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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2015-0053]

Notification of Decision to Authorize the Importation of Fresh Raspberry Fruit From Morocco Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

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

SUMMARY: We are advising the public of our decision to authorize the importation into the continental United States of fresh raspberry fruit from Morocco. 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 raspberries from Morocco.

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, M.S., Senior Regulatory Policy Coordinator, Regulatory Policy and Coordination, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2352.

SUPPLEMENTARY INFORMATION: 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) 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 or disseminated within the United States.

Section 319.56-4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the *Federal Register* announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

On August 26, 2016, we published in the *Federal Register* (81 FR 58867-58869, Docket No. APHIS-2015-0053) a proposal¹ to amend the regulations to allow the importation of fresh raspberry fruit from Morocco into the continental United States.

We solicited comments on the proposed rule for 60 days ending on October 25, 2016. We received six comments by that date, from members of the public and from a State agriculture agency. Two commenters supported the proposed rule. A third commenter generally opposed importing fresh raspberry fruit and all other commodities, but did not offer any comments on the specific provisions of the proposed rule. The remaining comments are discussed below.

¹ To view the proposed rule, supporting documents, and the comments we received, go to <https://www.regulations.gov/docket?D=APHIS-2015-0053>.

One commenter requested that shipments of fresh raspberry fruit from Morocco not be allowed into the State of Florida due to the “high” risk rating assigned to the fungus *Monilinia fructigena* in the PRA. The commenter acknowledged that while raspberry fruit is not considered a major host of this fungus, apples, peaches, plums, and apricots are, and if *M. fructigena* were to follow the pathway of importation into the United States, it could have devastating effects on Florida’s agricultural industry, especially on commercial peach production and on the native plums that serve as a major food source for wildlife in that State.

As stated in the risk management document (RMD) that accompanied the proposed rule, *M. fructigena* is a common cause of fruit rot in fruit orchards. Required field inspections, packinghouse inspections, and port of entry inspections provide sufficient mitigation and have been used successfully to mitigate *M. fructigena* associated with fresh pears from China. In addition, culling at the packinghouses, while not required in the systems approach, is a standard industry practice that removes obviously blemished, diseased, and insect-infested fruits from the pathway. Infected or infested fruit found by an inspector will not be allowed to enter into the United States. Furthermore, if a pest or disease is found at the port of entry, a traceback will be conducted by APHIS and the national plant protection organization (NPPO) of Morocco to identify the source of the problem. Corrective action, including removal of the packinghouse or place of production from the export program can then be taken.

One commenter requested that we consider requiring the use of irradiation on fresh raspberry fruit from Morocco to mitigate the risks associated with *M. fructigena*.

Irradiation is an approved treatment to mitigate the risks presented by arthropod plant pests, but is not approved as a treatment against fungi, like *M. fructigena*.

One commenter asked about the costs associated with inspections and whether these inspections would increase the burden on port of entry inspectors and cause delays.

The cost of inspection at the port of entry is covered by the agricultural quarantine and inspection user fee and, for inspections conducted outside regular business hours at the request of the importer/owner of the consignment, a reimbursable overtime charge. As discussed in the economic analysis that accompanied the proposed rule, Morocco expects to export between 200 and 500 metric tons of fresh raspberry fruit to the continental United States annually. This is a relatively small amount (about 0.4 to 0.9 percent of U.S. fresh raspberry fruit production) and we do not therefore anticipate an increase in burden to inspectors, nor do we believe that this action will cause delays at the ports.

One commenter asked how inspectors will be trained to identify *M. fructigena* on fresh raspberry fruit from Morocco.

Inspectors in Morocco and the United States are already well trained in identifying signs and symptoms of pests and diseases, including *M. fructigena*. The fresh raspberry fruit will be inspected for symptoms of fungal infections such as brown lesions and tufts sprouting from the skin of infected fruit.

One commenter asked if fruits or vegetables have been inspected and certified free of pests or diseases in their country of origin only to be found infested or infected upon arrival in the United States.

Commodities are inspected in their country of origin and again upon arrival at the port of entry in the United States. If a consignment is found to contain plant pests at the port of entry, the consignment may be treated, destroyed, or re-exported.

One commenter expressed concern about the monitoring and enforcement of the systems approach. Specifically, the commenter asked how APHIS intends to monitor the NPPO of Morocco to ensure the conditions of the systems approach are being met.

APHIS reserves the right to conduct site visits to Morocco to inspect places of production in Morocco and audit the program if pest problems occur.

Finally, we note that the proposed rule was issued prior to the October 15, 2018, effective date of a final rule² that revised the regulations in § 319.56-4 by broadening an existing performance standard to provide for approval of all new fruits and vegetables for importation into the United States using 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 August 2016 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.

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

- The NPPO of Morocco must develop an operational workplan, subject to APHIS approval, that details the activities that the NPPO of Morocco would carry out to comply with the phytosanitary requirements.

² To view the final rule, go to <https://www.regulations.gov/docket?D=APHIS-2010-0082>.

- The fresh raspberry fruit may be imported in commercial consignments only.
- The fresh raspberry fruit must be grown at a place of production that is registered with the NPPO of Morocco.
- During the growing season, raspberries must be inspected in the field by the NPPO of Morocco for signs of *M. fructigena* infection no more than 30 days prior to harvest. If the fungal disease is detected, the NPPO of Morocco must notify APHIS. APHIS will prohibit the importation of fresh raspberry fruit from Morocco into the continental United States from the place of production for the remainder of the growing season. The exportation of fresh raspberry fruit from the rejected place of production may resume in the next growing season if an investigation is conducted and APHIS and the NPPO of Morocco agree that appropriate remedial actions have been taken.
- The fresh raspberry fruit must be packed in packinghouses that are registered with the NPPO of Morocco.
- Detection of *M. fructigena* infection at a packinghouse may result in the suspension of the packinghouse until an investigation is conducted and APHIS and the NPPO of Morocco agree to appropriate remedial measures.
- Each consignment of fresh raspberry fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Morocco with an additional declaration stating that consignment was produced in accordance with the requirements authorized under 7 CFR 319.56-4, and that the consignment has been inspected prior to export from Morocco and found free of *M. fructigena*.

In addition to these specific measures, fresh raspberry fruit from Morocco 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 reporting and recordkeeping requirements included in this notification are covered under the Office of Management and Budget (OMB) control number 0579-0049. The estimated annual burden on respondents is 119 hours, which will be added to 0579-0049 in the next quarterly update.

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 notification, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule 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 19th day of July 2019 .

Kevin Shea

Administrator, Animal and Plant Health Inspection Service.

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