

# Rules and Regulations

Federal Register

Vol. 60, No. 32

Thursday, February 16, 1995

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. 94-042-2]

#### True Potato Seed From Chile

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

**ACTION:** Final rule.

**SUMMARY:** We are allowing, under certain conditions, the importation of true potato seed from Chile. The true potato seed imported from Chile under this rule will originate from certified virus-free plantlets from the United States, be produced under the supervision of Chilean plant protection authorities, and be tested for seedborne viruses prior to being offered for entry into the United States. Allowing the importation of true potato seed from Chile will give potato producers in the United States another means of producing disease-free tubers.

**EFFECTIVE DATE:** March 20, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter M. Grosser or Mr. Frank E. Cooper, Senior Operations Officers, Port Operations, Plant Protection and Quarantine, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436-6799 (Hyattsville); (301) 734-6799 (Riverdale).

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests. The

regulations contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," §§ 319.37 through 319.37-14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

One of the articles restricted in the regulations is *Solanum* species (spp.) true seed, also known as true potato seed. "*Solanum* spp. true seed" is defined in § 319.37-1 as "seed produced by flowers of *Solanum* capable of germinating and producing new *Solanum* plants, as distinguished from *Solanum* tubers, whole or cut, that are referred to as *Solanum* seeds or seed potatoes."

On September 9, 1994, we published in the **Federal Register** (59 FR 46572-46574, Docket No. 94-042-1) a proposed rule to allow, under certain conditions, the importation of true potato seed from Chile. We proposed that the true potato seed imported from Chile would have to originate from certified virus-free plantlets from the United States, be produced in the country's Tenth (X) Region under the supervision of Chilean plant protection authorities, and be tested for seedborne viruses prior to being offered for entry into the United States.

We solicited comments concerning our proposal for a 30-day comment period ending October 11, 1994. We received 31 comments by that date, from State universities and university extension services; plant researchers and geneticists; potato breeders, growers, and marketers; State agriculture departments; seed companies; an agronomist; a member of the U.S. House of Representatives; and the Chilean government trade bureau. Twenty one of the commenters supported the proposed rule as written, 8 commenters supported the proposed rule but suggested changes, and 2 commenters were opposed to the proposed rule. The suggested changes and the comments of those opposed to the proposal are discussed below.

*Comment:* Although the disease is already present in the United States, the regulations should include safeguards to prevent the introduction of potato spindle tuber viroid (PSTV), which is transmitted by true potato seed.

*Response:* As discussed in the proposed rule, the plants that would

produce the true potato seed would originate from plantlets from the United States that have been tested for viruses (including PSTV) and certified virus-free. Additionally, PSTV is not known to exist in the X Region, and, because the X Region is a quarantined area for potatoes, the entry of potato seeds, true seed, plants, and tubers is restricted in order to prevent the introduction of PSTV and other potato pests or diseases. Therefore, we believe that it is unlikely that the true potato seed would introduce PSTV into the United States and have made no changes in this final rule as a result of that comment.

*Comment:* The growing season inspection discussed in the proposed rule should be conducted within six weeks of harvest to maximize the ability to detect infected plant material. Surveys conducted earlier in the growing season might not detect infected plants.

*Response:* Diseases with visible symptoms would likely be more easily recognized later in the growing season, but the viruses for which the plants, tubers, and true potato seed will be tested may be asymptomatic in potatoes. The testing protocol presented by Chile's ministry of agriculture, the Servicio Agrícola y Ganadero (SAG), and accepted by the Animal and Plant Health Inspection Service (APHIS) calls for plant samples to be collected for testing between 30 days after planting up to the flowering phase. APHIS agrees with that time frame because we believe that the most accurate testing results would be obtained from samples gathered during the active phase of the plants' growth. We have, therefore, made no changes in this final rule as a result of that comment.

*Comment:* Our literature indicates that potato smut occurs in parts of Chile. If that disease is present in the X Region, it could be carried with the true potato seed as a contaminant.

*Response:* Potato smut is not reported to occur in the X Region and, as mentioned above, there are quarantine measures in place to prevent its introduction into the region. Because we believe that it is unlikely that potato smut would be carried into the United States as a contaminant on the true potato seed from Chile, we have made no changes in this final rule based on that comment.

*Comment:* For the sake of clarity, APHIS should specify “*Solanum tuberosum*,” rather than the more general “*Solanum* spp.,” when referring to the potato species from which the true potato seed may be derived.

*Response:* We agree that using “*Solanum tuberosum*” instead of the more general “*Solanum* spp.” would be clearer. We have, therefore, changed the regulatory text of this final rule to refer to the potato species from which the true potato seed may be derived as “*Solanum tuberosum*.”

*Comment:* Specifically requiring that the nitro-cellulose membrane (NCM) enzyme-linked immunosorbent assay (ELISA) be used to test for the viruses of concern leaves no room for the use of other tests that are also recommended by the International Potato Center. Other ELISA tests, as well as the nucleic acid spot hybridization (NASH) non-reagent test, should be allowed.

*Response:* In the testing protocol presented by SAG and accepted by APHIS, the NCM ELISA test was specified as the method that would be used to test for the viruses of concern. We recognize, however, that the other tests recommended by the International Potato Center are equally accurate and could be used to test for the viruses of concern without compromising the integrity of the testing program in any way. Therefore, we have changed the regulatory text of this final rule to allow the use of other ELISA tests and the NASH non-reagent test for the purposes of testing the tubers, plants, and true potato seed for the viruses of concern.

*Comment:* With regard to the sample sizes specified in proposed paragraph § 319.37-5(h)(iii), the sampling rate should be 500 tubers and 500 plantlets per hectare (2.5 acres) rather than per 30 acres in order to detect 1 percent contamination with a 99 percent confidence level. The sampling level for the true potato seed should be made according to International Potato Center’s guidelines for laboratory tests.

*Response:* The 500/500/500 sampling rate discussed in the proposed rule for the testing of plants, tubers, and true potato seed actually should, as pointed out by the commenter, be 500/500/500 per hectare, and not per 30-acre field as stated in the proposed rule. We have changed the regulatory text in this final rule to correct that error. With regard to the sampling to the true potato seed, the testing protocol presented by SAG and accepted by APHIS dictated that the true potato seed would be sampled at the same rate as the plants and tubers in order to detect 1 percent contamination with a 99 percent confidence level. It is the contamination

level/confidence level equation that is of the greatest importance to APHIS; if SAG would prefer to establish a different sampling procedure for true potato seed that could detect the same level of contamination with the same level of confidence, APHIS is willing to review the new sampling procedure and, if warranted, publish a proposal in the **Federal Register** to add the procedure to the regulations.

*Comment:* APHIS should recognize Chile’s VIII and IX regions as also being free from the four viruses of concern and allow the importation of true potato seed from those regions as well. Once such recognition has been established, APHIS should allow the use of parental material from those regions to produce the true potato seed and eliminate the requirement for the pre-export inspection and testing of true potato seed from the VIII, IX, and X regions of Chile.

*Response:* APHIS is open to working with SAG to expand the range of areas in Chile from which true potato seed may be imported into the United States; similarly, we are open to relaxing or eliminating inspection or testing requirements as circumstances warrant. However, we must first be able to establish that such actions would not result in an increased risk of plant pest introduction or dissemination in the United States. Once adequate protocols had been established and agreed upon, we could publish a proposal in the **Federal Register** to add any new areas or inspection requirements to the regulations. We cannot, however, make any such changes in this final rule.

*Comment:* The proposed requirement to test at three levels (plantlet, tuber, and true potato seed) for Andean Potato Latent Virus (APLV), Arracacha Virus B (AVB), and the Andean Potato Calico Strain of Tobacco Ringspot Virus (TRV-Ca) is unnecessarily stringent because there is no evidence to confirm that any of the three viruses can be transmitted by true potato seed under natural conditions. Additionally, the International Potato Center has analyzed true potato seed from the Peruvian Andean area—where AVB and TRV-Ca have been found to exist—and from the Center’s own germplasm stock for a continued term of 8 years and has never found any of the three viruses in the true potato seed tested.

*Response:* The testing protocol presented by SAG and accepted by APHIS prescribed that plants, tubers, and true potato seed would all be tested for the viruses of concern. If alternative testing protocols are presented by SAG, and APHIS determines that they would not result in an increased risk of plant

pest introduction or dissemination in the United States, we could publish a proposal in the **Federal Register** to relax or replace the requirement to test all three levels (plants, tubers, and true potato seed) for all viruses of concern.

*Comment:* The proposed criteria of sampling to detect 1 percent contamination at a 99 percent confidence level is not adequate for quarantine purposes. Zero tolerance is the desired goal of quarantine, and anything less creates an unacceptable level of risk that is not in the best interest of the potato industry. Under ideal conditions, most quarantines only delay the spread of regulated pests. The potato industry does not need to face the threat of diseases not currently in the United States.

*Response:* If “zero tolerance” for pest risk was the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a commodity to any other country. There will always be some degree of pest risk associated with the movement of agricultural products; APHIS’ goal is to reduce that risk to an insignificant level. In the case of true potato seed from Chile, we believe factors such as the low incidence of disease transmission by seeds and the absence of potato viruses in the seed production area, as well as the origin, certification, and testing requirements contained in this final rule, reduce the pest risk associated with its importation to an acceptable level.

*Comment:* The proposed rule contains a requirement for SAG to provide certain phytosanitary certifications. Before further consideration is given to the proposal, a formal review of the SAG’s phytosanitary certification program should be conducted by U.S. officials to determine whether SAG can in fact provide reliable and credible certification.

*Response:* APHIS has a longstanding working relationship with SAG, and we are fully confident in their ability to provide reliable and credible phytosanitary certification for Chile’s agriculture products, including true potato seed.

*Comment:* Potato producers in the United States do not need another means of producing disease-free tubers, especially if that means would not provide a genetically pure potato variety. True potato seed is already produced in the United States and is available to domestic potato research personnel and the seed potato industry. If there is a need for additional true potato seed, it could be produced in the United States.

*Response:* Whether the domestic potato industry will buy and use the true potato seed imported from Chile will be the decision of the domestic potato industry. APHIS is concerned with plant pest risk; marketing risks would be the concern of the true potato seed's producers, exporters, and importers.

*Comment:* The economic well-being of pre-nuclear seed potato producers and their associated industries may be jeopardized by allowing cheaper foreign material to enter the market.

*Response:* As discussed in the Regulatory Flexibility analysis in the proposed rule and in this final rule, we expect that it will take several years before true potato seed imported into the United States from Chile and its products will be in a position to capture any significant market share. Thus, its potential impact on price and competition in the potato seed market remains uncertain. If consumer response is favorable and true potato seed imported from Chile becomes competitive with the seed potatoes currently available in the United States, the price of seed potatoes may be driven down. However, because U.S. seed potato prices are influenced more by domestic production and market conditions than by imports, it is likely that any economic impact on domestic seed potato producers will be small.

#### **Addition of New Virus**

In addition to the comments discussed above, a representative of the Food Production and Inspection Branch of Agriculture and Agri-Food Canada informed APHIS of recent research that indicated the presence of Potato Yellowing Virus (PYV) in Chile. Because PYV can be transmitted through true potato seed, SAG informed APHIS that it will include PYV testing in its pre-export virus testing. Therefore, we have added PYV as a virus of concern in the listings for *Solanum* spp. and *Solanum* spp. true seed in § 319.37-2(a), and we have added PYV to the list in § 319.37-5(o)(3) of viruses for which the samples of *Solanum tuberosum* tubers, plants, and true seed must be tested.

#### **Miscellaneous**

In addition to those changes discussed above, we have also made two nonsubstantive changes to the paragraph designations in § 319.37-5. First, the regulatory text that we had proposed to add to the section as paragraph § 319.37-5(h) are added in this final rule as paragraph § 319.37-5(o). Second, the subordinate paragraphs in that same paragraph were

incorrectly designated in the proposed rule as (i), (ii), and (iii); they are now correctly designated as (1), (2), and (3).

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed above.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The 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.

This rule will allow, under certain conditions, the importation of true potato seed from Chile. True potato seed imported from Chile under this rule will originate from certified virus-free plantlets from the United States, will be grown under the supervision of Chilean plant protection authorities, and a sample of the plants, tubers, and true potato seeds will be tested for seedborne viruses prior to the true potato seed being offered for entry into the United States. Allowing the importation of true potato seed from Chile will give potato producers in the United States another means of producing disease-free tubers.

The United States produced approximately 2,880 million pounds of seed potatoes in 1992 (U.S. Department of Agriculture [USDA], Economic Research Service). During that same period, the United States imported approximately 128 million pounds of seed potatoes, which represents about 4.4 percent of U.S. production. Because imports represent such a small portion of the domestic seed potato supply, fluctuations in import levels and prices do not appear to have a significant effect on domestic seed potato prices.

For example, U.S. imports of seed potatoes declined by more than a third between 1990 and 1992, dropping from 201 million pounds in 1990 to 128 million pounds in 1992. This decline in imports did not, however, result in an increase in U.S. grower or retail prices for seed potatoes. In fact, the price of imported seed potatoes also fell by more than a third during that time, dropping from \$11 per 100 pounds in 1990 to \$7 per 100 pounds in 1992 (USDA, "Agricultural Statistics 1992," Table 371, page 239). Based on the decline in both import levels and price during the same 2-year period, it appears that domestic seed potato prices are influenced more by the volume of U.S. production.

The import levels and prices discussed above do not reflect any imports of true potato seed from

anywhere in the world, nor is there any record of true potato seed being imported into the United States. Our records indicate that true potato seed is a product that has not been commercially available in the United States. We expect that it will take several years before true potato seed imported into the United States from Chile and its products will be in a position to capture any significant market share. Thus, its potential impact on price and competition in the potato seed market remains uncertain.

We have identified domestic seed potato producers and seed potato importers as the entities potentially affected by this rule. According to the Small Business Administration's criteria, an agricultural producer with annual sales of less than \$500,000 is considered to be a small entity; an importer is considered to be a small entity if it employs fewer than 100 people. According to the U.S. Department of Commerce's "1987 Census of Agriculture," there were about 14,732 farms that produced potatoes in the United States, and about 96 percent of those farms reported sales of less than \$100,000. The exact percentage of those farms that produced only seed potatoes or a combination of seed potatoes and table potatoes is not known, but it is likely that the number is small, based on the total production of seed potatoes versus table potatoes (2,880 million pounds vs. 42,500 million pounds, respectively).

Information regarding the total number of seed potato importers and the percentage of those importers that would be considered small entities was unavailable. It is unlikely, however, that allowing the importation of true potato seed from Chile will have a significant impact on seed potato import levels. The true potato seed imported from Chile may be used by potato producers in the United States to produce potatoes of a different variety than those potatoes currently grown in the United States; the economic impact of the imported true potato seed will thus be affected by consumer response to the new variety of potatoes. If consumer response is favorable and true potato seed imported from Chile becomes competitive with the seed potatoes currently available in the United States, the price of seed potatoes may be driven down. However, because U.S. seed potato prices are influenced more by domestic production and market conditions than by imports, it is likely that any economic impact on domestic seed potato producers will be small. Any slight negative impact will likely be offset by the positive impact on

domestic potato producers, who will benefit from lower seed potato prices, and consumers will benefit from any resulting lower prices.

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 12778**

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule will allow true seed of *Solanum* spp. to be imported into the United States from Chile. State and local laws and regulations regarding true seed imported under this rule will be preempted while the true seed is in foreign commerce. Seeds are generally imported for immediate distribution and sale to the 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. This rule has no retroactive effect and does not require administrative proceedings before parties may file suit in court.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (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), and there are no new requirements. The assigned OMB control number is 0579-0049.

**List of Subjects in 7 CFR Part 319**

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

**PART 319—FOREIGN QUARANTINE NOTICES**

1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151-167, and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

**§ 319.37-2 [Amended]**

2. In § 319.37-2(a), in the table, the listing for *Solanum* spp. is amended in the third column by adding the words “; Arracacha Virus B; Potato Yellowing Virus” at the end of the entry, immediately before the period.

3. In § 319.37-2(a), in the table, the listing for *Solanum* spp. true seed is

amended in the second column by removing the words “Canada and New Zealand” and adding the words “Canada, New Zealand, and the X Region of Chile (that area of Chile between 39° and 44° South latitude—see § 319.37-5(o))” in their place, and in the third column by adding the words “; Arracacha Virus B, Potato Yellowing Virus” at the end of the entry, immediately before the period.

4. In § 319.37-3, paragraph (a)(3) is amended by removing the words “true seed of *Solanum* spp. (tuber bearing species only—Section Tuberarium) from New Zealand;”, and a new paragraph (a)(17) is added to read as set forth below:

**§ 319.37-3 Permits.**

(a) \* \* \*

(17) *Solanum tuberosum* true seed from New Zealand and the X Region of Chile (that area of Chile between 39° and 44° South latitude—see § 319.37-5(o)).

\* \* \* \* \*

5. In § 319.37-5, a new paragraph (o) is added to read as follows:

**§ 319.37-5 Special foreign inspection and certification requirements.**

\* \* \* \* \*

(o) Any *Solanum tuberosum* true seed imported from Chile shall, at the time of arrival at the port of first arrival in the United States, be accompanied by a phytosanitary certificate of inspection issued in Chile by the Servicio Agrícola y Ganadero (SAG), containing additional declarations that:

(1) The *Solanum* spp. true seed was produced by *Solanum* plants that were propagated from plantlets from the United States;

(2) The *Solanum* plants that produced the *Solanum tuberosum* true seed were grown in the Tenth (X) Region of Chile (that area of the country between 39° and 44° South latitude); and

(3) *Solanum tuberosum* tubers, plants, and true seed from each field in which the *Solanum* plants that produced the *Solanum tuberosum* true seed were grown have been sampled by SAG once per growing season at a rate to detect 1 percent contamination with a 99 percent confidence level (500 tubers/500 plants/500 true seeds per 1 hectare/2.5 acres), and that the samples have been analyzed by SAG using an enzyme-linked immunosorbent assay (ELISA) test or nucleic acid spot hybridization (NASH) non-reagent test, with negative results, for Andean Potato Latent Virus, Arracacha Virus B, Potato Virus T, the Andean Potato Calico Strain of Tobacco Ringspot Virus, and Potato Yellowing Virus.

(Approved by the Office of Management and Budget under control number 0579-0049)

Done in Washington, DC, this 9th day of February 1995.

**Lonnie J. King,**

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

[FR Doc. 95-3843 Filed 2-15-95; 8:45 am]

BILLING CODE 3410-34-P

**Agricultural Marketing Service**

**7 CFR Parts 905 and 944**

[Docket No. FV94-905-4-FIR]

**Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which relaxed the minimum size requirement for domestic shipments of Florida red seedless grapefruit and for red seedless grapefruit imported into the United States to 3<sup>5</sup>/<sub>16</sub> inches in diameter (size 56) through November 12, 1995. This rule enables handlers in Florida and importers to continue to ship size 56 red seedless grapefruit for the entire 1994-95 season.

**EFFECTIVE DATE:** March 20, 1995.

**FOR FURTHER INFORMATION CONTACT:** William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813-299-4770; or Mark Kreagor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone: 202-720-2431.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 905 [7 CFR Part 905], as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the “order”. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order,