§ 319.56-82 Fresh cherimoya from Chile.

Fresh cherimoya (*Annona cherimola*) fruit may be imported into the United States from Chile only under the following conditions and in accordance with all other applicable provisions of this subpart. These conditions are designed to prevent the introduction of the following quarantine pest: *Brevipalpus chilensis* mites.

(a) *Commercial consignments*. The fresh cherimoya fruit may be imported in commercial consignments only.

(b) The risks presented by *Brevipalpus chilensis* mites must be addressed in one of the following ways:

(1) *Importation into the United States.* The fresh cherimoya fruit are subject to treatment and certification consisting of:

(i) A soapy water and wax treatment, in accordance with part 305 of this chapter.

(ii) Each consignment of fresh cherimoya fruit must be accompanied by documentation to validate foreign site preclearance inspection after soapy water and wax treatment completed in Chile; or

(2) *Importation into the Continental United States*. The fresh cherimoya fruit are subject to a systems approach consisting of the following:

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

(ii) *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 leaves 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 leaves 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 *B. 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. Fruit from those production sites that do not meet the requirements for certification as low-prevalence production sites may still be imported into the United States subject to treatment as listed in paragraph (b)(1) of this section.

(iii) *Post-harvest processing*. After harvest, all damaged or diseased fruits must be culled at the packinghouse and remaining fruit must be packed into new, clean boxes, crates, or other APHIS-approved packing containers.

(iv) *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. Fresh cherimoya fruit can be shipped to the continental United States under the systems approach only if the consignment passes inspection. Any consignment that does not meet the requirements of this paragraph for inspection can still be imported into the United States subject to treatment as listed in paragraph (b)(1) of this section. Inspection procedures are as follows:

(A) 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.

(B) 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. 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 for the remainder of the harvest season.

(v) *Phytosanitary certificate*. Each consignment of fresh cherimoya fruit 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* and was grown, packed, and shipped in accordance with the requirements of § 319.56-82(b)(2).

(Approved by the Office of Management and Budget under control number 0579-0444)

Done in Washington, DC, this 23rd day of March 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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