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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2016-0022]

RIN 0579-AE29

Importation of Hass Avocados From Colombia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow the importation of fresh Hass avocado fruit from Colombia into the continental United States. As a condition of entry, fresh Hass avocado fruit from Colombia will have to be produced in accordance with a systems approach that includes orchard and packinghouse requirements and port of entry inspection. The fruit will also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Colombia with an additional declaration stating that the fruit has been produced in accordance with the requirements. This action will allow for the importation of fresh Hass avocado fruit from Colombia while continuing to provide protection against the introduction of plant pests into the continental United States.

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

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Senior Regulatory Policy Specialist, IRM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851-2103.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-77, referred to below as the regulations or the fruits and vegetables 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 plant pests from being introduced into and spread within the United States.

On October 27, 2016, we published in the *Federal Register* (81 FR 74722-74727, Docket No. APHIS-2016-0022) a proposal¹ to amend the regulations by allowing for the importation of commercially produced fresh Hass avocado (*Persea americana*) fruit from Colombia into the continental United States.

We solicited comments concerning our proposal for 60 days ending December 27, 2016. We reopened and extended the deadline for comments until February 16, 2017, in a document published in the *Federal Register* on January 17, 2017 (82 FR 4798, Docket No. APHIS-2016-0022). We extended the reopened comment period until March 20, 2017, in a document published in the *Federal Register* on February 10, 2017 (82 FR 10312, Docket No. APHIS-2016-0022). We received 43 comments by that date. They were from producers, exporters, industry

¹ To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0022>.

groups, and representatives of State and foreign governments. Of these, 32 were fully supportive of the proposed action. The remaining 11 raised issues that are discussed below by topic.

General Comments

One commenter suggested that APHIS focus on importing fresh Hass avocado fruit from Indonesia since Indonesia's production levels are much higher than Colombia's.

APHIS's phytosanitary evaluation process only begins once a country has submitted a formal request for market access for a particular commodity. APHIS does not solicit such requests, nor do we control which countries submit requests. Were Indonesia to submit a market access request for avocados we would evaluate that request in the same way we do any other.

The same commenter argued that we should direct our efforts towards keeping avocado fruit produced domestically within the United States, thus reducing the need to import fresh Hass avocado fruit. A second commenter urged APHIS to focus instead on bolstering domestic avocado growers. The commenter claimed that the number and size of U.S. avocado farms is decreasing as a result of competition from foreign growers.

It is beyond APHIS' statutory authority to prohibit importation of a commodity for any reason other than to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. Under the Plant Protection Act (PPA), APHIS may prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. The second commenter's claim regarding a decrease in the number of domestic producers is incorrect. Nearly all domestic production of fresh Hass avocado fruit takes place in California and the number of avocado farms in that State increased by nearly 17

percent between 2002 and 2012. While total acreage did decrease by 20 percent during that period, largely as a result of urban growth and water shortages, higher yields have allowed producers to maintain steady overall production levels.

Another commenter was supportive of the action, but only if the fresh Hass avocado fruit from Colombia was grown organically.

While we do not stipulate that the fresh Hass avocado fruit must be grown to USDA organic standards, Colombian growers may choose to do so. The USDA Agricultural Marketing Service enforces the regulations governing domestic and imported organic agricultural commodities under the National Organic Program.

Several commenters said that the phytosanitary risk represented by the importation of fresh Hass avocado fruit from Colombia outweighs any potential monetary gains associated with such importation.

This action was predicated on the findings of several risk assessment documents that provide a scientific basis for potential importation of fresh Hass avocado fruit from Colombia. Without these risk assessment documents, which have withstood several reviews and public comment periods, APHIS would not have proposed this action. Economic interests may stimulate consideration of the expansion of trade of agricultural commodities between countries, but all decisionmaking concerning phytosanitary restrictions on trade must be science-based. APHIS stands behind the risk assessment documents that support this rule, and believes they are based on sound science. The risk mitigations required by APHIS will remove any insect pests from the importation pathway.

Another commenter expressed concerns that the national plant protection organization (NPPO) of Colombia may not adequately implement the required systems approach in the interests of cost-cutting.

Our standard practice is to conduct site visits prior to the initiation of any import program. This is to ensure that all required mitigations are in place and the agreed upon operational workplan is being enforced. Subject matter experts inspect production sites and packinghouses and report their findings to APHIS. Furthermore, the operational workplan authorizes the regional APHIS International Services Director to conduct periodic audit visits of production sites. While it is true that the systems approach will be overseen thereafter by the NPPO of Colombia or its designee, APHIS will provide qualified personnel to work cooperatively with the NPPO of Colombia and all other program participants to review and evaluate operations in the field and packinghouses, quarantine pest management and control activities, and other safeguarding measures when such assistance is necessary as a result of noncompliance events or program audits conducted in accordance with APHIS' policy.

Comments on the Pest List

The pest risk assessment (PRA) that accompanied the proposed rule identified four quarantine pests that could be introduced into the United States in consignments of fresh Hass avocado fruit from Colombia. 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.” The pests listed in the PRA are:

- The avocado seed weevil, *Heilipus lauri* Boheman;
- The avocado seed weevil, *Heilipus trifasciatus*;
- Pink hibiscus mealybug, *Maconellicoccus hirsutus* (Green); and

- Avocado seed moth, *Stenomoma catenifer*.

We later amended the PRA in order to remove pink hibiscus mealybug from the pest list after further examination revealed that growing conditions and standard packinghouse practices used in Colombia would effectively prevent pink hibiscus mealybug from following the pathway of importation into the United States. We have therefore removed references to that pest in the final regulatory text and supporting documents.

One commenter argued that the larvae of the two avocado seed weevils and the avocado seed moth are internal feeders, unaffected by post-harvest processing and very likely to escape detection via visual inspection.

The avocado seed weevil *Heilipus lauri* Boheman and the avocado seed moth are among the pests analyzed in connection with the importation of fresh Hass avocado fruit from Mexico and have been successfully mitigated for years using a similar systems approach. As long as post-harvest practices are maintained as part of the overall systems approach, we are confident that the pests will not follow the pathway of importation. The avocado seed weevil *Heilipus trifasciatus* has behavior and biology very similar to *Heilipus lauri* and we are therefore similarly confident in the efficacy of the systems approach in connection with this pest. In addition, *Heilipus trifasciatus* is very uncommon in Colombia, which also decreases the chance of infestation.

The same commenter observed that fresh avocado fruit are considered by APHIS to be conditional non-hosts for the South American fruit fly (*Anastrepha fraterculus*), the guava fruit fly (*Anastrepha striata*), and old world fruit flies (*Ceratitis* spp.) based on the scientific literature and pest interception data. The commenter stated that this status does not mean that fresh Hass avocado fruit is not a host and therefore risk of infestation is present.

The commenter is correct that fresh Hass avocado fruit are considered by APHIS to be conditional non-hosts to fruit flies. The only time fresh Hass avocado fruit may become a fruit fly host is after the fruit has fallen from the tree or after harvesting. For that reason, we require that all fallen fruit be removed from production sites and destroyed weekly. Fallen fruit is also prohibited from entering the packinghouses. Harvested avocados are required to be safeguarded from fruit flies after harvest until the fruit is packed in pest-exclusionary packinghouses and shipped to the United States.

Comments on the Systems Approach

Based on the findings of the PRA, we determined that measures beyond standard port-of-entry inspection will be needed to mitigate the risks posed by the pests listed above. These measures were identified in the risk mitigation document (RMD) and were used as the basis for the requirements of the systems approach.

At various locations within the proposed regulations, PRA, and RMD, we referred to departments of Colombia, which are one of the administrative units of that country. The Colombian government requested that these references be replaced with the term “municipalities.” Municipalities are smaller administrative units which comprise Colombian departments.

We agree and have changed the language accordingly.

One commenter requested that fresh Hass avocado fruit from Colombia not be allowed into the State of Florida given that the climate in that State is conducive to the establishment of the listed pests.

We have determined, for the reasons described in the RMD that accompanied the proposed rule, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of fresh Hass avocado fruit from Colombia. 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.

We stipulated that Hass avocado fruit that has fallen from the trees would have to be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest. One commenter suggested that we require fallen fruit to be removed at shorter intervals.

The 7-day interval is consistent with the requirement we have successfully used for years in relation to the importation of fresh Hass avocado fruit from Mexico and Peru. We also note that the requirement sets out the 7-day interval as the maximum amount of time growers may allow to elapse between removing any fallen fruit. Growers may choose to remove fallen fruit at shorter intervals if they feel such action is warranted.

We will require the fresh Hass avocado fruit to be packed in insect-proof packaging, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States. These safeguards will have to remain intact until arrival in the United States. One commenter asked that we remove this requirement for maritime shipments because those consignments are constantly protected in equivalent ways due to the nature of the transport.

We are making no changes as a result of this comment since we consider the sealed maritime containers in which all maritime shipments are transported to represent an adequate safeguarding measure as required by the regulations.

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 changes discussed in this document.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Further, because this rule is not significant, it is not a regulatory action under Executive Order 13771.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. 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.

Colombia has requested USDA authorization of market access for commercial shipments of fresh Hass avocado fruit into the continental United States under a systems approach. U.S. fresh Hass avocado fruit imports have increased significantly over the years. A growing U.S. population and growing Hispanic share of the population, greater awareness of the avocado's health benefits, year-round availability of fresh, affordable Hass avocado fruit, and greater disposable income have contributed to the increased demand.

The increase in demand over the past decade has contributed to domestic producers being able to maintain production levels despite the large increase in avocado imports. Annual U.S. fresh avocado fruit production, 2011/12 to 2015/16, averaged 426 million pounds, of which California accounted for approximately 84 percent, or over 356 million pounds. Nearly all of California's production is of the Hass variety.

Potential economic effects of this rule are estimated using a partial equilibrium model of the U.S. fresh Hass avocado fruit sector. Colombia is expected to export between 8,000 to 12,000 metric tons of fresh Hass avocado fruit, with 10,000 metric tons being most likely. If the United States were to import between 10,000 and 12,000 metric tons of fresh Hass avocado fruit considering a 20 percent displacement of fresh Hass avocado fruit imports from other sources, the decline in avocado prices may range from 1.0 percent to 1.5 percent. Consumer welfare gains of about \$14 million to \$22 million will outweigh producer welfare losses of about \$4 million to \$5 million, resulting in net welfare gains of about \$11 million to \$17 million. The lower-bound of 8,000 metric tons considers partial import displacement will occur, and price and welfare effects will be proportional to the net increase in U.S. fresh Hass avocado fruit imports if fresh Hass avocado fruit imported from Colombia were to displace fresh Hass avocado fruit imports from elsewhere (e.g., Chile, Peru, or Mexico).

While APHIS does not have information on the size distribution of U.S. avocado producers, according to the Census of Agriculture, there were a total of 93,020 Fruit and Tree Nut farms (NAICS 1113) in the United States in 2012. The average value of agricultural products sold by these farms was less than \$274,000, which is well below the Small Business Administration's small-entity standard of \$750,000. It is reasonable to assume that most avocado farms qualify as small entities. Between 2002 and 2012, the number of avocado operations in California grew by approximately 17 percent, from 4,801 to 5,602 operations.

Executive Order 12988

This final rule allows fresh Hass avocado fruit to be imported into the United States from Colombia. State and local laws and regulations regarding fresh Hass avocado fruit imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are

generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579-0459, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the *Federal Register* providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

List of Subjects for 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. Section 319.56-78 is added to read as follows:

§ 319.56-78 Hass avocados from Colombia.

Fresh Hass variety (*Persea americana* P. Mill) avocados may be imported into the continental United States from Colombia only under the conditions described in this section.

These conditions are designed to prevent the introduction of the following quarantine pests:

Heilipus lauri Boheman, avocado seed weevil; *Heilipus trifasciatus*, avocado seed weevil; and *Stenomoma catenifer*, avocado seed moth.

(a) *General requirements*—(1) *Operational workplan.* The national plant protection organization (NPPO) of Colombia must provide an operational workplan to APHIS that details the activities that the NPPO of Colombia and places of production and packinghouses registered with the NPPO of Colombia will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The operational workplan must include and describe the specific requirements as set forth in this section. APHIS will be directly involved with the NPPO of Colombia in monitoring and auditing implementation of the regulatory requirements in this section, including implementation of the operational workplan.

(2) *Registered places of production.* The fresh avocados considered for export to the continental United States must be grown by places of production that are registered with the NPPO of Colombia and that have been determined to be free from *H. lauri*, *H. trifasciatus*, and *S. catenifer* in accordance with this section.

(3) *Registered packinghouses.* The avocados must be packed for export to the continental United States in pest-exclusionary packinghouses that are registered with the NPPO of Colombia.

(4) Avocados may be imported in commercial consignments only.

(b) *Monitoring and oversight.* (1) The NPPO of Colombia must visit and inspect registered places of production monthly, starting at least 2 months before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the grove sanitation requirements of this section and following pest control guidelines, when necessary, to reduce quarantine pest populations. Any personnel conducting trapping and pest surveys under this section at registered places of production must be hired, trained, and supervised by the NPPO of Colombia. APHIS may monitor the places of production if necessary.

(2) In addition to conducting fruit inspections at the packinghouses, the NPPO of Colombia must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of this section.

(3) If the NPPO of Colombia finds that a place of production or packinghouse is not complying with the requirements of this section, no avocados from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO of Colombia conduct an investigation and agree that appropriate remedial actions have been implemented.

(4) The NPPO of Colombia must retain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(c) *Grove sanitation.* Avocado fruit that has fallen from the trees must be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest. Fallen avocado fruit may not be included in field containers of fruit brought to the packinghouse to be packed for export.

(d) *Mitigation measures for *H. lauri*, *H. trífasciatus*, and *S. catenifer*.* Avocados must either be grown in places of production located in municipalities of Colombia that are designated as free of *H. lauri*, *H. trífasciatus*, and *S. catenifer* in accordance with § 319.56-5, or be grown in places of production that have been surveyed by the NPPO of Colombia and have been determined to be free of these pests. If the latter, the NPPO must maintain a buffer zone of 1 kilometer around the perimeter of the place of production, and must survey representative areas of the place of production and buffer zone for *H. lauri*, *H. trífasciatus*, and *S. catenifer* monthly, beginning no more than 2 months before harvest, in accordance with a survey protocol approved by APHIS. If one or more *H. lauri*, *H. trífasciatus*, or *S. catenifer* is detected during a survey of the place of production or buffer zone, the place of production will be suspended from the export program for avocados to the continental United States until APHIS and the NPPO of Colombia conduct an investigation and agree that appropriate remedial actions to reestablish pest freedom have been implemented.

(e) *Harvesting requirements.* Harvested avocados must be placed in field cartons or containers that are marked with the official registration number of the place of production. The place 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 a registered packinghouse within 3 hours of harvest or must be protected from fruit fly introduction until moved. The fruit must be safeguarded in accordance with the operational workplan while in transit to the packinghouse and while awaiting packing.

(f) *Packinghouse requirements.* (1) During the time registered packinghouses are in use for packing avocados for export to the United States, the packinghouses may only accept avocados that are from registered places of production and that are produced in accordance with the requirements of this section.

(2) Avocados must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. All openings to the outside of the packinghouse must be screened or covered by a barrier that prevents pests from entering, as specified within the operational workplan. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(3) Fruit must be packed in insect-proof packaging, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States. These safeguards must remain intact until arrival in the United States.

(4) Shipping documents accompanying consignments of avocados from Colombia that are exported to the United States must specify the place of production at which the avocados were grown as well as the packing shed or sheds in which the fruit was processed and packed. This identification must be maintained until the fruit is released for entry into the United States.

(g) *NPPO of Colombia inspection.* Following any post-harvest processing, inspectors from the NPPO of Colombia must visually inspect a biometric sample of fruit from each place of production at a rate to be determined by APHIS. The inspectors must visually inspect for

quarantine pests and must cut a portion of the fruit to inspect for *H. lauri*, *H. trifasciatus*, and *S. catenifer*. If a single quarantine pest is detected during this inspection protocol, the consignment from which the sample was taken is prohibited from being shipped to the United States. Additionally, if a single *H. lauri*, *H. trifasciatus*, or *S. catenifer* at any life stage is detected during this inspection, the place of production of the infested avocados will be suspended from the export program for avocados to the continental United States until APHIS and the NPPO of Colombia conduct an investigation and agree that appropriate remedial actions to reestablish pest freedom have been implemented.

(h) *Phytosanitary certificate*. Each consignment of Hass avocados from Colombia must be accompanied by a phytosanitary certificate issued by the NPPO of Colombia with an additional declaration stating that the avocados in the consignment were produced in accordance with this section and the operational workplan.

(Approved by the Office of Management and Budget under control number 0579-0459)

Done in Washington, DC, this 10th day of August 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

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