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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: Final rule.

SUMMARY: We are amending 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 will 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 will have to undergo pre-harvest sampling at the registered production site under the direction of Chile's national plant protection organization. Following post-harvest processing, the fruit will have to be inspected in Chile at an APHIS-approved inspection site. Each consignment of fruit will have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *B. chilensis* based on field and packinghouse inspections. This final rule will allow for the safe importation of lemons from Chile using mitigation measures other than fumigation with methyl bromide.

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

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Wayson, Senior Regulatory Specialist, Regulatory Coordination and Compliance, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851-2036.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart-Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-82, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture 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.

The regulations in § 319.56-4(a) provide that fruits and vegetables that can be safely imported using one or more of the designated phytosanitary measures in § 319.56-4(b) will be listed, along with the applicable requirements for their importation, on the Internet. This list may be found in the Fruits and Vegetables Import Requirements (FAVIR) database at https://www.aphis.usda.gov/aphis/ourfocus/planthealth/sa_import/sa_permits/sa_plant_plant_products/sa_fruits_vegetables/ct_favir/. Currently, lemons from Chile (*Citrus limon* (L.) Burm. f.) are listed in the FAVIR database as enterable subject to treatment with methyl bromide for the pest *Brevipalpus chilensis*, the Chilean false red mite, applied either as a condition of entry treatment or in Chile under an APHIS preclearance program. These conditions have been in place since 1982.

The regulations in § 319.56-4(a) also provide that commodities that require phytosanitary measures other than those found in § 319.56-4(b) may only be imported in accordance with

applicable requirements in § 319.56-3 and commodity-specific requirements contained elsewhere in the subpart. The conditions applicable to the importation of citrus from Chile are listed in § 319.56-38. At present, clementines (*Citrus reticulata* Blanco var. Clementine), mandarins (*Citrus reticulata* Blanco), and tangerines (*Citrus reticulata* Blanco) may be imported into the United States from Chile, and grapefruit (*Citrus paradisi* Macfad.) and sweet oranges (*Citrus sinensis* (L.) Osbeck) may be imported into the continental United States from Chile under a systems approach.

On April 4, 2016, we published in the *Federal Register* (81 FR 19063-19066, Docket No. APHIS-2015-0051) a proposal¹ to amend § 319.56-38 by including lemons that are currently enterable into the United States subject to treatment, thereby making the lemons eligible for importation under the same systems approach as other citrus from Chile. We also prepared a commodity import evaluation document (CIED) in support of the proposed rule. The CIED was made available for public review and comment with the proposed rule.

We solicited comments concerning our proposal for 60 days ending June 3, 2016. During that time, a commenter noted that APHIS prepared a pest risk assessment (PRA) in response to this market request in 2012, but while we made it available to stakeholders, we did not publish a notice in the *Federal Register* making the PRA available for public review and comment. In response, we made the 2012 PRA publicly available and reopened and extended the deadline for comments until September 26, 2016, in a document published in the *Federal Register* on August 26, 2016 (81 FR 58873, Docket No. APHIS-2015-0051). We received 38 comments by that date. They were from producers, importers, exporters, port operators, representatives of State and foreign governments, and private citizens. Twenty-eight of the commenters were supportive

¹ To view the proposed rule, the supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0051>.

of the proposed rule. The other commenters raised a number of questions and concerns about the proposed rule. The comments are discussed below, by topic.

One commenter was opposed to the proposed rule because of potential economic impacts on lemon producers in the United States.

APHIS notes that the United States is already a net importer of lemons. We also note that this final rule will not change the number of lemons produced by Chile for export to the United States, but will provide an alternative to methyl bromide fumigation. We have thoroughly analyzed the economic effects of the rule, as described below.

Two commenters stated that they were opposed to the proposed rule because there would be an increased pest risk associated with lemons produced under a systems approach.

APHIS notes that this systems approach has been used successfully with other commodities, such as grapefruit, oranges, and tangerines, to prevent the introduction of pests associated with citrus from Chile. We are making no changes in response to this comment.

One commenter stated that the detection methodology used to qualify for the systems approach will only detect adult mites as a 200 mesh sieve (0.074 mm) but will not collect immature mites. The commenter stated that a refinement of this methodology by using a mesh size of 0.044 mm is needed to detect all life stages.

The commenter is correct that the sieve will collect adult mites. Only the adults can be identified reliably through microscopic examination of the filtrate from the sieve. However, in a given population, multiple life stages (egg to adult) of the mite are concurrent, and since APHIS will require a number of samples, the likelihood of only eggs or nymphs being present in all of the samples is very low. For this reason APHIS can use the sieve sampling method to reliably detect populations of mites at production sites.

Three commenters noted that if mites are detected, lemons would not qualify for the systems approach but could still be shipped to the United States if a methyl bromide treatment is conducted at either the point of origin or at destination. The commenters stated that the treatment of lemons using methyl bromide in Florida is unacceptable as this will allow for the possibility of mites to have a pathway into Florida and possibly endanger Florida's citrus and grape industries. One of the commenters stated that all shipments of fresh lemons that do not qualify for shipment under the systems approach should either have the methyl bromide treatment conducted in Chile or have the shipments sent north of the 39th parallel.

The commenters are correct that lemons that do not qualify for the systems approach could still be shipped to the United States if they are treated with methyl bromide. However, APHIS disagrees that treatment of lemons in Florida will provide a pathway for *B. chilensis* into Florida. We have determined, for the reasons described in the CIED that accompanied the proposed rule, that the measures specified in the systems approach will effectively mitigate the risk associated with the importation of lemons from Chile. The commenter did not provide any evidence suggesting that the mitigations are not effective. Therefore, we are not taking the action requested by the commenter.

One commenter suggested substituting phosphine (sold under the trade names Phostoxin and Magtoxin) or a phosphine/carbon dioxide combination in place of methyl bromide fumigation.

APHIS notes that we do not have an approved phosphine treatment for *B. chilensis*. Moreover, Chile did not ask APHIS to approve a phosphine treatment. They requested that we approve a systems approach, which can substitute for a methyl bromide treatment, eliminating the need for fumigation.

One commenter stated that the rule provides that the production centers where lemons are grown must be registered with the national plant protection organization (NPPO) of Chile including in this record the number of plants/hectares/species. The commenter suggested that this be replaced by the area in hectares/species/variety, which is the information that we currently manage in our records for the other citrus species under a systems approach.

APHIS disagrees. Under the regulations, production site registration requires: Production site name, grower, municipality, province, region, area planted to each species, number of plants/hectares/species, and approximate date of harvest. The information required in this rulemaking is consistent with current recordkeeping for other citrus from Chile under a systems approach.

In the proposed rule and the accompanying CIED, we referred to commercially grown shipments from registered production sites that use good agricultural practices to reduce or eliminate pests. One commenter asked what good agricultural practices entail.

In this context, the phrase good agricultural practices means that fruits and vegetables are produced, packed, handled, and stored to reduce or eliminate pest risk by growing healthy crops that are less vulnerable to pest and diseases, and by protecting the fruit from exposure to pests and diseases after harvest. Good agricultural practices can effectively suppress or eliminate pests from fields or prevent infestation in harvested crops.

One commenter stated that the requirement for good agricultural practices should be required for pre-harvest as well as post-harvest protocols. The commenter suggested adding the words “Production sites must follow pre-harvest good agricultural practices to be registered” to § 319.56-38(d)(1).

APHIS notes that following pre-harvest good agricultural practices is not currently required for other Chilean citrus using the systems approach. Furthermore, the systems approach will disqualify production sites that, upon inspection, are found to have mites. It is up to the Chilean growers to reduce their mite populations or they will not qualify to export under the systems approach.

One commenter asked if APHIS will have any role in pre-harvest oversight activities, such as reviewing the records for the registrations on an annual basis. The commenter also asked if APHIS personnel will participate in the pre-harvest tests that are done to determine the existence of the mite.

Yes. At Chile's request, APHIS conducts activities in Chile under a pre-clearance program that covers all fruits and vegetables exported to the United States, so all of the pre-harvest tests and sampling are subject to APHIS oversight. More information about APHIS pre-clearance activities can be found on the APHIS website at https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/sa_preclearance/ct_preclearance_activities.

One commenter asked how large registered production sites would be. The commenter stated that the size of the random sample should be proportionate to the size of the registered site. The commenter also asked if there would be a maximum size for each registered production site.

APHIS does not place limits on the size of production sites. The samples for determining freedom from mites are to be taken at random from production sites. Random sampling obviates any reason to increase sample size with the size of the production site. The current sample size is sufficient to detect mite populations of 2 percent with 95 percent probability regardless of the size of production sites.

One commenter stated that requiring the NPPO of Chile to present a list of certified production sites to APHIS annually is insufficient because the pest situation in a given area is always evolving.

Production site surveillance is not the only method used to detect pests. Packinghouse inspection, which takes place throughout the harvest season, backs up production site surveillance. These overlapping measures are part of the same systems approach that has been successfully used with other commodities, such as grapefruit, oranges, and tangerines from Chile, to prevent pest introductions into the United States.

Two commenters stated that in the 2012 PRA, *B. chilensis* was rated as medium risk. The commenters stated that the pest should be considered high risk.

APHIS disagrees that the pest should be rated as high risk. Furthermore, a high risk rating would not have changed our mitigations for the pest. Under APHIS policy, both medium risk and high risk pests are subject to pest-specific mitigations beyond port of entry inspection, and the mitigations we prescribed to address *B. chilensis* are based on the possibility that it may follow the pathway, rather than the risk rating ascribed to the pests.

One commenter stated that random sampling may not be the appropriate way to determine its prevalence in a given growing area. Instead, surveys of surrounding areas may be needed because if there are populations of the mite in the vicinity of the production site and given the ability of the mite to travel on the wind, the mites could move into neighboring orchards given the right wind conditions.

B. chilensis tend to aggregate, move downwind slowly, and do not balloon -- that is, they do not produce streamers of silk and travel with wind currents for longer distances.² If *B. chilensis* mites move from a neighboring orchard into a registered production site, they should be readily detected through routine place of production inspections and the biometric sampling protocol.

One commenter stated that the 2012 PRA should have addressed citrus fruit borer (*Gymnandrosoma aurantianum*), which is present in Argentina, Peru, and Brazil.

The PRA addressed pests of lemons that are present in Chile. The Crop Protection Compendium³ maintained by the Centre for Agriculture and Biosciences International does not list the citrus fruit borer as present in Chile, and a search of the scientific literature for Tortricidae references did not find it to be present in Chile.

One commenter stated that APHIS should provide data that demonstrates that the pre-harvest sieving is effective. The commenter stated that relying on the lack of interceptions of the mite is not sufficient.

As we explained above, this systems approach, including pre-harvest sieving, has been used successfully with other commodities, such as clementines, mandarins, tangerines, grapefruits, and sweet oranges from Chile. APHIS considers that this approach has been extensively tested and found to work.

Two commenters stated that the wash survey proposed in the systems approach does not appear to have been evaluated in scientific literature. The commenters stated that surveys

² Childers, C.C. and J.C.V. Rodrigues. 2011. An overview of *Brevipalpus* mites (Acari: Tenuipalpidae) and the plant viruses they transmit. *Zoosymposia* 6:180–192.

³ The Crop Protection Compendium can be viewed online at <http://www.cabi.org/cpc/>.

capable of detecting immature mites should be scientifically evaluated before being considered as a component of a systems approach

APHIS disagrees. Mites and other small organisms have been studied by collecting them from their habitat through sieves that concentrate them. In their classic textbook *Ecological Methods*, Southwood and Henderson devote chapters to this method of sampling. (Southwood, T. R. E., & Henderson, P. A. (2009). *Ecological Methods*. John Wiley & Sons.)

This method of sampling has been used since the 18th century; use of Berlese funnels and sieves is ubiquitous in sampling mites and other small organisms in various habitats. The agricultural quarantine and inspection data that APHIS collects routinely suggests that the specific method described in the regulations, which has been used for almost 20 years, has been very effective in detecting *B. chilensis* mites on fruit from Chile.

One commenter noted that under the systems approach, a biometric sample of each consignment will be inspected in Chile under the direction of APHIS inspectors. The commenter asked how the term biometric sample is defined and if the biometric sample will be made proportional to the size of the consignment. The commenter also asked how large each consignment would be and if there was a limit on the size of each consignment.

With a hypergeometric probability distribution (biometric sample), once a certain consignment size is reached (about 4,000 fruit, which would be a very small commercial shipment), a fixed sample size of 150 gives the same probability of finding the pest (95 percent confidence of finding a 2 percent pest infestation) independent of the increasing consignment size no matter how large the consignment size is. The size of a consignment is determined by agreement between the importer and the exporter. APHIS does not limit the size of consignments.

One commenter stated that the number of samples inspected for the determination of production site freedom from mites as part of the systems approach should be 600 for at least the first 3 years of the program, since this is consistent with what other countries require of U.S. growers. The commenter stated that this requirement is appropriate given that this is the first time this program has been applied to lemons and unanticipated issues could arise.

APHIS disagrees that the number of samples inspected should be 600. One hundred samples is consistent with the protocol used for other Chilean citrus fruits, including clementines, mandarins, tangerines, grapefruits, and sweet oranges, and has been effective at preventing infested fruit from being shipped. Inspecting an additional 500 fruit per sample does not substantially impact the probability of finding an infestation, and would be significantly more resource-intensive.

Miscellaneous

In § 319.56-38, paragraph (d)(4) provides the phytosanitary inspection procedures that apply to citrus fruit imported from Chile under the section. When we added sweet oranges and grapefruit to the section in 2009, we failed to add them specifically to that paragraph with the already-listed clementines, mandarins, and tangerines. We similarly neglected to propose adding lemons to the listed fruit in our proposed rule. Therefore, in this final rule, we have added sweet oranges, grapefruit, and lemons to the fruit listed in paragraph (d)(4).

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed in this document.

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.

This rule will allow fresh lemon imported from Chile into the United States to be treated using a systems approach as an alternative to methyl bromide fumigation, to mitigate the risk of introduction of the Chilean false red mite.

The United States is a net importer of fresh lemons. Over the last five seasons, U.S. annual imports of fresh lemons averaged 497,000 metric tons (MT), an amount equal to about 60 percent of U.S. fresh lemon production and almost four times the quantity exported (129,000 MT per year).

More than 90 percent of U.S. fresh lemon imports come from Mexico, with only 4 percent supplied by Chile. Chile's Ministry of Agriculture estimates that approximately 60 percent of that country's lemon exports to the United States will be qualified for importation using the systems approach rather than fumigated. This amount represents less than 3 percent of U.S. lemon imports, and less than 2 percent of U.S. fresh lemon consumption. This rule is not expected to result in significant cost savings for Chile's lemon exporters or a substantial change in their competitiveness.

Although the majority of entities that may be affected by this rule (lemon importers, producers, and wholesalers) are small, the Administrator of the Animal and Plant Health

Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows lemon fruit to be imported into the continental United States from Chile subject to a systems approach. State and local laws and regulations regarding lemon 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 burden requirements included in this final rule, which were filed under 0579-0446, 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 and 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-38 is amended as follows:

a. In the introductory text, by adding the words “, lemons (*Citrus limon* (L.) Burm. f.),” between the words “(*Citrus paradisi* Macfad.)” and “and sweet oranges”;

b. In paragraph (d)(4) introductory text, by adding the words “grapefruit, lemons,” between the words “Clementines,” and “mandarins,” and by adding the words “sweet oranges,” between the words “mandarins,” and “or tangerines”;

c. In paragraphs (e) and (f), by adding the word “lemons,” between the words “grapefruit,” and “mandarins,”; and

d. By revising the OMB citation at the end of the section.

The revision reads as follows:

§ 319.56-38 Citrus from Chile.

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(Approved by the Office of Management and Budget under control numbers 0579-0242 and 0579-0446)

Done in Washington, DC, this 2nd day of April 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 2018-07073 Filed: 4/5/2018 8:45 am; Publication Date: 4/6/2018]