

Rules and Regulations

Federal Register

Vol. 76, No. 206

Tuesday, October 25, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2010-0018]

RIN 0579-AD37

Importation of Fresh Baby Kiwi From Chile Under a Systems Approach

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation into the continental United States of baby kiwi fruit from Chile, subject to a systems approach. Under this systems approach, the fruit must 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 must undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit must be inspected in Chile at an approved inspection site. Each consignment of fruit must be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *Brevipalpus chilensis* based on field and packinghouse inspections. This final rule allows for the safe importation of fresh baby kiwi from Chile using mitigation measures other than fumigation with methyl bromide.

DATES: *Effective Date:* November 25, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–52, 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.

Previously, under the regulations, the importation into the United States of fresh baby kiwi (*Actinidia arguta*) from Chile was allowed only if the fruit was fumigated with methyl bromide. On March 21, 2011, however, we published in the **Federal Register** (76 FR 15225–15228, Docket No. APHIS-2010-0018) a proposal¹ to amend the fruits and vegetables regulations to allow the importation into the continental United States of baby kiwi fruit from Chile, subject to a systems approach. We proposed that 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 declaration stating that the fruit had been found free of *Brevipalpus chilensis* based on field and packinghouse inspections.

We solicited comments concerning our proposal for 60 days ending May 20, 2011. We received 23 comments by that date. They were from private citizens, growers, shippers, trade associations, a State department of agriculture, industry groups, and the Government of Chile. Most of the commenters supported the proposed rule, with only one opposing it outright and another supporting it with reservations. The issues raised by the commenters are discussed below.

One commenter, while generally supportive of the proposed rule, expressed concern about how the imports of baby kiwi from Chile that

would be allowed under this rulemaking could affect domestic kiwi growers. The commenter suggested that we should have provided a more extensive discussion of that potential impact, including statistics, in the preamble to the March 2011 proposed rule. The commenter did not present any new information, however.

In the economic analysis that accompanied the proposed rule and was summarized in the preamble, we concluded that we expect the impact of fresh baby kiwi fruit imports from Chile to be minimal for domestic producers due to timing differences (baby kiwi would likely be imported from Chile during the off-season for U.S. producers) and the small quantity that we anticipated would be imported. The full economic analysis, which was conducted in accordance with Executive Order 12866 and the Regulatory Flexibility Act and was posted on the Regulations.gov Web site along with the proposed rule, featured a more extensive discussion of the possible economic impact of the rulemaking, including the potential impact on small growers. As the commenter did not present any evidence to the contrary, we stand by our original determination that the economic impact of the rulemaking on domestic growers of baby kiwi is likely to be minimal.

A commenter from a State Department of Agriculture stated that shipments of baby kiwi from Chile should not be allowed entry into Florida until the effectiveness of the phytosanitary measures required under the proposed systems approach has been demonstrated through their use on baby kiwi imported from Chile into lower-risk States.

We have determined, for the reasons described in the risk management document (RMD) that accompanied the March 2011 proposed rule, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of baby kiwi 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.

For greater clarity, we are making a change in this final rule to the requirement for an additional declaration on the phytosanitary certificate accompanying shipments of

¹To view the proposed rule, the PRA, the RMD, the economic analysis, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0018>.

baby kiwi from Chile. As originally proposed, the additional declaration had to state that the fruit in the consignment was inspected and found free of *Brevipalpus chilensis*. This final rule provides that the additional declaration must also state that the fruit was grown, packed, and shipped in accordance with the requirements of the systems approach.

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 Order 12866 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.

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

This final rule amends the regulations to allow the importation of fresh baby kiwi fruit from Chile into the continental United States under a systems approach. The systems approach provides an alternative to fumigation with methyl bromide of baby kiwi imported from Chile into the continental United States.

The impact of fresh baby kiwi fruit imports from Chile will be minimal for domestic producers due to timing differences (baby kiwi are likely to be imported from Chile during the off-season for U.S. producers) and the small quantity expected to be imported. Although most U.S. growers of baby kiwi fruit are small entities by the standards of the Small Business Administration, our analysis concludes that the effects of this rule on U.S. baby kiwi fruit producers, regardless of their size, will be minimal.

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 baby kiwi to be imported into the continental United States from Chile. State and local laws and regulations regarding baby kiwi

imported under this rule will be preempted while the fruit is in foreign commerce. Fresh baby kiwi 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 the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0374.

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 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 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. A new § 319.56-53 is added to read as follows:

§ 319.56-53 Fresh baby kiwi from Chile.

Fresh baby kiwi (*Actinidia arguta*) may be imported into the continental United States from Chile under the following conditions:

(a) *Production site registration.* The production site where the fruit is grown must be registered with the national plant protection organization (NPPO) of

Chile. Harvested baby kiwi 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.

(b) *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 fruit 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 fruit 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 *Brevipalpus 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.

(c) *Post-harvest processing.* After harvest, all damaged or diseased fruits must be culled at the packinghouse and must be packed into new, clean boxes, crates, or other APHIS-approved packing containers. Each container must have a label identifying the registered production site where the fruit originated and the packing shed where it was packed.

(d) *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. Baby kiwi in any consignment may be shipped to the continental United States under the conditions of this section only if the consignment passes inspection as follows:

(1) 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.

(2) 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. A portion of the fruit must be washed with soapy water and the collected filtrate must be microscopically examined for *B. chilensis*. 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.

(e) *Phytosanitary certificate*. Each consignment of fresh baby kiwi 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 7 CFR 319.56–53.

(Approved by the Office of Management and Budget under control number 0579–0374)

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

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27577 Filed 10–24–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 56

[Docket No. APHIS–2009–0031]

RIN 0579–AD21

National Poultry Improvement Plan and Auxiliary Provisions; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Correcting amendment.

SUMMARY: In a final rule that was published in the **Federal Register** on March 22, 2011, and effective on April 21, 2011, we amended the regulations for the control of H5/H7 low pathogenic avian influenza to simplify the list of types of poultry eligible for 100 percent indemnity, among other changes. This document corrects an error in our amendatory instructions accomplishing that change.

DATES: *Effective Date:* October 25, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. C. Stephen Roney, DVM, Senior Staff Officer, NPIP, VS, APHIS, USDA, 1506 Klondike Road, Suite 300, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

In a final rule that was published in the **Federal Register** on March 22, 2011 (76 FR 15791–15798, Docket No. APHIS–2009–0031), and effective on April 21, 2011, we amended the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. We also amended the regulations in 9 CFR part 56, which set out conditions for the payment of indemnity for costs associated with poultry that are infected with or exposed to the H5 or H7 subtypes of low pathogenic avian influenza.

In § 56.3, we simplified the list of types of poultry eligible for 100 percent indemnity in paragraph (b) by replacing former paragraphs (b)(1) through (b)(6) with new paragraphs (b)(1) and (b)(2) and redesignating former paragraph (b)(7) as paragraph (b)(3). However, our amendatory instructions for accomplishing this change neglected to remove former paragraph (b)(3), resulting in the presence of two paragraphs designated (b)(3) in the Code of Federal Regulations. This document corrects that error.

List of Subjects in 9 CFR Part 56

Animal diseases, Indemnity payments, Low pathogenic avian influenza, Poultry.

Accordingly, we are amending 9 CFR part 56 as follows:

PART 56—CONTROL OF H5/H7 LOW PATHOGENIC AVIAN INFLUENZA

- 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 56.3 [Amended]

- 2. In § 56.3, the first paragraph (b)(3) is removed.

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

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27579 Filed 10–24–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS–2011–0005]

Brucellosis in Swine; Add Texas to List of Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding Texas to the list of validated brucellosis-free States. The interim rule was necessary to relieve certain restrictions on interstate movement of breeding swine from Texas.

DATES: Effective on October 25, 2011, we are adopting as a final rule the interim rule published at 76 FR 28885–28886 on May 19, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Troy Bigelow, Swine Health Programs, Aquaculture, Swine, Equine, and Poultry Programs, National Center for Animal Health Programs, VS, APHIS, 210 Walnut Street Room 891, Des Moines, IA 50309; (515) 284–4121.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease caused by bacteria of the genus *Brucella*. The disease mainly affects cattle, bison, and swine, but goats, sheep, horses, and even humans are susceptible. In its principal animal hosts, it causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. There is no economically feasible treatment for brucellosis in livestock. In humans, brucellosis initially causes flu-like symptoms, but the disease may develop into a variety of chronic conditions, including arthritis. Humans can be treated for brucellosis with antibiotics.

In an interim rule¹ effective and published in the **Federal Register** on May 19, 2011 (76 FR 28885–28886, Docket No. APHIS–2011–0005), we amended the brucellosis regulations in 9 CFR part 78 by adding Texas to the list of validated brucellosis-free States in § 78.43. That action relieved certain

¹ To view the interim rule and the comment we received, go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2011-0005>.