

# Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS-2009-0084]

RIN 0579-AD56

### Importation of Litchi Fruit From Australia

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to allow, under certain conditions, the importation of commercial shipments of litchi fruit from Australia into the continental United States, except Florida. As a condition of entry, the litchi fruit would have to be grown in production areas that are registered with and monitored by the national plant protection organization of Australia and treated with irradiation at a dose of 400 gray for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, and subject to inspection. The fruits would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that the conditions for importation have been met. Additionally, litchi would not be imported into or distributed to the State of Florida, due to the presence of litchi rust mite in Australia. This action would allow for the importation of litchi fruit from Australia into the continental United States, except Florida, while continuing to provide protection against the introduction of quarantine pests.

**DATES:** We will consider all comments that we receive on or before February 27, 2012.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/> #!documentDetail;D=APHIS-2009-0084-0001.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2009-0084, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/> #!documentDetail;D=APHIS-2009-0084 or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 6902817 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dorothy C. Wayson, Regulatory Coordination Specialist, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737-1231; (301) 734-0772.

#### 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 that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Australia has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh litchi fruit (*Litchi chinensis* Sonn.) from Australia to be imported into the continental United States. As part of our evaluation of Australia's request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room).

As part of our evaluation of that request, we prepared a PRA titled “Importation of Fresh Litchi, *Litchi chinensis* Sonn. Fruit from Australia

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into the Continental United States” (November 2008). That PRA evaluates the risks associated with the importation of litchi fruit with up to 5 millimeters of stem into the continental United States from Australia. The threshold allowing for a maximum of 5 millimeters of stem on the imported litchi fruit was included in Australia's request and therefore established as the allowable limit in the PRA.

The PRA identified 15 pests of quarantine significance present in Australia that could be introduced into the United States through the importation of litchi fruit, including 3 fruit flies, 7 lepidopteran pests, 2 scales, 2 insect pests, and 1 mite.

##### Fruit flies

Jarvis's fruit fly (*Bactrocera jarvisi*). Queensland fruit fly (*Bactrocera tryoni*).

Mediterranean fruit fly (*Ceratitis capitata*).

##### Lepidopteran pests

Yellow peach moth (*Conogethes punctiferalis*).

Litchi fruit moth (*Cryptophlebia ombrodelta*).

Orange fruit borer (*Isotenes miserana*).

The moth *Cateremna quadriguttella*.

Bright cornelian (*Deudorix diovius*).

Dull cornelian (*Deudorix epijarbas dido*).

Flower caterpillar (*Phycita leucomilta*).

##### Scales

Red wax scale (*Ceroplastes rubens*). Green scale (*Coccus viridis*).

##### Insect pests

Spherical mealybug (*Nipaecoccus viridis*).

Passionvine mealybug (*Planococcus minor*).

##### Mite

Litchi hairy mite (*Aceria litchii*).

## Proposed Systems Approach

Based on the risk management document, APHIS has determined that measures beyond the standard port of arrival inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of litchi from Australia into the United States only if they are produced in accordance with a

systems approach to mitigate pest risk as outlined below. We are proposing to add the systems approach to the regulations in a new § 319.56–55 governing the importation of litchi from Australia.

#### Place of Production Requirements

Paragraph (a) of proposed § 319.56–55 would require that litchi fruit be grown in approved places of production that are registered with and monitored by the NPPO of Australia.

#### Treatment

Paragraph (b) of proposed § 319.56–55 would require that litchi fruit be treated with a minimum absorbed irradiation dose of 400 gray in accordance with the provisions of § 305.9 and the PPQ Treatment Manual (table 3–8–1). This is the established generic dose for all insect pests except pupae and adults of the order Lepidoptera. Seven of the insect pests of concern, yellow peach moth, litchi fruit moth, orange fruit borer, the moth *Cateremna quadriguttella*, bright cornelian, dull cornelian, and flower caterpillar, belong to the order Lepidoptera, and the 400 gray dose is not approved to treat pupae and adults of the order Lepidoptera. However, the life stages of concern for these pests are the eggs and the larvae, because the eggs and the larvae of these species are internal feeders and thus difficult to detect through inspection; the 400 gray dose is approved to treat those stages of the life cycle for Lepidoptera pests. The pupae and adults of these species are external feeders, and we are confident that inspection can detect them. Within part 305, § 305.9 contains a number of other requirements for irradiation treatment, including monitoring by APHIS inspectors and safeguarding of the fruit. Treatment could be conducted at an approved facility in Australia or in the United States.

Paragraph (c) would require that each shipment of fruit be accompanied by a phytosanitary certificate issued by the NPPO of Australia containing an additional declaration stating that the conditions for importation have been met.

#### Distribution Restrictions

The required irradiation treatment would not mitigate the risks posed by the litchi hairy mite (*Aceria litchii*), and because of the mite's microscopic size, inspection alone is not considered sufficient to mitigate the risk of introduction into the United States. Based on the distribution and reported host range of this pest, we estimate it could establish in the continental

United States in USDA Plant Hardiness Zones 9 through 11. Neither of its two hosts, longan or litchi, occur naturally in the United States; however, both litchis and longans are commercially grown in the State of Florida and the climatic conditions in Florida present the highest risk for establishment of the pest. For this reason, our regulations generally prohibit the movement of litchi into Florida from areas where the litchi hairy mite is present. Litchi from China, India, and Thailand that are imported under § 319.56–13 and § 319.56–47, respectively, are also not allowed to be imported or distributed in Florida.

Because the litchi hairy mite is not present in Florida and because we have consistently prohibited host movement into Florida from areas where that pest is present, we propose to prohibit the importation and distribution of litchi from Australia into the State of Florida. Accordingly, paragraph § 319.56–55 (d) would stipulate that all cartons of litchi would have to be stamped "Not for importation into or distribution in FL."

#### Commercial Shipments

Paragraph (e) would state that only commercial consignments of litchi fruit would be allowed to be imported. Produce grown commercially is less likely to be infested with plant pests than noncommercial shipments. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial shipments, as defined in § 319.56–1, are shipments of fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Identification of a particular shipment as commercial is based on a variety of indicators, including, but not limited to, the quantity of produce, the type of packaging, identification of a grower or packinghouse on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Commercially produced fruit in Australia are already subjected to standard commercial cultural and post-harvest practices that reduce the risk associated with plant pests. While not specifically required by this proposal, standard cultural practices other than the twice yearly application of broad spectrum fungicides (e.g., the regular use of sanitation measures, irrigation, fertilization, and pest control) help to further ensure that the pests of concern do not follow the pathway. All export orchards are registered production sites

with traceback capability. Harvested fruit is moved to the packinghouses in a manner that would preclude reinestation by pests. Culling of blemished and damaged fruit occurs in the field and during the post-harvest commercial processing of the fruit.

The regulations in § 319.56–3 provide that all imported fruits and vegetables shall be inspected, and shall be subject to such disinfection at the port of first arrival as may be required by an inspector. The pre-export inspection conducted by APHIS personnel as part of preclearance activities in the country of export typically serves to satisfy the inspection requirement. Section 319.56–3 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with plant pests that an inspector determines that it cannot be cleaned or treated. We believe that the proposed conditions described above, as well as all other applicable requirements in § 319.56–3, would be adequate to prevent the introduction of plant pests into the continental United States, except Florida, with litchi fruit imported from Australia.

The proposed conditions described above for the importation of litchi fruit from Australia into the continental United States, except Florida, would be added to the fruits and vegetables regulations as a new § 319.56–55.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed 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 **ADDRESSES** above for instructions for accessing Regulations.gov).

This proposed rule is in response to a request from Australia to export fresh litchis to all States in the United States except Florida. Litchi is grown in Florida, Hawaii, and California, and U.S. production is estimated to be about 500 metric tons (MT) per year. Based on available information, most, if not all, litchi farms are small entities.

The United States imports litchis from such countries as Taiwan, China, Israel, and Mexico. Australia expects to export about 400 MT of litchis to the United States annually. This amount is

equivalent to less than 3 percent of the quantity of litchis that was imported by the United States in 2004, the latest year for which we have data. Most likely, the quantity of litchis expected to be imported from Australia is of even lesser significance when compared to current litchi imports by the United States, given the expanding demand for this fruit.

Any litchi price declines that might result from this rule would be insignificant, especially if, as is likely, at least some litchi imports from Australia were to displace imports from other countries. Moreover, given that the agricultural seasons in the Southern Hemisphere are generally the opposite of those in the Northern Hemisphere, the proposed imports from Australia likely would not directly compete with U.S. litchi production.

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

#### *Executive Order 12988*

This proposed rule would allow litchi fruit to be imported into the United States from Australia. If this proposed rule is adopted, State and local laws and regulations regarding litchi fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables 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. If this proposed rule is adopted, 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 proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2009-0084. Please send a copy of your comments to: (1) Docket No. APHIS-2009-0084, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700

River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the fruits and vegetables regulations to allow, under certain conditions, the importation into the United States of commercial consignments of litchi fruit from Australia. The conditions for the importation of litchi fruit from Australia include requirements for pest exclusion at the production site, irradiation treatment, pest-excluding packinghouse procedures and port-of-entry inspections. The litchi would also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of Australia with an additional declaration confirming that the litchi had been produced in accordance with the proposed requirements. This action would allow for the importation of litchi fruit from Australia while continuing to provide protection against the introduction of injurious plant pests into the United States.

Implementing this rule will require the completion of phytosanitary certificates, compliance agreements, preclearance workplans, treatment records and trust fund agreements. We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.5455 hours per response.

*Respondents:* Foreign business and NPPO of Australia.

*Estimated annual number of respondents:* 2.

*Estimated annual number of responses per respondent:* 11.

*Estimated annual number of responses:* 22.

*Estimated total annual burden on respondents:* 12 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

#### **E-Government Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment 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 proposed 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 propose to amend 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 § 319.56-55 is added to read as follows:

#### **§ 319.56-55 Litchi from Australia (including Tasmania).**

Litchi (*Litchi chinensis*) with up to 5 millimeters of stem may be imported into the continental United States from Australia only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) Litchi must be grown in a production area that is registered with and monitored by the national plant protection organization (NPPO) of Australia.

(b) The litchi must be treated for plant pests of the class Insecta, except pupae

and adults of the order Lepidoptera, with irradiation in accordance with § 305.9 of this chapter. Treatment must be conducted prior to importation of the fruits into the United States.

(c) Each shipment of litchi must be accompanied by a phytosanitary certificate of inspection issued by the NPPO of Australia with an additional declaration stating that the litchi were treated with irradiation as described in the Plant Protection and Quarantine Treatment Manual.

(d) In addition to meeting the labeling requirements in Part 305 of this chapter, cartons in which litchi are packed must be stamped "Not for importation into or distribution in FL."

(e) The litchi may be imported in commercial consignments only.

Done in Washington, DC, this 19th day of December 2011.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011-33201 Filed 12-27-11; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 92

[Docket No. APHIS-2007-0158]

RIN 0579-AD30

#### Information From Foreign Regions Applying for Recognition of Animal Health Status

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations that govern the importation of animals and animal products by revising the list of factors APHIS considers when evaluating the animal health status of a foreign region. Additionally, we are proposing criteria for considering a region to be historically free of a specific disease. These changes would make clearer the type of information APHIS needs from a requesting region to most expeditiously conduct an evaluation.

**DATES:** We will consider all comments that we receive on or before February 27, 2012.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/> #!documentDetail;D=APHIS-2007-0158-0001.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2007-0158, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/> #!documentDetail;D=APHIS-2007-0158 or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kelly Rhodes, Regionalization Evaluation Services, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737-1231; (301) 734-4356.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 92, "Importation of Animals and Animal Products; Procedures for Requesting Recognition of Regions" (referred to below as the regulations), set forth the process by which a foreign government may request recognition of the animal health status of a region.

Section 92.2 of the regulations requires that such requests be accompanied by information regarding the region that will enable the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture to evaluate the request. Currently, the provisions in paragraph (b) of § 92.2 state that each request must include the following information, which APHIS commonly refers to as "the 11 factors":

- The authority, organization, and infrastructure of the veterinary services organization in the region.
- Disease status, i.e., is the restricted disease agent known to exist in the region? If "yes," at what prevalence? If "no," when was the most recent diagnosis?
- The status of adjacent regions with respect to the agent.
- The extent of an active disease control program, if any, if the agent is known to exist in the region.
- The vaccination status of the region. When was the last vaccination? What is the extent of vaccination if it is currently used, and what vaccine is being used?

- The degree to which the region is separated from adjacent regions of higher risk through physical or other barriers.

- The extent to which movement of animals and animal products is controlled from regions of higher risk, and the level of biosecurity regarding such movements.

- Livestock demographics and marketing practices in the region.

- The type and extent of disease surveillance in the region, e.g., is it passive and/or active; what is the quantity and quality of sampling and testing?

- Diagnostic laboratory capabilities.
- Policies and infrastructure for animal disease control in the region, i.e., emergency response capacity.

Current paragraph (e) of § 92.2 provides that if, after evaluating the information submitted, APHIS believes the action being requested can be safely taken, the Agency will publish a proposed rule in the **Federal Register** proposing to take such action and will provide a period of time during which the public may comment on the proposal. Current paragraph (f) of § 92.2 provides that, during the comment period, the public will have access both to the information upon which APHIS based its analysis of risk and the analysis itself. Once APHIS reviews and considers all comments received, it makes a final decision regarding the request and publishes that decision in the **Federal Register**.

In order to conduct a valid evaluation of a region's animal health status and any risk that might be associated with the action requested, it is important that APHIS have complete and pertinent information regarding the region, its disease history, its animal health practices and capabilities, and any effect its import practices or relationship to adjacent regions might have on disease risk.

The 11 factors listed in § 92.2(b) specify the types of information APHIS needs to accomplish its evaluation. To assist foreign governments making a request under § 92.2, APHIS also makes available on its Web site detailed guidance as to the types of information required. This guidance is forth in a document titled "Clarification of Information Requested for Recognition of a Region," which can be viewed at [http://www.aphis.usda.gov/import\\_export/downloads/info\\_request.pdf](http://www.aphis.usda.gov/import_export/downloads/info_request.pdf).

Each year, APHIS receives a number of requests to evaluate the animal health status of foreign regions. However, the evaluation process is often hindered because, even with the assistance of the