BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2016-0099]

Decision to Authorize the Importation of Fresh Avocado Fruit From Continental Ecuador Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, Department of Agriculture (USDA).

ACTION: Final rulemaking action; notification of decision to import.

SUMMARY: We are advising the public of our decision to authorize the importation of fresh avocado fruit from continental Ecuador into the continental United States. Based on the findings of a pest risk analysis, which we made available to the public for review and comment, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh avocado fruit from continental Ecuador.

DATES: The articles covered by this notification may be authorized for importation after [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Imports, Regulations, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart L–Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-12, referred to below as the regulations), the Animal and Plant Health Inspection Service

(APHIS) of the United States Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

Section 319.56-4 contains a performance-based process for approving the importation of fruits and vegetables that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the five designated phytosanitary measures listed in paragraph (b) of that section.

On June 15, 2018, APHIS published in the *Federal Register* (83 FR 27918-27922, Docket No. APHIS-2016-0099) a proposed rule[1] to authorize the importation of fresh avocado from continental Ecuador into the continental United States.

The proposed rule was based on a pest risk assessment (PRA) that found four quarantine pests to be candidates for pest risk management. The quarantine pests were the fruit flies *Anastrepha fraterculus* (Wiedemann), *Anastrepha serpentina* (Wiedemann), *Anastrepha striata* (Schiner), and *Ceratitis capitata* (Wiedemann). All avocado varieties except the Hass variety are hosts for these quarantine pests. Consequently, APHIS proposed to allow the importation of avocados from Ecuador into the United States under a systems approach that included phytosanitary measures to safeguard against these pests for all varieties of avocado except the Hass variety.

During the public comment period, we received information from a commenter that led us to add the avocado seed pest, *Stenoma catenifer,* to a revised PRA. The revised PRA determined that *Stenoma catenifer* was a candidate for pest risk management for all varieties of avocado imported from continental Ecuador. In light of this change, we revised the risk management document (RMD) to include pest risk management measures for *Stenoma catenifer* for all avocado varieties. We made the revised PRA and the revised RMD available for public

[1] To view the proposed rule, go to https://www.regulations.gov, and enter APHIS-2016-0099 in the Search field.

review and reopened the comment period until May 17, 2021, in a document published in the *Federal Register* on April 16, 2021 (86 FR 20037-20038, Docket No. APHIS-2016-0099).[2]

We received 10 comments by the end of the original comment period on August 14, 2018, and 4 additional comments by the end of the reopened comment period on May 17, 2021. The comments were from two State departments of agriculture, Ecuador's national plant protection organization (NPPO), two trade associations, and private individuals.

The issues raised by the commenters are addressed below.

One commenter requested that the required buffer zone around pest-free places of production for *Stenoma catenifer* be 500 meters instead of 1 kilometer. The commenter noted that, according to the cited literature, *Stenoma catenifer* can fly 67 meters per night, implying that adults could only move 469 meters during their lifespan.

While it is true that the cited study found that males flew an average of 67 meters in one night, the study also noted that this is likely an underestimate of the distance that male moths are capable of flying in a single night. Therefore, it should not be assumed based on the study that 469 meters is the maximum distance a male moth could fly in its life. *Stenoma catenifer* is a significant pest of avocados and the buffer zone is a key component of the systems approach. Additionally, we require a buffer zone of 1 kilometer for the importation of avocados from Colombia under a systems approach and have found this measure to be effective. APHIS will continue to require a buffer zone of 1 kilometer around pest-free places of production for avocados imported from Ecuador.

The commenter also asked that we replace the term "place of production" in the RMD with the term "production site" to better reflect the nature of the growing sites in Ecuador.

The International Plant Protection Convention glossary defines a place of production as any premises or collection of fields operated as a single production or farming unit, and a

[2] To view the PRA, RMD, and the comments that we received, go to https://www.regulations.gov, and enter APHIS-2016-0099 in the Search field.

production site as a defined part of a place of production, that is managed as a separate unit for phytosanitary purposes.[3] Substituting one term for the other does not substantively change the RMD. APHIS has made the requested change.

The same commenter, along with another commenter, also asked us to replace the term "municipality" with the term "parroquia rural," or "rural parish," to reflect Ecuador's administrative divisions more accurately.

We understand the commenters' concerns and have replaced the term "municipality" with the term "rural parish" in the RMD.

Two commenters stated that there should be more pest control measures for Hass avocados.

Since *Stenoma catenifer* was added to the PRA, significant additions have been made to the pest mitigation measures outlined in the RMD, such as survey programs and pest-free sites of production. These measures apply to all avocado varieties, including Hass. Other requisite phytosanitary measures that apply to all avocado varieties include registered sites of production, regular inspections of sites of production and packinghouses, and the removal of fallen fruit.

One commenter encouraged USDA to develop molecular diagnostics for the *Anastrepha fraterculus* group to better identify fruit fly larvae during inspections.

In recent years, APHIS has invested significant resources in molecular diagnostic technology, which allows APHIS to identify almost any interception in commercial fruit commodities to the species level. However, if any *Anastrepha spp*. fruit flies are intercepted in a consignment and identification at the species level is not possible, the consignment will be refused entry into the United States regardless.

One commenter stated that cold treatment is not an effective pest mitigation measure because fruit fly larvae can survive in untreated shipments.

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[3] To view the glossary, go to https://assets.ippc.int/static/media/files/publication/en/2021/05/ISPM_05_2021_En_Glossary_2021-05-27_PostCPM-15_Fixed.pdf.

APHIS is not proposing to use cold treatment as a pest mitigation measure for avocado fruit from Ecuador. Rather, avocados from Ecuador will be imported under the systems approach outlined in the RMD.

The commenter also claimed that Ecuador does not have a point-of-origin protocol for fruit inspection.

The systems approach requires the NPPO of Ecuador to conduct inspections of sites of production, packinghouses, and samples of avocado following post-harvest processing. Details of what these inspections must entail are included in the RMD, and the inspection protocol will be expanded upon further in the operational workplan the NPPO will enter into with APHIS.

The same commenter expressed concern that internal feeders, including fruit flies, are difficult to detect during inspections at ports of entry.

U.S. Customs and Border Protection inspects commercial fruit at U.S. ports of entry from all over the world and has significant experience in detecting pests, including fruit fly larvae. Moreover, most avocado varieties are poor fruit fly hosts, and Hass avocados are considered non-hosts by APHIS. The systems approach detailed in the RMD includes multiple mitigation measures in addition to inspections, including pest-free sites of production, trapping for fruit flies, removal of fallen fruit, and insect-exclusionary packinghouses. APHIS is confident that the systems approach is sufficient to mitigate any remaining risk of fruit flies following the pathway of avocados from Ecuador.

The commenter also suggested that avocados should only be considered for importation into States that do not have climates conducive to the establishment of fruit flies.

APHIS is confident that the systems approach outlined in the RMD is sufficient to mitigate risk of introducing pests to climates conducive to the establishment of fruit flies. The commenter did not provide any evidence suggesting that the mitigation measures are not effective. Therefore, we are not taking the action requested by the commenter.

The same commenter requested access to trapping records to better assess the threat of fruit fly introduction, and access to quality control records from Ecuador to verify that traps are being baited and checked at appropriate intervals. The commenter also expressed a desire to participate in site visits.

APHIS is committed to a transparent process and an inclusive role for stakeholders in our risk analysis process. To that end, we are currently considering ways to facilitate further stakeholder involvement during the initial stages of the development of PRAs and RMDs. However, at this time, APHIS does not routinely provide trapping records to stakeholders, nor does it involve stakeholders in site visits. APHIS based its PRA on scientific literature, port-of-entry pest interception data, and information from the Government of Ecuador. The methodology we used to assess the threat of pest introduction is summarized in the PRA.

The systems approach outlined in the RMD includes multiple quality control measures to ensure that trapping is carried out appropriately. The NPPO of Ecuador must visit and inspect the production sites monthly, and the personnel conducting the trapping and pest surveys must be hired, trained, and supervised by the NPPO. APHIS will be directly involved with the NPPO in monitoring and auditing implementation of the systems approach. The commenter did not provide any evidence suggesting that the pest risk analysis is inaccurate or that trapping will not be carried out effectively.

Another commenter asked for more mitigation measures for Linda, Bola, and Tonashe avocado varieties, stating that there is insufficient research regarding these varieties as potential fruit fly hosts.

As noted earlier, APHIS expects that the mitigation measures in the systems approach will be sufficient to remove any fruit flies from the pathway of all varieties of avocado fruit from Ecuador. If APHIS finds that any avocados have fruit fly larvae, the places of production will be suspended pending investigation, and will remain suspended until the risk has been mitigated.

APHIS will consider suspending varieties, places of production, and packinghouses, as well as modifying the systems approach, if there are fruit fly interceptions.

The same commenter also suggested that the PRA should address the potential risk of introducing strains of the pest, *Xylella fastidiosa***,** not currently found in the United States, such as the subspecies *pauca*.

Phytosanitary surveillance conducted by the NPPO of Ecuador has found no evidence of *Xylella fastidiosa* in Ecuador, and the bacteria is officially declared absent from that country. Additionally, APHIS has no record of *Xylella fastidiosa* subspecies *pauca* affecting avocados. For these reasons, the bacteria was not included in the PRA, which only considers pests that are evidenced to be associated with avocado and present in Ecuador.

Another commenter asked that, in lieu of the requirement that no fruit fly hosts be grown within 100 meters of the edge of the production site, growers should be able to control the fruit flies via methods such as the elimination of overripe fruit, burial of fallen fruits, and installation of bait stations.

This requirement prevents the attraction of fruit flies to hosts adjacent to the avocado crop, creating a barrier that helps protect the avocados from pests. APHIS considers it a crucial part of the systems approach. Therefore, we are not removing this requirement.

The commenter also appeared to state that the NPPO of Ecuador will not include details of the trapping program in the operational workplan they provide to APHIS because they will approve the production sites as pest free areas.

APHIS is unclear on the commenter's reasoning. The operational workplan will need to include details of the trapping program for the fruit flies before importations of avocados from Ecuador into the United States can proceed under a systems approach. This is the case whether the trapping occurs under the auspices of a program to maintain a pest-free area for the fruit flies in question or not.

Finally, a commenter expressed concern that imports of avocados from Ecuador would reduce imports from Michoacán, Mexico, thereby harming that country's economy.

As a signatory to the World Trade Organization's Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), the United States has agreed that any prohibitions it places on the importation of fruits and vegetables will be based on scientific evidence related to phytosanitary measures and issues, and will not be maintained without sufficient scientific evidence. Prohibiting imports based on economic considerations such as those brought up by the commenter would not be in keeping with this agreement.

That being said, we do not anticipate that this action will have a meaningful impact on the amount of avocados that Mexico exports to the United States. Mexico exports approximately 500,000 metric tons of avocados to the United States a year, while Ecuador is anticipated to export approximately 1 percent of that amount. Even if Ecuador avocados were to displace some Mexican exports of avocados to the United States, the disparity between the amounts exported by each country strongly suggests that any impact on Mexico would be negligible.

Finally, we note that the proposed rule was issued prior to the October 15, 2018, effective date of a final rule[4] that revised the regulations in § 319.56-4 by broadening an existing performance standard to provide that all revisions to existing requirements for the importation of fruits and vegetables into the United States will use a notice-based process. That final rule also specified that region- or commodity-specific phytosanitary requirements for fruits and vegetables would no longer be found in the regulations, but instead in APHIS' Fruits and Vegetables Import Requirements database (FAVIR). With those changes to the regulations, we cannot issue the final regulations as contemplated in our June 2018 proposed rule and are therefore discontinuing that rulemaking without a final rule. Instead, it is necessary for us to finalize this action through the issuance of a notification.

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[4] 83 FR 46627 (September 14, 2018). To view the final rule, go to www.regulations.gov and enter APHIS-2010-0082 in the Search field.

Therefore, in accordance with the regulations in § 319.56-4(c)(3)(iii), we are announcing our decision to authorize the importation of commercial consignments of fresh avocado fruit from continental Ecuador into the continental United States subject to the following phytosanitary measures, which will be listed in FAVIR, available at https://epermits.aphis.usda.gov/manual.

Phytosanitary measures for all varieties of Ecuador avocados:

- The NPPO of Ecuador must provide an operational workplan to APHIS that details the activities that the NPPO of Ecuador will, subject to APHIS' approval of the workplan, carry out to meet the requirements of the systems approach.
- Avocados must be grown in sites of production that are registered with the NPPO of Ecuador. The NPPO of Ecuador must visit and inspect registered sites of production monthly, starting at least 2 months before harvest and continuing until the end of the shipping season.
- The NPPO must register packinghouses that intend to export avocados to the United States, as well as inspect and monitor the operations of the packinghouses.
- If the NPPO of Ecuador finds that a site of production or packinghouse is not complying with the requirements of the systems approach, no fruit from the production site or packinghouse will be eligible for export to the United States until APHIS and the NPPO of Ecuador conduct an investigation and appropriate remedial actions have been implemented.
- The NPPO of Ecuador must review and maintain all forms and documents related to export program activities in sites of production and packinghouses for at least 1 year and, if requested, provide them to APHIS for review.
- Avocados must be grown in pest-free sites of production for the avocado seed pest, *Stenoma catenifer*, established and maintained in accordance with international

standards. APHIS must approve the survey protocol used by the NPPO of Ecuador to determine and maintain pest free status.

- If the avocados are grown in a rural parish free of *Stenoma catenifer*, the rural parish must be surveyed every 6 months (twice a year) for the pest. Representative areas of the rural parish where there are avocado trees, including production sites and urban areas, must be sampled.
- If the avocados are grown in a rural parish not completely free of *Stenoma catenifer*, the NPPO of Ecuador can certify individual sites of production as pest free. The surveys for pest-free sites of production must include representative areas from all parts of each registered site of production and a buffer zone of 1 kilometer. The sites of production and buffer zone must be surveyed monthly for *Stenoma catenifer* from 2 months before harvest until harvest is completed.
- If one or more *Stenoma catenifer* are detected during a survey or during any other monitoring or inspection activity, the site of production will be prohibited from exporting avocados to the continental United States until APHIS and the NPPO of Ecuador jointly agree that the risk has been mitigated.
- The NPPO of Ecuador must keep records of *Stenoma catenifer* detections for each site of production, and update the records each time the sites of production are surveyed. The records must be maintained for at least 1 year and provided for APHIS' review, if requested.
- Avocado fruit that has fallen from the trees must be removed from the production site at least once every 7 days, starting 2 months before harvest and continuing through the end of the harvest, and may not be included in field containers of fruit to be packed for export.
- Harvested avocados must be placed in field cartons or containers that are marked to show the official registration number of the production site. The site of production

where the avocados were grown must remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process. The fruit must be moved to the packinghouse within 3 hours of harvest or must be protected from fruit fly infestation until moved.

- Avocados must be packed within 24 hours of harvest in an insect-exclusionary packinghouse registered with the NPPO of Ecuador. The fruit must be safeguarded by an insect-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Fruit must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or a plastic tarpaulin for transport to the United States. During the time the packinghouse is in use for exporting avocado fruit to the United States, the packinghouse may only accept fruit from registered, approved production sites.
- A sample of avocado fruit from each site of production must be inspected by the NPPO of Ecuador following any post-harvest processing.
- Fruit presented for inspection at the port of entry to the United States 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.
- Each consignment of avocados must be accompanied by a phytosanitary certificate issued by NPPO of Ecuador and providing an additional declaration stating that the fruit in the consignment has been produced in compliance with the requirements of the systems approach.

Additional phytosanitary measures for varieties of Ecuador avocados other than Hass:

- No other host of *Anastrepha fraterculus*, *A. serpentina*, *A. striata*, or *Ceratitis capitata* can be grown within 100 meters of the edge of the avocado site of production.

- The registered production sites must conduct trapping for *Anastrepha spp*. and *Ceratitis capitata* fruit flies in accordance with the operational workplan.
- The NPPO must keep records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS upon request. The records must be maintained for at least 1 year.
- If *Anastrepha spp*. or *Ceratitis capitata* fruit flies trapped at a registered production site go above the threshold specified in the operational workplan, the avocados may still be exported, but only with an APHIS-approved quarantine treatment. Irradiation treatment at 150 Gy (T105-a-1) is approved for all fruit flies.

These conditions are described in further detail in the final RMD. In addition to these specific measures, fresh avocado fruit from continental Ecuador will be subject to the general requirements listed in § 319.56-3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.), the recordkeeping and burden requirements associated with this action are covered under the Office of Management and Budget control number 0579-0049, which is updated every 3 years during the required renewal period.

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 notice, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851-2483.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq*.), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 23rd day of May 2022.

Anthony Shea

Administrator, Animal and Plant Health Inspection Service.

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