

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****7 CFR Parts 210 and 220****Incorporating the 2010 Dietary Guidelines for Americans Into the Proposed School Meal Patterns**

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Request for comments.

**SUMMARY:** This document informs the public about a change in the Dietary Guidelines for Americans that affects the proposed rule "Nutrition Standards in the National School Lunch and School Breakfast Programs" issued by the Department of Agriculture and published in the **Federal Register** on January 13, 2011. Members of the public are asked to address this change when writing comments on the above referenced rule to assist the Department in updating the school meal patterns and nutrition standards according to the latest dietary recommendations.

**DATES:** The public comment period for the proposed rule closes on April 13, 2011.

**ADDRESSES:** All comments should be submitted under the proposed rule, "Nutrition Standards in the National School Lunch and School Breakfast Programs," (FNS-2007-0038), which is posted at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 703-305-2590, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302-1594.

**SUPPLEMENTARY INFORMATION:****Background**

Section 9 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1758, requires that meals served under the National School Lunch Program and the School Breakfast Program reflect the most recent Dietary Guidelines for Americans (DGAs). The DGAs are the federal government's evidence-based nutritional guidance to promote health, reduce the risk of chronic diseases, and reduce the prevalence of overweight and obesity through improved nutrition and physical activity.

The Department of Agriculture (USDA) published a proposed rule on January 13, 2011 (76 FR 2494), to align the school meal patterns and nutrition standards with the 2005 DGAs, the most current at the time of publication. On January 31, 2011, USDA and the

Department of Health and Human Services released the 2010 DGA recommendations. The 2010 DGA recommendations contain two changes from the 2005 recommendations which could affect the proposed school meal patterns.

The 2010 DGAs include a new Red-Orange vegetable subgroup, while the proposed meal patterns include an Orange vegetable subgroup and group the Red vegetables under the category of Other vegetables (consistent with the 2005 DGAs). However, the proposed meal patterns do reflect the emphasis on consuming a variety of vegetables, which is a key recommendation of the 2005 and 2010 DGAs. Consuming a variety of vegetables provides children with a number of nutrients that are under consumed in the United States, including dietary fiber, folate, magnesium, potassium, and vitamins A, C, and K.

The 2010 DGAs also advise consuming protein from a variety of sources, and recommend weekly amounts from three Protein foods (formerly Lean meat and beans) subgroups: (1) Seafood; (2) meat, poultry, and eggs; and (3) nuts, seeds, and soy products. The proposed meal patterns contain weekly and daily amounts of meats/meat alternates, but do not specify amounts for subgroups introduced by the 2010 DGAs. Consumption of a balanced variety of protein foods can contribute to improved nutrient intake and health benefits.

Therefore, this document requests the public to:

1. Consider the impact of the new Red-Orange vegetable subgroup and the new protein foods subgroups on the proposed school meal patterns,
2. Evaluate the need to revise the proposed meal patterns to reflect the new vegetable subgroup and protein foods subgroups, and
3. Address how the new vegetable subgroup and protein foods subgroups may be incorporated into the proposed meal patterns in a sound and practical manner.

Individuals wishing to address the effect of these changes, or any other issues, on the proposed rule "Nutrition Standards in the National School Lunch and School Breakfast Programs" (76 FR 2494), may submit their comments when providing comments on the above-referenced proposed rule.

Dated: March 14, 2011.

**Julia Paradis,**

*Administrator, Food and Nutrition Service.*

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**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:** Proposed rule.

**SUMMARY:** We are proposing 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. 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 declaration stating that the fruit had been found free of *Brevipalpus chilensis* based on field and packinghouse inspections. This proposed rule would allow for the safe importation of fresh baby kiwi from Chile using mitigation measures other than fumigation with methyl bromide.

**DATES:** We will consider all comments that we receive on or before May 20, 2011.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0018> to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send one copy of your comment to Docket No. APHIS-2010-0018, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0018.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room 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.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**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 319.56–50, 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.

Currently, the importation into the United States of fresh baby kiwi (*Actinidia arguta*) from Chile is allowed if the fruit is fumigated with methyl bromide. The Animal and Plant Health Inspection Service (APHIS) also received a request from the national plant protection organization (NPPO) of Chile to allow the fresh baby kiwi fruit from Chile to be imported into the continental United States (the lower 48 States, the District of Columbia, and Alaska) without methyl bromide fumigation, but subject instead to a systems approach. As part of our evaluation of Chile’s request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and the risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The PRA, titled “Pest Risk Assessment for Fresh Fruits of Baby Kiwi (*Actinidia arguta*) from Chile Imported into the Continental United States” (May 2008), evaluates the risks associated with the importation of baby kiwi into the continental United States from Chile. The risk management document lists the phytosanitary measures necessary to ensure the safe importation into the United States of baby kiwi from Chile.

The PRA identifies one quarantine pest that could be introduced into the

United States in consignments of baby kiwi from Chile: *Brevipalpus chilensis* (false red mite). 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 *B. chilensis* 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 United States.

Based on the findings of our PRA and risk management document, we are proposing to allow the importation of fresh baby kiwi from Chile into the continental United States, subject to a systems approach. Under a systems approach, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified, whereby fruits and vegetables may be imported into the United States from countries that are not free of certain plant pests. The systems approach for fresh baby kiwi from Chile would require the fruit to be grown in a place of production that is registered with the NPPO of Chile. The fruit would have to undergo pre-harvest sampling at the registered production site under the direction of the NPPO of Chile and, once harvested, placed in field cartons or containers marked to allow for traceback to the production site. The NPPO of Chile would present a list of production sites certified as having a low prevalence of *B. chilensis* to APHIS. Following post-harvest processing, 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. Each consignment of the fruit would 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.

The mitigation measures in the proposed systems approach are discussed in greater detail below, as well as in the risk management document.

##### **Production Site Registration**

The production site where the fruit is grown would have to be registered with the NPPO of Chile. Harvested baby kiwi

would have to be placed in field cartons or containers that are marked to show the official registration number of the production site. Registration would have to be renewed 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 removed from the program until further mitigation measures were taken to reduce pest populations.

##### **Low-Prevalence Production Site Certification**

Between 1 and 30 days prior to harvest, random samples of fruit 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 fruit 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 *B. chilensis* mites. If a single live *B. chilensis* mite were found, the production site would not qualify for certification as a low-prevalence production site. 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 *B. chilensis* mites from such sites. This mite sampling method has been tested in Chile and found to be successful in identifying grape and citrus 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. Each container would have to have a label identifying the registered production site where the fruit originated and the packing shed where it was packed.

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 produce quality fruit without pests. Labeling of containers to identify both production site and packing shed would aid in traceback.

#### *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. A biometric sample would have to be drawn from each consignment. 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.
- The biometric sample, referred to above, of the boxes, crates, or other APHIS-approved packing containers from each consignment would be selected by the NPPO of Chile, and the fruit from these boxes, crates, or other APHIS-approved packing containers would be visually inspected for quarantine pests. A portion of the fruit would have to be washed with soapy water and the collected filtrate microscopically examined for *B. chilensis*. If a single live *B. chilensis* mite were found during the inspection process, the certified low-prevalence production site where the fruit was grown would lose its certification.

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

Requiring a phytosanitary certificate would ensure that the NPPO of Chile has inspected the fruit and certified that the fruit meets the conditions 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).

This proposed rule would allow the importation into the continental United States of baby kiwi fruit from Chile, subject to a systems approach. The systems approach would provide an alternative to fumigation with methyl bromide of baby kiwi imported from Chile into the continental United States.

Domestic growers of fresh baby kiwi fruit are the entities that could be affected by this proposed rule. The currently available information indicates that almost all U.S. growers of baby kiwi fruit are small in size, by the standards of the Small Business Administration.

The impact of fresh baby kiwi fruit imports from Chile is expected 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 expected to be imported. Therefore, we do not expect the proposed rule to have any significant impact on U.S. baby kiwi fruit growers, regardless of the size of operation.

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 baby kiwi to be imported into the continental United States from Chile, subject to a systems approach. If this proposed rule is adopted, State and local laws and regulations regarding fresh baby kiwi imported under this rule would 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 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-2010-0018. Please send a copy of your comments to: (1) Docket No. APHIS-2010-0018, 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.

This proposed rule would allow the importation into the continental United States of baby kiwi fruit from Chile, subject to a systems approach. For the systems approach to work effectively, certain information-collection activities must be performed. These activities include the registration of production sites with the NPPO of Chile, the post-harvest labeling of containers so that the fruit can be identified back to the registered production site, and the completion of 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 0.253434 hours per response.

*Respondents:* Kiwi fruit production sites, packinghouses, and the NPPO of Chile.

*Estimated annual number of respondents:* 4.

*Estimated annual number of responses per respondent:* 91.

*Estimated annual number of responses:* 364.

*Estimated total annual burden on respondents:* 92.25 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 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 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 § 319.56-51 is added to read as follows:

##### § 319.56-51 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* based on field and packinghouse inspections.

Done in Washington, DC, this 15th day of March 2011.

**Kevin Shea,**

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

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**BILLING CODE 3410-34-P**