

# Proposed Rules

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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–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:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations to allow 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. 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 proposed systems approach would include requirements for production site registration, low pest prevalence area certification, post-harvest processing, and fruit cutting and inspection at the packinghouse. The fruit would also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Chile 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 would continue to be allowed to be imported into the United States subject to treatment. This action would 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:** We will consider all comments that we receive on or before June 3, 2016.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0015>.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0015, 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/#!docketDetail;D=APHIS-2015-0015> 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) 799–7039 before coming.

**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 319.56–74, 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.

Pursuant to 7 CFR 319.56–4(a), fresh cherimoya (*Annona cherimola*) fruit from Chile may be imported into the United States provided the shipment has undergone a soapy water and wax treatment in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual to mitigate against infestation by the false red mite (*Brevipalpus chilensis*), and is

accompanied by a permit and subjected to inspection and shipping procedures.

The national plant protection organization (NPPO) of Chile has requested that APHIS amend the regulations in order to allow fresh cherimoya fruit that has been produced in accordance with an approved systems approach to be imported into the continental United States as an alternative option to the currently approved treatment.

As part of our evaluation of Chile’s request, we prepared a pest risk assessment (PRA), “Importation of Fresh Cherimoya (*Annona cherimola* Mill.) Fruit from Chile into the Continental United States, A Qualitative, Pathway-Initiated Pest Risk Assessment” (May 2013), which evaluated the risk of permitting the importation of fresh cherimoya fruit from Chile into the continental United States.

The PRA identifies the false red mite as the one quarantine pest that could be introduced into the United States in consignments of fresh cherimoya fruit from Chile. A quarantine pest is defined in § 319.56–2 as “a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.” In the PRA, the likelihood and consequences of introducing this pest to the United States are considered, and the false red mite is rated as having a medium pest risk potential. Pests receiving a rating within the medium range may necessitate specific phytosanitary measures in addition to standard port-of-entry inspection of the commodity being imported into the continental United States.

We also prepared a commodity import evaluation document (CIED) to determine what phytosanitary measures should be applied to mitigate the pest risk associated with the importation of fresh cherimoya fruit from Chile into the continental United States. Copies of the PRA and CIED may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room).

In the CIED, entitled, “Importation of Fresh Cherimoya (*Annona cherimola* Mill.) Fruit from Chile into the Continental United States using a

systems approach,” (December 2014), we determined that phytosanitary measures could be applied as a systems approach to mitigate the risks of introducing or disseminating the false red mite into the continental United States. Therefore, we are proposing to allow the importation of fresh cherimoya fruit from Chile into the continental United States if it is produced under a systems approach, which is described below. Alternatively, fresh cherimoya fruit that do not meet the conditions of the systems approach would still be allowed to be imported into the United States if the fruit is treated in Chile in accordance with the current requirements of the PPQ Treatment Manual. The fruit would also have to be imported in commercial consignments only and accompanied by documentation to validate foreign site preclearance inspection after the required treatment is completed.

Based on the findings of the CIED and the PRA, we are proposing to add the systems approach to the regulations in a new § 319.56–75.

#### Commercial Consignments

Only commercial consignments of fresh cherimoya fruit from Chile would be allowed to be imported into the continental United States. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments 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 consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packing, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

#### Production Site Registration

Under this proposed rule, the production site where the fruit is grown would be required to be registered with the NPPO of Chile. The official registration number of the production site would be marked on all field cartons and containers of harvested fresh cherimoya fruit. Production sites would be required to renew their registration annually.

Registration of production sites with the NPPO of Chile and marking of field cartons or containers with the

registration numbers would allow traceback to the production site if pest problems were found on fruit shipped to the United States. Problem production sites could then be suspended until further mitigation measures were taken to address the pest populations.

#### Low-Prevalence Production Site Certification

Between 1 and 30 days prior to harvest, random samples of leaves would have to be collected from each registered production site under the direction of the NPPO of Chile. These samples would have to undergo a pest detection and evaluation method as follows: The leaves would have to 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 would then be repeated. The contents of the 200-mesh sieve would then be placed on a petri dish and analyzed for the presence of live false red mites. If a single live false red mite were found, the production site would not qualify for certification as a low-prevalence production site and would only be eligible to export fruit to the continental United States if the fruit is subsequently treated with an APHIS-approved quarantine treatment in Chile. Each production site would have only one opportunity per season to qualify as a low-prevalence production site, and certification of low prevalence would be valid for one harvest season only. The NPPO of Chile would be required to present a list of certified production sites to APHIS.

Production site low-prevalence certification would identify problem production sites and prevent the shipment of fruit with false red mites from such sites. This mite sampling method has been tested in Chile and found to be successful in identifying grape, citrus, baby kiwi, and pomegranate production areas with high and low populations of mites.

#### Post-Harvest Processing

After harvest, all damaged or diseased fruits would have to be culled at the packinghouse, and the remaining fruit would have to be packed into new, clean boxes, crates, or other APHIS-approved packing containers.

Post-harvest processing procedures, such as culling damaged fruit and sampling for mites, would remove fruit that could contain pests from consignments being shipped to the United States. Culling is a standard procedure to remove fruit that may

contain pests or otherwise be of poor quality.

#### Phytosanitary Inspection

The fruit would have to 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. In order to be eligible for shipment to the continental United States, the fruit in the consignment would have to pass inspection by meeting the following requirements:

- Fruit presented for inspection would have to be identified in the shipping documents accompanying each lot of fruit to specify the production site(s) where the fruit was produced and the packing shed(s) where the fruit was processed. This identification would have to be maintained until the fruit is released for entry into the United States.

- A biometric sample would have to be drawn from each consignment and examined for false red mite. If a single live false red mite were found during the inspection process, the certified low-prevalence production site where the fruit was grown would lose its certification for the remainder of the harvest season. Rejected consignments of fruit would still be eligible for export to all ports of the United States only after application of an APHIS-approved quarantine treatment in Chile as long as the fruit is imported in commercial consignments only and accompanied by documentation to validate foreign site preclearance inspection after the required treatment is completed.

The proposed requirements for the identification in shipping documents of the fresh cherimoya fruit to their production sites and packing sheds would aid in traceback if pests were discovered. The proposed requirements for visual inspection and biometric sampling of the fruit would provide additional layers of protection against the possibility of fresh cherimoya fruit infested with quarantine pests being shipped from Chile to the United States. These methods have proved effective when employed to inspect consignments of citrus, baby kiwi, and pomegranates from Chile.

#### Phytosanitary Certificate

Each consignment of fruit would have to 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 false red mite based on field and packinghouse inspections and was

grown, packed, and shipped in accordance with the requirements of the regulations.

Requiring a phytosanitary certificate would ensure that the NPPO of Chile has inspected the fruit and certified that the fruit meets the conditions in the section for export to the United States.

#### **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).

APHIS is proposing to allow the importation of fresh cherimoya fruit from Chile into the continental United States under a systems approach, in response to a January 2013 request from Chile's NPPO. This proposed rule provides the public with the opportunity to comment on APHIS' PRA and CIED that are the basis for this action. Currently, commercial consignments of fresh cherimoya are allowed into all of the United States subject to mandatory soapy water and wax treatment for *Brevipalpus chilensis*.

Over 80 percent of Chile's cherimoya exports are to the United States. APHIS welcomes information regarding cherimoya production within the United States. Regardless of the number of U.S. producers or their size, any impact of this proposed rule would be minor because the volume of cherimoya imported from Chile is not expected to change significantly.

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 fresh cherimoya fruit to be imported into the continental United States from Chile under a systems approach. If this proposed rule is adopted, State and local laws and regulations regarding fresh cherimoya fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits 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-2015-0015. Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

We are proposing to amend the regulations to allow 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. 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 proposed systems approach would include requirements for production site registration, low pest prevalence area certification, post-harvest processing, and fruit cutting and inspection at the packinghouse. The fruit would also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the NPPO of Chile 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 would continue to be allowed to be imported into the United States subject to treatment. This action would 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.

Implementing this rule will require pre-clearance documentation, production site registration with low-prevalence level certification option, inspections, box markings, and phytosanitary certificates.

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 0.12407 hours per response.

*Respondents:* Producers and importers of fresh cherimoya fruit and the NPPO of Chile.

*Estimated annual number of respondents:* 16.

*Estimated annual number of responses per respondent:* 202.5.

*Estimated annual number of responses:* 3,240.

*Estimated total annual burden on respondents:* 402 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 Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

#### **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 proposed rule, please contact Ms.

Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

#### 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. Section 319.56-75 is added to subpart Fruits and Vegetables to read as follows:

##### § 319.56-75 Fresh cherimoya from Chile.

Fresh cherimoya (*Annona cherimola*) fruit must be imported into the United States under the conditions listed in paragraphs (a) and (b)(1) of this section. Fresh cherimoya fruit may also be imported into the continental United States from Chile under the conditions listed in paragraph (b)(2) of this section.

(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) The fresh cherimoya fruit are subject to treatment and certification consisting of:

(i) A soapy water and wax treatment.  
(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) 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 number 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 continental 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 conditions of this section only if the consignment passes inspection. Any consignment that does not meet the requirements for inspection can still be imported into the continental 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 § 319.56-75(b)(2).

Done in Washington, DC, this 29th day of March 2016.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2016-07653 Filed 4-1-16; 8:45 am]

**BILLING CODE 3410-34-P**

#### DEPARTMENT OF AGRICULTURE

##### Animal and Plant Health Inspection Service

##### 7 CFR Part 319

[Docket No. APHIS-2015-0051]

RIN 0579-AE20

##### Importation of Lemons From Chile Into the Continental United States

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the fruits and vegetables regulations to list lemon (*Citrus limon* (L.) Burm. f.) from Chile as eligible for importation into the continental 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 Government 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