

# Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0078]

#### Importation of Grapes From Chile Into the United States

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

**ACTION:** Notice.

**SUMMARY:** We are advising the public of our decision to revise the requirements relative to the importation into the United States of fresh table grapes from regions of Chile where European grapevine moth (*Lobesia botrana*, EGVM) is either absent or at very low prevalence. Based on the findings of a commodity import evaluation document, which we made available to the public for review and comment through a previous notice, we have determined that, in addition to the existing option of methyl bromide fumigation for EGVM and Chilean false red mite (*Brevipalpus chilensis*), grapes from Chile may be safely imported under a systems approach or irradiation for EGVM and *B. chilensis*. Current mitigation measures for *Ceratitis capitata*, or Medfly, will remain unchanged.

**DATES:** The articles covered by this notification may be authorized for importation under the revised requirements after July 19, 2024.

**FOR FURTHER INFORMATION CONTACT:** Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, RCC, IRM, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (202) 836–0149; [Claudia.Ferguson@usda.gov](mailto:Claudia.Ferguson@usda.gov).

#### 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 U.S. Department of Agriculture’s (USDA’s) 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 provides the requirements for authorizing the importation of fruits and vegetables into the United States, as well as revising existing requirements for the importation of fruits and vegetables. Paragraph (c) of that section provides that the name and origin of all fruits and vegetables authorized importation into the United States, as well as the requirements for their importation, are listed on the internet at <https://epermits.aphis.usda.gov/manual>; this address provides access to the Agricultural Commodity Import Requirements database, or ACIR.<sup>1</sup> It also provides that, if the Administrator of APHIS determines that any of the phytosanitary measures required for the importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant pest risk posed by the fruit or vegetable, APHIS will publish a notice in the **Federal Register** making its pest risk documentation and determination available for public comment.

Chile table grapes (*Vitis vinifera* L.) are currently listed in ACIR as authorized for importation into the United States subject to methyl bromide fumigation. This requirement was first adopted in 1960 as a risk mitigation measure against the Chilean false red mite (*Brevipalpus chilensis*), subsequently revised to apply only if quarantine pests were intercepted, and, following frequent pest interceptions, reinstated in 1996 for all shipments. Chile table grapes from areas of Chile under quarantine for Medfly (*Ceratitis capitata*) are subject to additional pest mitigation measures, which we did not propose to change.<sup>2</sup>

<sup>1</sup> The internet address listed in the regulations had previously provided access to the Fruits and Vegetables Import Requirements database, or FAVIR. However, on September 30, 2022, the FAVIR database was replaced by the ACIR database.

<sup>2</sup> We will, however, clarify that irradiation is an approved phytosanitary treatment for Medfly. This is specified in our PPQ Treatment Manual, but not currently reflected in ACIR.

On August 27, 2008, we published in the **Federal Register** (73 FR 50577–50582, Docket No. APHIS–2007–0152) a proposed rule<sup>3</sup> to allow the importation of fresh table grapes from Chile into the continental United States under a systems approach. Following an outbreak of European grapevine moth (*Lobesia botrana*, EGVM) in Chile that same year, and subsequent public comments on the proposed rule regarding the outbreak, APHIS elected not to finalize the proposed rule, as the proposed systems approach did not include EGVM-specific measures. Since that time, we have continued to require that table grapes imported from Chile receive methyl bromide fumigation, which also mitigates the risk of EGVM.

The national plant protection organization (NPPO) of Chile, Servicio Agrícola y Ganadero (SAG), has requested that APHIS revise the import requirements for grapes from Chile to the United States to allow the export of table grapes from areas of Chile where EGVM is either absent or at very low prevalence (the Arica and Parinacota, Tarapacá, Antofagasta, Atacama, Coquimbo, and Valparaíso regions of Chile) under an APHIS preclearance program for a systems approach in Chile, or irradiation treatment. In response to this request, APHIS prepared a new pest risk assessment (PRA) that evaluates the risks associated with importation of commercially produced fresh grapes (*Vitis vinifera* L.) for consumption from Chile into the entire United States. Based on the PRA, a commodity import evaluation document (CIED) was prepared to identify phytosanitary measures that could be applied to grapes from Chile to mitigate pest risk. The CIED recommended that commercially produced shipments of fresh table grapes originating from the Arica and Parinacota, Tarapacá, Antofagasta, Atacama, Coquimbo, and Valparaíso regions of Chile could be imported into the United States under an APHIS preclearance program for a systems approach or irradiation without the risk of introducing quarantine pests.

Accordingly, in accordance with the requirements of § 319.56–4, we

<sup>3</sup> To view the proposed rule, go to: <https://www.regulations.gov/document/APHIS-2007-0152-0001>.

published a notice<sup>4</sup> in the **Federal Register** on October 17, 2022 (87 FR 62783–62784, Docket No. APHIS–2021–0078), in which we announced the availability, for review and comment, of the PRA and CIED. We also made available an economic effects assessment, or EEA, which contextualized the possible economic impacts associated with the notice.

We solicited comments on the notice for 60 days ending December 16, 2022. We extended the deadline for comments until January 17, 2023, in a document published in the **Federal Register** on December 13, 2022 (87 FR 76174, Docket No. APHIS–2021–0078).

We received 45 comments by that date. They were from producers, importers, United States and Chilean trade associations, industry groups representing domestic table grape producers, the NPPO of Chile, a port authority, a State department of agriculture, a State natural resources and environmental agency, and a private citizen. Thirty-four commenters expressed support for the notice, and two opposed it. The remaining nine commenters did not overtly express support or opposition, but posed questions, offered recommendations, or requested additional time to comment. Of the comments supporting the notice, 21 included a request for us to finalize the notice expeditiously. The comments are discussed below by topic.

### General Comments

Four commenters asked us to extend the comment period by 75 days.

We extended the comment period by 30 days, which we consider appropriate given our prior outreach efforts to stakeholders in connection with this action. This includes: Making the PRA and CIED available for stakeholder review and providing an informal opportunity for comment before the notice was published in the **Federal Register**; providing briefings for the domestic table grape industry within the United States and the National Plant Board, which represents State plant protection organizations within the United States, regarding the provisions of the systems approach; and conducting a virtual site visit of Chilean grape production systems for domestic stakeholders.

Two commenters asked us to disclose the operational workplan (OWP) and reopen the comment period.

The OWP is a government-to-government document formulated using

the CIED and PRA, which were made available for public review and comment. It contains guidance on the detailed implementation of the systems approach that is outlined in the CIED without expanding or reducing its scope. The use of OWPs allows APHIS to adjust the details of how to execute the systems approach, within the bounds of the requirements laid out in the CIED, in response to situations such as changes in pest distribution and/or population density within a particular region, or technological advances. The OWP allows the Agency to work nimbly to adjust to operational realities within the parameters and strictures set forth by the CIED. Because the OWP is a government-to-government document that provides internal guidance regarding implementation of APHIS import requirements once they have been finalized, and because the OWP does not deal with subject matter outside the scope of the documents disclosed for notice and comment, it is long-standing APHIS policy not to publish draft OWPs for public review and comment. The OWP functions not as a document that provides the underlying basis for APHIS' determination, but as a further expression, and consistent with the requirements, of the CIED. As such, the non-disclosure of OWP does not deprive the public of ample opportunity for notice and comment.

One commenter requested access to all documentation supporting the PRA and CIED and asked us to reopen the comment period. The commenter also stated that they requested this information by filing a Freedom of Information Act (FOIA) request and, in response, only received the comments that APHIS received during the informal stakeholder input process.

The commenter is referencing a FOIA request received by APHIS in April 2022. The FOIA request specifically requested “all public comments, including any attachments or supporting documentation submitted and received by APHIS” during the informal stakeholder input process. APHIS provided this information to the requester in November 2022. We have no record of the requester expanding the scope of this request to include additional records.

We do not believe that reopening the comment period is warranted, as all of the documentation supporting the PRA and CIED is cited in those documents, and the majority of this information is publicly available (e.g., published, peer-reviewed literature) or available upon request (e.g., data from the Agricultural Quarantine Activity System, or AQAS,

and the Agricultural Risk Management System, or ARM). APHIS does not consider this information necessary in order to provide meaningful comment on the systems approach, particularly in light of the extensive outreach efforts to stakeholders that took place before the notice was published, including a virtual site visit. All documents essential for ample opportunity for notice and comment have been disclosed.

A commenter asked whether methyl bromide fumigation will remain an option for entry of the grapes into the United States if irradiation is not a feasible option for an importer.

Methyl bromide fumigation will remain an option.

Two commenters said that methyl bromide fumigation should be an option if the systems approach fails and grapes have pests.

If pests are detected in a shipment during the mandatory preclearance inspection in Chile, methyl bromide fumigation will remain an option for export of the grapes to the United States, provided that the pests detected can be addressed by methyl bromide fumigation.

If pests are detected in a shipment during an inspection at the port of entry, the possibility of methyl bromide fumigation as a remedial measure will be determined on a case-by-case basis. This determination will be based on whether the port has methyl bromide fumigation capacities and whether the pest detected can be addressed by methyl bromide fumigation.

Detection of quarantine pests on a shipment imported under the systems approach will trigger traceback, and could result in suspension of production sites and/or packinghouses from the systems approach, and/or reevaluation of the systems approach itself.

One commenter stated that APHIS failed to evaluate whether methyl bromide fumigation could be replaced with other fumigation methods, e.g., ethyl formate, phosphine, ozone, or multiple fumigants. As such, the commenter stated that the notice was issued in violation of the Administrative Procedures Act (5 U.S.C. 500 *et seq.*) insofar as there was not evidence of reasoned decision making because the Agency failed to consider alternatives to methyl bromide fumigation apart from the systems approach.

While we are committed as an Agency to evaluating alternatives to the use of methyl bromide, the commenter misunderstands the basis for the notice, which was articulated in the initial notice and its supporting

<sup>4</sup> To view the notice, PRA, CIED, and the comments we received, go to: <https://www.regulations.gov/document/APHIS-2021-0078-0001>.

documentation. When a change is being sought to the conditions governing the importation of a commodity that is already authorized for importation into the United States, as is the case with Chilean grapes, the NPPO of the relevant exporting country must submit information in support of the requested change in accordance with 7 CFR 319.5. Pursuant to these regulations, APHIS was asked by the NPPO of Chile to evaluate whether a systems approach or irradiation would mitigate the risk of introducing pests of concern to the United States relevant to the importation of table grapes. In response to that request, and in accordance with the regulations, we prepared a pest risk analysis evaluating the risk associated with the requested change. The NPPO did not ask us to evaluate other fumigation methods, nor include information regarding other fumigation methods, and it would have therefore been inconsistent with our regulatory process to do so.

One commenter asked that we require the NPPO of Chile to fumigate imported grapes with sulfur dioxide once the Environmental Protection Agency (EPA) approves the use of sulfur dioxide as a pest mitigant.

As the commenter stated, sulfur dioxide is not currently approved by the EPA for use as a pest mitigant. If such approval occurs, APHIS would be open to evaluating the efficacy of sulfur dioxide as a treatment for table grapes from Chile if requested, in accordance with our regulations in 7 CFR part 305, which govern the approval process for phytosanitary treatments. APHIS would not require the use of sulfur dioxide, if it is determined to be efficacious, unless evidence emerges that the alternate conditions for importation of grapes from Chile into the United States (methyl bromide fumigation, irradiation, or the systems approach) are not effective.

#### Pest Risk Assessment

Four commenters requested additional assessments of the pest risk of potential tortricid pests, including *Accuminulia buscki*. The commenters requested that these assessments address the presence of *A. buscki* in Chilean table grapes, its potential to impact vineyards in the United States, and the potential impact this species could have if transmitted to the United States. Several of the commenters also expressed doubt that a lack of interceptions could be considered evidence for a weak pathway, since most grapes are fumigated at ports of entry into the United States and thus presumably not inspected as regularly

as other commodities, or fumigation is effective against *A. buscki* and therefore the pest would not be detected, or *A. buscki* has been present but has not been identified as such. One commenter noted that *A. buscki* has been intercepted on grapes imported into the United States from Chile.

The PRA addresses the concerns brought up by the commenters. While we do not know of the presence of *A. buscki* and the other potential tortricid pests in Chilean table grapes, we do know that grapes are a host for these moths, and because of this, we started our baseline rating at the highest rating (“High”) for all but one of the tortricid species. However, the tortricids (other than EGVM) identified in the PRA have a low likelihood of establishing via this pathway because the life stage most likely to be associated with the commodity is the larva, which feeds externally on the fruit and could be noticed during harvest. Those larvae that avoid detection would have to find a new host, complete development, find a mate, and establish a population, all while avoiding being disposed of, succumbing to the elements, predation, and other sources of mortality.

The PRA considers the pest’s potential to impact the United States by assessing its likelihood of entry and establishment in the United States. For the reasons outlined in the PRA, we have determined that the combined likelihood of entry and establishment is “Low” via the pathway of grapes from Chile for all tortricids (other than EGVM). While the PRA states that these pests are likely to cause unacceptable consequences if introduced into the United States, we believe that the mitigations outlined in the CIED will prevent such an introduction for the reasons articulated in the CIED.

APHIS disagrees that a lack of interceptions cannot be used to support our determination of a weak pathway. No tortricids or quarantine significant Lepidoptera have been intercepted on Chilean grapes since 1984, which includes the period between 1984 and 1996 that predates the mandatory methyl bromide fumigation requirement. The interception of *A. buscki* that one commenter mentioned, citing a 1999 manuscript, refers to a single adult male collected in 1926. We do not consider this to be sufficient evidence to contradict our determination.

Finally, the same commenter claimed that APHIS’ determination that *A. buscki* presented a low risk was not shared by researchers, citing a European and Mediterranean Plant Protection

Organization (EPPO) bulletin,<sup>5</sup> which the commenter claimed classified “*A. buscki* in the same risk category as the Chilean false red mite.”

We disagree with the conclusions the commenter draws from this bulletin. In the bulletin, both species are listed as “intercepted” but not “spreading/emerging.” Importantly, the caption of the table listing the species reads, “‘intercepted’ means that the pest has been reported as intercepted in trade, but not necessarily on table grapes.” Additionally, while this report mentions some of the same pests as our pest risk assessment, APHIS uses different methodologies for risk assessment than the methodologies outlined in the EPPO bulletin. Therefore, direct comparisons are not possible.

Two commenters stated that, while the PRA assesses the risk of pests individually, it fails to assess the cumulative risk of all pests over time. The commenters provided a calculation of probability as an example, and added that grapes grow in tight clusters, increasing the probability of introduction.

The concept of cumulative risk presented by the commenter is based on faulty assumptions. The commenter assumes that each pest is biologically similar in terms of its plant pest status, each has a commensurate likelihood of attacking the grapes, each is commensurately likely to survive shipment to the United States, and each is commensurately likely to become established in the United States, if it enters the United States. This is not the case. For example, with regard solely to the likelihood of establishment, there are multiple factors that must be considered when determining if a pest could establish in an area, including life stage imported, development time, likelihood of finding hosts, finding mates, and being introduced into a suitable environment, all while avoiding mortality factors. In considering each pest distinctly, the PRA takes into consideration this variability from pest to pest. Additionally, we considered and factored into our assessment the physical parameters of the commodity (grape clusters) when determining if a pest would follow the pathway.

Finally, the PRA adopted a conservative methodology for assessing likelihood of introduction in certain instances. For example, some of the pests (*e.g.*, tortricid moths) cause secondary infections, such as *Botrytis*, to infect the fruit and/or display visible

<sup>5</sup> Suffert et al., 2018. *Identification of New Pests Likely to Be Introduced into Europe with the Fruit Trade*. 48 EPPO Bulletin 144, 150.

feeding damage. The feeding damage, as well as secondary infections, can be obvious in the field and would likely be culled, further reducing pest occurrence on the harvested commodity. We did not consider this factor in the PRA. Thus, the likelihood of introduction of some of the pests analyzed in the PRA may be lower than estimated.

Two commenters said that the PRA underestimates the risk of the Chilean fruit tree leaf folder (*Proeulia auraria*), stating that the pest has been intercepted 34 times on blueberries imported into the United States. One commenter also claimed that we disregarded European and Australian reports suggesting that *P. auraria* is an emergent pest with high potential quarantine risk and of more significance than the Chilean false red mite, and that we ignored scientific literature providing that *P. auraria* is an emerging danger that can be controlled using pheromone traps.

The PRA does indicate that it is possible that *P. auraria* larvae could enter the United States on grapes from Chile. However, pest entry is only part of likelihood of introduction in the PRA, as the pest would also have to establish. Establishment would be difficult for the pest, which feeds externally on grape fruit as larvae, because it would have to successfully complete development (on a perishable commodity), find a mate, and establish a population, all while avoiding being disposed of, succumbing to the elements, predation, and other sources of mortality. All these factors contribute to a low likelihood of introduction.

We read and considered the reports from Europe and Australia<sup>6</sup> but did not cite them. The reports suggest that *P. auraria* should be considered a significant pest of grapes. This does not directly address whether it could follow the pathway of grapes from Chile to the United States. For that determination, the PRA relied on direct evidence and factors unique to exporting grapes to the United States. APHIS cites direct evidence in the PRA, not works that were considered but determined not germane.

The literature addressing pheromone traps that the commenter cited<sup>7</sup>

<sup>6</sup> Wilstermann et al., 2016. Report on Table Grapes—Fruit Pathway and Alert List 51.

Suffert et al. 2018. *Identification of New Pests Likely to Be Introduced into Europe with the Fruit Trade*. 48 EPPO Bulletin 144, 150.

Biosecurity Australia, 2005. Final Report: Import Risk Analysis for Table Grapes from Chile 42.

<sup>7</sup> Reyes-García, Luis et al., 2014. *A 4-component Sex Pheromone of the Chilean Fruit Leaf Roller Proeulia Auraria (Lepidoptera: Tortricidae)*. Ciencia E Investigacion Agraria: 187–196.

suggests that pheromone traps could be used to manage *P. auraria* in Chile. This literature does not address the pathway of grapes from Chile into the United States. Based on our determination of a low likelihood of introduction for the factors listed above, we determined that risk mitigation measures such as pheromone traps would not be scientifically justified.

With regard to the commenters' mention of interceptions of *P. auraria* on blueberry, the number referenced by the commenter does not correspond with our records. United States port inspectors have intercepted *Proeulia* sp. larvae (not identified to *P. auraria*) once on *Vaccinium* spp. in permit cargo originating from Chile since 1984. As noted earlier, no tortricids or quarantine significant Lepidoptera, which includes *Proeulia* sp., have been intercepted on Chilean grapes since 1984. This includes the period between 1984 and 1996, which pre-dates the mandatory methyl bromide fumigation requirement.

These two commenters also said that the PRA underestimates the risk of the South American fruit tree weevil (*Naupactus xanthographus*). One of the commenters stated that APHIS had ignored European and Australian reports suggesting the pest was a significant risk, and presented five scientific references that the commenter stated we had failed to consider in developing our PRA.

We found no evidence that *N. xanthographus* is regularly associated with grape clusters. As stated in the PRA, adults are polyphagous and may attack many parts of the plant, which could include fruit. However, this pest is not regularly associated with fruit. When disturbed, adult weevils drop to the ground, so they would likely move off fruit during harvest. Larvae are root pests and would not be associated with the harvested commodity. Additionally, the adults do not fly, which would limit their ability to establish.

Regarding the commenter's claims that the European Union considers *N. xanthographus* on the same level as the Chilean false red mite, and that Australia considers it high risk, while these assessments recognize that these organisms are pests of grapes, they each use their own methodologies to rate risk and determine what pests may follow the pathway that differ from our own. Therefore, direct comparisons between these assessments and APHIS'

Flores, M., et al, 2021. *Development of Monitoring and Mating Disruption against the Chilean Leafroller Proeulia auraria (Lepidoptera: Tortricidae)*. In *Orchards*. Insects 12, no. 7: 625.

assessments are not possible. Additionally, it would lack context to cite the assessments without a full discussion of the limits of the assessments based on the differing methodologies.

The commenter is incorrect that APHIS never considered important scientific literature on *N. xanthographus*. We consulted many sources when developing our risk assessment, including sources referenced by the commenter.<sup>8</sup> However, while we cite in the PRA all direct evidence that informed the assessment, we do not cite sources that were considered but determined not germane. None of the references cited by the commenter focused specifically on whether the pest would be associated with grape fruit or remain with the fruit during harvest. We cited references that assisted in our understanding of the biology of *N. xanthographus*, which led us to determine that fruit for consumption would not be a pathway for *N. xanthographus*.

One commenter disagreed with our risk rating of "Medium" for the likelihood of introduction of EGVM, stating that the assessment fails to recognize that grapes are distributed nationally and that EGVM previously became established in California. The commenter also noted that the data the rating was based on was not made available for public comment.

We acknowledge in the PRA that grapes are sold in every State, which results in a high likelihood of entry. However, risk of introduction has two separate components, likelihood of entry and likelihood of establishment. In this regard, there are some significant hurdles that EGVM must overcome that would reduce the likelihood of establishment. The eggs and larvae are the most likely life stages to enter, which would have to complete development, find a mate, and establish

<sup>8</sup> W. Vera and J. Bergmann, 2018. *Distribution and Ultrastructure of the Antenna/Sensilla of the Grape Weevil Naupactus Xanthographus*. 81 Microscopy Rsch. & Tech. 590, 590.

A.A. Lanteri and M.G. del Rio, 2017. *Naupactus Xanthographus (Germer) Species Group (Curculionidae: Entiminae: Naupactini): A Comprehensive Taxonomic Treatment*. 51 J. Nat. Hist. 1557, 1557.

C. Aguirre et al, 2015. *A PCR-Based Diagnostic System for Differentiating Two Weevil Species (Coleoptera: Curculionidae) of Economic Importance to the Chilean Citrus Industry*. 108 J. Econ. Entomology 107, 107.

N. Guzman et al., 2010. *Isolation and Characterization of Microsatellite Loci in the Fruit Tree Weevil Naupactus Xanthographus*. 89 J. Genetics.

W. Vera et al., 2016. *Attraction to Host Plant Volatiles and Feeding Performance of Naupactus Xanthographus (Coleoptera: Curculionidae) Is Affected By Starvation*. 29 J. Insect Behav. 48, 48.

a population. This must occur all while avoiding being disposed of, succumbing to the elements, predation, and other sources of mortality. All these factors contribute to reducing the likelihood of establishment, and thus the overall likelihood of introduction, which rated “Medium.”

Our rating of “Medium” for likelihood of establishment acknowledges that establishment is possible, especially without risk mitigations. However, as explained above and in further detail in the PRA, the likelihood of introduction is limited by multiple factors. We also note that the PRA specifically assesses the risk of introduction via the hypothetical pathway of commercially produced grapes from Chile and is therefore based on factors specific to that pathway. A historical instance of establishment via an unknown pathway does not contradict our risk rating for the likelihood of introduction.

All sources supporting the PRA are listed in that document and publicly available or available upon request.

The commenter also disagreed with our risk ratings for *B. chilensis*, stating that the assessment fails to recognize that grapes are distributed nationally, and noting that the data the rating was based on was not made available for public review.

We acknowledge in the PRA that grapes are sold in every State. However, we also state that there are some significant hurdles that the mite must overcome that would reduce the likelihood of establishment, such as seasonality of host availability, dispersal ability of the mites, and intended use of the commodity. Our consideration of all these factors resulted in a rating of “Medium.”

As stated earlier, all sources supporting the PRA are listed in that document and publicly available or available upon request.

### General Comments on the Systems Approach

One commenter said that a systems approach provides insufficient protection against known and emerging pests, and that APHIS has not considered the risk posed by unknown future pests.

We do not agree with the commenter that the systems approach provides inadequate protection against pest risk. For the reasons outlined in the CIED, APHIS has determined that the systems approach will provide an appropriate level of phytosanitary protection against known pests. APHIS continuously monitors foreign countries for quarantine pests. If a previously

unknown quarantine pest relevant to the importation of table grapes from Chile arises in the future, APHIS will reassess the associated pest risk and, if we determine that current phytosanitary measures would not provide an adequate level of phytosanitary protection, revise the import restrictions accordingly. Interception of even one quarantine pest for a commodity at a port of entry triggers an immediate review of the risk mitigations for that commodity.

The commenter also stated that, whereas fumigation with methyl bromide is efficacious for a broad spectrum of plant pests beyond those specifically identified in the PRA as potentially following the pathway on table grapes from Chile into the United States, the systems approach was constructed more narrowly to address EGVM and *B. chilensis*.

While the mitigations of the systems approach target EGVM and *B. chilensis*, the general phytosanitary measures of the systems approach, including commercial production, culling of damaged fruit, traceback to production sites, inspection, a phytosanitary certificate issued by the NPPO, and a Plant Protection and Quarantine (PPQ) Form 203 or vessel report (which we will require in addition to a phytosanitary certificate, as discussed later in this document), also mitigate for pests that were rated “Low” for likelihood of introduction in the PRA. Certain measures, such as packing in pest-exclusionary packinghouses, also help prevent hitchhiking pests (pests not normally associated with the fruit) from following the pathway. We are confident that these measures will sufficiently mitigate the pest risk.

One commenter stated that the systems approach was vulnerable to manipulation, providing a hypothetical example of a person failing to report a moth found in a trap. The commenter indicated that the PRA is flawed because of the failure to account for “gamesmanship”.

The PRA does not address “gamesmanship” in the systems approach because the PRA does not consider any mitigations (such as those of the subsequently developed systems approach) during the pathway, and therefore does not analyze risk based on whether or not mitigations are followed. Rather, the PRA considers the pest risk potential of organisms before any mitigations are applied, and the phytosanitary measures of the systems approach are developed in response to the pest risks we identify in the PRA.

If APHIS identifies evidence of underreporting or manipulation of

records of trap catches, we may determine not to allow the importation of any further grapes under the systems approach until corrective action acceptable to APHIS establishes that such records are accurate and reliable. We consider the possibility of such general prohibitions a sufficient incentive for the NPPO to sufficiently monitor the systems approach program in Chile, and for producers to adhere to the provisions of the systems approach.

The commenter also stated that the systems approach was vulnerable to accidents, such as comingling of grapes in packinghouses or problems caused by grapes grown near the border between regions. The commenter indicated that the PRA is flawed because of the failure to account for such accidents.

The PRA does not account for accidents in the systems approach because, as explained above, the PRA does not consider any mitigations (such as those of the subsequently developed systems approach) during the pathway, and therefore does not analyze risk based on whether or not mitigations are followed. Rather, the PRA considers the pest risk potential of organisms before any mitigations are applied, and the phytosanitary measures of the systems approach are developed in response to the pest risks we identify in the PRA.

Protocols will be in place in packinghouses to prevent comingling of systems approach and non-systems approach grapes, such as separate timing of the arrival of grapes grown under the systems approach and separate storage areas, and these protocols will be included in the operational workplan. Orchards that are eligible to ship grapes grown under the systems approach that are on the border of regions that are not approved to export grapes under the systems approach will be subject to the necessary trapping and survey requirements to ensure freedom from quarantine pests.

Moreover, with regard to both the possibility of deliberate manipulation of the systems approach or accidental lapses in various provisions of the systems approach, the systems approach consists of multiple independent but interlocking measures that mitigate pest risk; if one measure fails, other measures, including mandatory inspections of packed table grapes under the pre-clearance program in Chile, and possible additional inspections at the port of entry, remain.

We are confident that the mitigations individually as well as collectively will mitigate the pest risk.

One commenter stated that the systems approach for plums in Chile has

recently been unsuccessful, which casts doubt on the efficacy of the proposed systems approach.

There is no evidence that the systems approach for plums has been unsuccessful. EGVM was discovered on plums before there was a systems approach in place with specific mitigations for the pest. As we alluded to in the April 1, 2021 Federal Order that first established EGVM-specific mitigations for the importation of plums from Chile, until EGVM larvae were detected on precleared plums in February 2021, they had not previously been considered a host for EGVM.<sup>9</sup> The systems approach for the importation of plums from Chile was subsequently established in a notice published in the *Federal Register* on January 25, 2022 (87 FR 3756–3758, Docket No. APHIS–2021–0041) after the detections.

We are confident that the proposed systems approach for table grapes from Chile will mitigate the risk presented by *B. chilensis*, *L. botrana*, and other quarantine pests.

#### CIED and Specific Provisions of the Systems Approach

Two commenters asked for details regarding regulated areas for EGVM, as well as whether, and under what conditions, fruit can be shipped from a regulated area.

In the case of multiple EGVM captures, there will be a regulated area following the protocol of Chile's national *Lobesia botrana* program. Fruit from a regulated area will only be eligible for export if it undergoes a phytosanitary treatment, such as methyl bromide fumigation or other approved treatment, either in Chile or at the port of first arrival in the United States.

Four commenters asked whether field inspections for EGVM will be required and requested details about these inspections.

Field sampling of grapes targeting EGVM is an integral part of any eradication program. However, field sampling is typically initiated in response to adult captures. According to the systems approach outlined in the CIED, capture of an adult moth will result in a regulated area from which grapes will not be eligible to ship to the United States without a phytosanitary treatment. Because these areas will already be suspended from participating in the systems approach, there is no justification to require sampling for larvae as part of the systems approach.

<sup>9</sup> To view this Federal Order, go to: [https://www.aphis.usda.gov/import\\_export/plants/plant\\_imports/federal\\_order/downloads/2021/da-2021-04.pdf](https://www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/downloads/2021/da-2021-04.pdf).

Information about Chile's eradication program, including information about field inspections, is available publicly on the SAG website.<sup>10</sup> If a larva is detected in the field, it will result in a regulated area from which grapes cannot be shipped under the systems approach.

Three commenters requested more information about EGVM trapping protocol.

Details on trapping density and action thresholds are typically reserved for the operational workplan, as this allows the Agency to work nimbly to adjust to operational realities within the parameters and strictures set forth by the CIED.

That being said, Chile's national *Lobesia botrana* program is available publicly on SAG's website.<sup>11</sup> In its current form, the program requires 1 trap per 10 hectares, with a minimum of 1 trap per production site.

One commenter requested that sampling procedures targeting EGVM for Chilean growers be the same as those for California growers in order to "level the playing field." The commenter also requested further field sampling and surveys for EGVM, as well as restoration of funding for this program in the United States.

As explained earlier in this document, field sampling is not a part of the systems approach, but it is a component of Chile's national *Lobesia botrana* program. The sampling procedures used in Chile (available publicly on the SAG website at the link provided in footnotes 10 and 11) are based off the same scientific data that were used to develop the sampling procedures used during eradication efforts in California.

Domestic EGVM programs and their funding is outside the scope of this notice.

One commenter stated that the CIED lacks evidence for designating specific regions of Chile as "low prevalence" for EGVM, as the CIED does not include survey data from recent years and provides no explanation as to what the phrase "mainly free" from EGVM means.

The populations of EGVM in these regions are under official eradication and suppression efforts by SAG. During the last 4 years, captures of adult EGVM

have not exceeded 100 moths in these regions during the first flight of the table grape production season. In contrast, there were over 2,000 adult captures of EGVM in the Metropolitan region, which did not qualify as an area of low pest prevalence.

We also note that grapes may only be exported from pest free production sites in the areas that qualified as low pest prevalence; areas that qualify for the systems approach will require trapping in production sites to ensure freedom from EGVM, and production sites that are within 3 kilometers (km) of locations with positive captures of EGVM will not be eligible to ship under the systems approach.

The statement that the regions of Chile considered for the systems approach are "mainly free of *Lobesia botrana*" refers to the fact that EGVM populations are transient and officially under eradication by SAG.

One commenter stated that the CIED should include a definition of a "shipping season" for purposes of counting EGVM captures and determining eligibility to export under the systems approach. The commenter suggested that a shipping season should start on October 1.

Due to climatic changes and geographic variability in participation of the growing areas, we cannot specify a calendar date for the start of the shipping season. We require recordkeeping of EGVM captures as part of the systems approach and will use the dates and locations of any captures of EGVM to determine eligibility of the production sites to participate in the systems approach.

One commenter said that the Valparaíso region should not be eligible to export grapes under the systems approach as it does not have a low prevalence of EGVM. As evidence, the commenter indicates that there were 91 EGVM captures by the end of the first flight of the moth during 2018/2019 season, and that those captures were made in 54 different traps and that 74 captures occurred in 35 different table grape vineyards.

The populations of EGVM in this region are under official eradication and suppression efforts by SAG. EGVM captures have decreased since the 2018/2019 season, with 78 adult EGVM captured in the Valparaíso region in the 2023/2024 season. Captures of EGVM during the intervening years were similarly lower than the 91 moths captured during the 2018/2019 season. Production sites that are within 3 km of captures will not be eligible to ship under the systems approach.

<sup>10</sup> SAG's National *Lobesia botrana* control program, including information about inspections, can be found here: <https://www.sag.gob.cl/sites/default/files/Estrategia%20Programa%20Nacional%20Lobesia%20botrana.%20Temporada%202023-2024.pdf>.

<sup>11</sup> SAG's National *Lobesia botrana* control program specifying trap density can be found here: <https://www.sag.gob.cl/sites/default/files/Estrategia%20Programa%20Nacional%20Lobesia%20botrana.%20Temporada%202023-2024.pdf>.

Four commenters asked about the rate for preharvest grape sampling for *B. chilensis*, and one commenter requested that it be specified in the CIED.

Sampling rates are typically reserved for the operational workplan. As noted earlier, reserving such details for the OWP allows APHIS to adapt to operational realities within the parameters and strictures set forth by the CIED. However, the sampling rate identified in the OWP will be within the same general parameters as that for other commodities in systems approach programs in Chile and in accord with International Standards for Phytosanitary Measures No. 6, "Surveillance," produced by the Secretariat of the International Plant Protection Convention.

One commenter suggested that we require a secondary random sampling for *B. chilensis* or other additional mitigation measures.

The phytosanitary measures required by the systems approach, including mite washes at the packinghouse, already serve as additional mitigation measures to ensure that no mites are present in exported table grapes from Chile. If mites are found during phytosanitary inspections, traceback will be conducted and the production site from which the grapes were produced will no longer be able to ship under the systems approach for the remainder of the season. Given these measures, a secondary random sampling is not supported.

One commenter stated that the window for *B. chilensis* testing in the CIED should be reduced from the proposed 1 to 30 days before harvest to 1 to 15 days, as the longer window increases the risk of a new generation of mites.

We have determined that preharvest sampling up to 30 days before harvest is sufficient to ascertain that prevalence of the mite is low. Although *B. chilensis* has multiple generations each year, these generations occur every 30–40 days and overlap with one another, so mites are likely to be detected during the preharvest sampling if they are present. The systems approach also requires post-harvest mite washes, which provide an additional layer of protection to ensure that no mites are present in the exported table grapes.

One commenter stated that the CIED should specify that, during testing for *B. chilensis*, the filtrate in the petri dish must be analyzed under a microscope.

We agree with the commenter that the filtrate in the petri dish must be examined under a microscope during testing to establish low prevalence for a shipping season. Although the CIED

published alongside the initial notice stated that the filtrate must be "microscopically examined," we have edited this language to "under a microscope" to state this requirement more clearly.

One commenter stated that the CIED did not include data from the pilot program of a systems approach consisting of low prevalence places of production for *B. chilensis* in Chile. The commenter also claimed that the data were outdated.

Data from the pilot programs are summarized in the CIED. As stated in that document, there were no detections of live *B. chilensis* during the inspections performed in Chile or in the United States.

We disagree that the data are outdated. While the pilot programs were conducted during the 2002/2003 and 2006/2007 growing seasons, they tested the efficacy of the control measures for *B. chilensis* in the systems approach, and were not therefore dependent on the conditions of any particular growing season. No additional pilot programs have been performed because the pilot program provided sufficient evidence that a systems approach that includes low prevalence of *B. chilensis* effectively removes this pest from the importation pathway.

The commenter also said there was a lack of evidence supporting APHIS' selection of a 6 percent infestation rate with 95 percent confidence as the sampling standard for *B. chilensis*.

The "6 percent" infestation rate stated in the CIED was based on extensive surveys in the field over multiple seasons, as stated in the CIED. However, APHIS has determined that details such as inspection rates are best kept in the OWP, rather than the CIED. The use of OWPs allows APHIS to adjust the details of how to execute the systems approach, within the bounds of the requirements laid out in the CIED, in response to situations such as changes in pest distribution and/or population density within a particular region, or technological advances. We are amending the CIED to remove the specified inspection rate.

We have extensive experience sampling for *B. chilensis* in systems approaches for other commodities from Chile, such as citrus, cherimoya, kiwi fruit, and pomegranate. The sampling requirements for *B. chilensis* in table grapes will match those commodity programs already sampling for *B. chilensis*, as well as sampling protocols for *B. chilensis* in place in other APHIS systems approaches in South America, such as that for lemons from Argentina. The proposed rate is consistent with

risk in grapes when compared to other commodities.

Two commenters asked for more information about Mediterranean fruit fly (Medfly) trapping and descriptions of eradication and regulatory activities.

As mentioned in the initial notice, the current mitigation measures for *Ceratitis capitata*, or Medfly, would remain unchanged. Therefore, activities related to Medfly are outside the scope of this notice. To reiterate, APHIS' Medfly-specific requirements for table grapes from Chile are not part of the systems approach and will remain unchanged as a result of this notice.

APHIS acknowledges that Medfly outbreaks occur sometimes in Chile. Chile maintains a national trapping program with the aim of detecting and eradicating Medfly. SAG regularly communicates updates regarding Medfly outbreaks to APHIS-PPQ, and current outbreaks are updated on SAG's website.<sup>12</sup>

Two commenters stated that the CIED lacked detail about requirements for packinghouses, specifically regarding culling damaged or diseased fruit. One commenter wanted "damaged or diseased" fruit to be defined so that even fruit with slight damage or disease will be culled at the packinghouses and only quality fruit without pests will be imported.

The CIED states that "all damaged or diseased fruits must be culled." Fruit with any amount of damage or disease, however minor, should be culled at the packinghouse. APHIS believes the language in the CIED clearly defines the required actions to ensure pest risk is mitigated. Any further details of activities to be conducted in the packinghouse will be contained in the operational workplan.

Two commenters requested that producers in Chile be allowed to pack outside of pest-exclusionary packinghouses under the systems approach.

We are making no changes in response to the commenters. Pest-exclusionary packinghouses are an integral part of the systems approach. As we stated in the CIED that accompanied the initial notice, requiring packing in pest-exclusionary packinghouses prevents infestation of fruit by pests after harvest and prevents hitchhiking pests (pests not normally associated with the fruit) from following the pathway. Accordingly, to mitigate pest risk, grapes must be packed in

<sup>12</sup> Current outbreaks are listed at: <https://www.sag.gob.cl/ambitos-de-accion/mosca-de-la-fruta>.

facilities with pest-exclusionary measures in place.

One commenter claimed that the CIED lacked information about the processes and criteria for recertification of production sites.

As stated in the CIED, a suspended production site may be reinstated to export under the systems approach under the following conditions: An adult capture would require 1 year with no more than 1 adult EGVM trapped, and a larval find would require 2 years without any immature stages of EGVM found in the field or in packed table grapes. Additional details concerning the operational execution of these requirements will be included in the operational workplan.

One commenter requested that the CIED be amended to provide that a suspended production site not be eligible for reinstatement to export under the systems approach unless there have been no captures of adult EGVM for 2 years, rather than 1 year, in order to avoid a mismatch between initial and reinstatement requirements.

As noted earlier, after an area has been approved to export under the systems approach, a larval find would require two whole seasons without any EGVM detections before the area would be eligible for reinstatement in the systems approach program, whereas an adult capture would require one whole season without EGVM detections. A larval detection would indicate a breeding population, whereas adult captures do not necessarily indicate a breeding population and may instead be transient individuals. For this reason, we believe one season without adult captures to be a sufficient amount of time to mitigate risk.

Between trapping and phytosanitary inspections, we are confident that EGVM populations will be detected.

One commenter stated that the CIED should disclose the remedial actions that APHIS may take if a production site or packinghouse does not comply with measures of the systems approach, and that any noncompliance should automatically make a production site or packinghouse ineligible for the systems approach for at least the rest of the shipping season.

If the noncompliance is due to a find of *L. botrana* or *B. chilensis*, remedial actions will begin with suspension of the noncompliant production site or packinghouse, followed by an investigation into the cause of the noncompliance. APHIS and SAG will then identify actions that must be taken that will allow the packinghouse or production site to be reinstated into the systems approach program once the pest

risk is sufficiently mitigated, if applicable. If SAG finds that a production site or packinghouse is not in compliance with the requirements of the systems approach, no table grapes from the production site or packinghouse will be eligible for export into the United States without a phytosanitary treatment (methyl bromide fumigation or irradiation) until APHIS and SAG investigate and implement appropriate satisfactory corrective actions.

Two commenters stated that there is no guidance for spotting pests and that the CIED should specify how inspectors will carry out inspections, including explicitly obligating inspectors to identify pests at the species level.

The CIED provides the framework for the phytosanitary requirements APHIS has put forth. Details on the implementation of those requirements, including expectations for inspectors, will be included in the bilaterally signed operational workplan. Regarding identifying pests to the species level, this is not always possible during inspection depending on the pest and life stage found. However, if conclusive identification is not possible and the pest is determined to belong to or share morphological similarities with a genus that contains a known plant pest of quarantine significance, APHIS policy is to consider the pest identified to be of quarantine significance.

One commenter stated that the CIED should be modified by providing that inspectors should be required to conduct visual inspections for pests using illuminating lamps, not hand lens.

As stated above, details on the implementation of the requirements laid out in the CIED will be included in the operational workplan. That being said, we can confirm that inspection tables are equipped with illumination to facilitate suitable visual detection of pests. Particularly small pests will be detected through mite washes, as the wash filtrate will be analyzed under a microscope.

One commenter stated that the CIED should disclose which records regarding the systems approach must be generated and retained by SAG. The commenter added that SAG should be required to retain communications with Chilean producers about EGVM detections or *B. chilensis*, and general communications between SAG and grape producers regarding the systems approach.

SAG will be required to inform APHIS of any detections of EGVM and *B. chilensis* in the areas of low pest prevalence. SAG already provides annual updates on the distribution of EGVM in Chile. Any further

requirements for recording communications would be included in the operational workplan.

One commenter stated that SAG should be required to retain records for at least 5 years. The commenter stated that this length of time was needed to address regulatory incidents.

APHIS agrees that record retention for more than 1 year is appropriate given the provisions of the systems approach. However, we do not agree that 5 years of records are warranted. EGVM has three life cycles or flights per year. Thus, the 5-year retention period requested by the commenter would cover up to 15 life cycles of the pest, which far exceeds the number needed in order to investigate individual regulatory incidents, which presumably would occur within a particular flight. We consider 3 years, or nine flights, worth of records sufficient to enable investigations of regulatory incidents, and have amended the CIED accordingly to require records to be kept for at least 3 years.

The same commenter said that the CIED should be modified to require that production sites, packinghouses, and SAG retain information about individuals who have handled consignments of grapes.

Traceability back to production sites and packinghouses will be required. As stated in the CIED, the identity and origin of the fruit must be maintained from the grove, through the packinghouse, and through the exporting process into the United States. We have determined that this information will be sufficient to backtrack pest detections, should they occur, and take appropriate remedial actions, as laid out in the CIED. Information on individuals who handled the fruit goes beyond the scope of pest risk management.

The commenter also suggested that the CIED be modified so that the required phytosanitary certificates are more specific about which measures of the systems approach have been followed, as this would help with any investigation into a failure of the systems approach and serve as a reminder to producers to comply with the systems approach.

The intent of the phytosanitary certificate is to have an NPPO-issued official document that certifies that all provisions of the systems approach that are required to take place in Chile have in fact taken place, and that the grapes in the consignment are free of *Brevipalpus chilensis* and *Lobesia botrana*. Given its intended function, this document would not be an appropriate vehicle to serve as a



reminder to producers to comply with the systems approach. The commenter did not provide reason to believe that such a reminder would be necessary or beneficial, and we believe that the consequences of failing to follow the measures of the systems approach will serve as sufficient incentive for producers to comply with its measures.

We also note that APHIS is editing the CIED to require a PPQ Form 203 or vessel report in addition to a phytosanitary certificate issued by the NPPO prior to export. Like a phytosanitary certificate, the PPQ Form 203 or vessel report certifies inspection at the country of origin, and can be used to certify that all in-country requirements have taken place. However, it is issued by APHIS-PPQ, rather than by the NPPO of the commodity's country of origin, and is used when a commodity is subject to an APHIS preclearance program. At packinghouses, APHIS preclearance personnel will confirm, based on the identification associated with the consignment, that it was produced and packed in accordance with the systems approach prior to inspecting the consignment for quarantine pests.

Other aspects of the systems approach, such as unique identification and recordkeeping requirements, will provide the traceability requested by the commenter in the event of failure of the systems approach.

One commenter expressed doubt that APHIS has adequate resources to conduct inspections at the port of entry and asked about the frequency of such inspections.

We affirm that APHIS and Customs and Border Protection (CBP) have adequate resources for conducting inspections at the port of entry. All shipments imported under the systems approach are subject to inspection at the port of entry. The exact frequency of inspections will be at the discretion of CBP.

One commenter claimed there was a lack of evidence that irradiation would mitigate risk of EGVM and *B. chilensis*.

APHIS has determined that a minimum absorbed dose of 400 Gy is adequate to neutralize all insects except pupae and adults of Lepidoptera, as set forth in the PPQ Treatment Manual pursuant to 7 CFR part 305, which contains APHIS' phytosanitary treatment regulations.<sup>13</sup> Adults of EGVM are unlikely to follow the pathway because they readily take flight when disturbed. Pupae of EGVM

typically pupate on vines or in leaves and are therefore unlikely to follow the pathway. In the unlikely event that pupae are present in clusters of grape, signs such as webbing and damaged fruit will allow for detection of the pest during visual inspection, and such fruits will not be eligible for irradiation.

One commenter asked how APHIS will ensure that proper packaging is used for irradiated grapes and enforce the U.S. Food and Drug Administration's (FDA) requirements for marking irradiated foods.

APHIS' packaging requirements for articles imported to be irradiated upon arrival in the United States are listed in § 305.9(f)(3). These requirements include packing in cartons that have no openings that will allow the exit of the pests of concern and that are sealed with seals that will visually indicate if the cartons have been opened. The importer compliance process conducted by APHIS will verify that all labeling and pest-proof packaging meet these requirements. In accordance with § 305.9(c), an importer cannot receive a permit until this process is completed.

The FDA's labeling requirements for consumer-facing packaging of irradiated foods are outside the scope of APHIS' authority.

The commenter also expressed doubts as to whether there are sufficient irradiation facilities in the United States to handle grapes that will need treatment.

Irradiation is not a requirement of the systems approach; rather, it is authorized as an alternative to the system approach's pest-specific measures. Importers will be able to consider the current capacity of irradiation facilities as a factor in their decision making as to whether to employ the pest-specific measures of the systems approach or pursue irradiation or fumigation.

#### *Economic Effects Assessment*

One commenter disagreed that authorization of the systems approach would only marginally increase Chilean grape imports, citing the Chilean Minister of Agriculture's statement that, under the systems approach, annual table grape imports into the United States from Chile are expected to increase from \$400 million to \$650 million.

Contextually, the Chilean Minister of Agriculture was describing a scenario in which all Chilean grape exports to the United States were produced under the systems approach and Chile enjoyed a 165 percent price premium for grapes produced under the approach. As noted in the initial notice, not all grape-

producing areas in Chile are eligible for the systems approach, and, within a particular region, places of production and packinghouses will have to meet stringent requirements in order to participate. Additionally, the premium cited by the Minister of Agriculture would, in general, significantly exceed current "at-the-market" premiums for specialty grapes and would be predicated on consumer acceptance of that premium.

Chile's table grape exports to the United States increased by 22 percent from the 2021 marketing year to 2022. However, over the last 3 years (2021 to 2023), there has been a decrease in Chilean table grape acreage and exports. Production increased from 2021 to 2022, but decreased in 2023. Given the lag between planting new acreage and harvesting (which is about 3 to 5 years for peak yield), supply chain constraints, and other macroeconomic factors, it is unlikely that these trends will change in the short term.

Over the period 2018 to 2022, Chile's table grapes exports were approximately 780,000 metric tons (MT) valued at \$1.0 billion. Production has hovered around this value for the past 3 years. Chile's top five trading partners for table grapes were the United States (275,000 MT), China (99,000 MT), the Netherlands (36,000 MT), the United Kingdom (23,000 MT), and the Republic of Korea (22,000 MT). In the unlikely event that Chile diverted an amount of grapes equivalent to all grape exports from China to the United States, or all exports from the Netherlands, the Republic of Korea, and the United Kingdom, to the systems approach, the impact on the U.S. grape industry would not be economically significant by the current regulatory standard (the standard establishes a threshold of \$200 million or greater). If this notice increased table grape imports by 99,000 MT, which is Chile's export volume to China, the domestic price of table grapes would decrease by a little over 3 percent. Consumers' welfare would increase by \$59 million, which would offset U.S. producers' \$27 million loss of profits. The net benefit to society would be approximately \$31 million.

The same commenter expressed the opinion that the EEA underestimates the competition between Chilean and U.S. industries by failing to consider the partial overlap in shipping seasons of table grapes from California and Chile.

We appreciate that the market for table grapes is competitive, and that changes in the length of the growing season can affect the counter-seasonality of import markets. That being said, over the course of the last 4 years, on

<sup>13</sup> The treatment manual is available at: [https://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment.pdf](https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf).

average, less than five percent of Chilean grapes have been exported to the United States between May and June. In 2020, there was one shipment of Chilean table grapes in July. However, this shipment was small, constituting less than a percent of total table grape imports in that year.

The commenter also claimed that the EEA only focuses on the impact on the domestic organic grape market, while it should consider impact on the entire domestic grape market.

The EEA considered all table grapes, not just organic table grapes. An effect of the systems approach is that it would open the possibility of organic grape imports from Chile into the United States, which is precluded altogether under the status quo. Grapes from Chile produced under the systems approach could possibly be certified organic, provided that all other requirements for being certified organic are met. The initial EEA acknowledged this possibility, however, APHIS did not evaluate the systems approach against the standards set by the Agricultural Marketing Service for organic certification, but rather against known plant pest risk.

The same commenter stated that the EEA failed to assess the effects of a possible failure of the systems approach on: The domestic table grape industry (in terms of eradication efforts, price drops and the loss of export markets); the wine grapes, juice grapes, and raisin grapes industries; and industries of other host crops (almond, apple, fig, lemon, orange, pear, alfalfa, coffee, plum, and potato).

We understand the commenter's concerns regarding the negative impacts of a potential outbreak of pests of concern in the United States. For this reason, we have carefully analyzed the pest risks associated with the importation of table grapes from Chile under a systems approach. We have determined that, based upon the PRA, the measures specified in the CIED will effectively mitigate the pest risk. The economic effects assessment takes this determination of efficacy as a presupposition, and analyzes the potential economic effects of this action accordingly.

In a final rule titled "Establishing a Performance Standard for Authorizing the Importation and Interstate Movement of Fruits and Vegetables" (Performance Standard rule) and published in the **Federal Register** on September 14, 2018 (83 FR 46627–46639, Docket No. APHIS–2010–

0082),<sup>14</sup> APHIS revised the regulations pertaining to the importation of fruits and vegetables to provide for approval of changes to existing requirements using a notice-based process, rather than by rulemaking. In that rule, APHIS provided that any notices published using the notice-based approach, as done here, would not contain an economic analyses but will include APHIS' consideration of trade volume and other economic factors. APHIS' determination as to whether a new agricultural commodity can be safely imported is based on the findings of the pest risk analysis, not on economic factors.

The commenter also said that APHIS has not met the requirements of the Regulatory Flexibility Act (5 U.S.C. 501) by failing to analyze the effect of the proposed systems approach on small businesses. The commenter indicated that APHIS should analyze the effects on grapes vineyards in the United States with less than \$4 million in annual receipts, noting that the systems approach could affect their insurance premiums, access to credit, and ability to bear eradication costs.

As indicated above, in accordance with the Performance Standard rule, APHIS does not prepare an economic analysis, nor are such notices subject to the Regulatory Flexibility Act. Nonetheless, even if this decision had been a rule subject to the Regulatory Flexibility Act, then regulated entities would have fallen within the zone of interest protected by the Regulatory Flexibility Act, not, in this instance, domestic vineyards, which are not regulated by the systems approach.

Two commenters stated that the systems approach could adversely impact domestic fumigators. The commenters noted that if methyl bromide capacity decreases, the ability to eradicate quarantine pests would be reduced.

We acknowledge that the initial EEA did not discuss losses that could be anticipated by domestic fumigators as a result of the systems approach, and that these possible losses should be evaluated. Currently, the vast majority of grapes imported into the United States from Chile (greater than 95 percent) are imported subject to methyl bromide fumigation at U.S. ports of entry. Grapes produced under the systems approach would not be subject to such port-of-entry fumigation unless a quarantine pest that can be neutralized using methyl bromide fumigation is

found or the shipment otherwise does not meet requirements for entry into the United States.

In order to quantify these potential losses, it thus becomes necessary to estimate the total annual volume of shipments that will occur under the provisions of the systems approach. While APHIS has received word of widespread interest among Chilean producers in participating in the systems approach, there is significant uncertainty regarding the volume that will actually be imported under its terms. This is due in part to the market dynamics mentioned in previous responses: The Chilean industry has shrunk in recent years, with both acreage and production trending downwards. If this trend continues, it will place a stricture on overall grape exports from Chile to the United States.

Additionally, the systems approach itself may impact trade volume. The provisions of the systems approach are stringent for places of production: If a production site does not pass an annual sampling protocol for low pest prevalence for *B. chilensis*, or if more than one adult EGVM has been detected at the production site in the previous shipping season (after initial approval to participate in the systems approach) or any immature EGVM has been detected at the production site in the previous two shipping seasons, the production site may not participate in the systems approach for that shipping season. In APHIS' experience with other systems approaches, pest-free places of production, or places of production with low pest prevalence, can be difficult to establish and maintain, and often significantly reduce producer participation, at least initially, irrespective of producer interest.

Finally, as evidenced by the remarks of Chile's Minister of Agriculture mentioned earlier in this document, it is possible that Chilean producers may be anticipating a significant "at-the-market" premium for grapes exported under the systems approach in comparison to fumigated grapes, one that significantly exceeds current premiums in the United States market and which domestic consumers may not accept. If producer interest in the systems approach is conditioned on this anticipated premium, that may also act to reduce producer participation if the premium is not realized.

With that being said, as noted above, we have modeled a high-end scenario in which approximately 12.5 percent of Chile's global exports (99,000 MT) are shipped to the United States under the terms of the systems approach. Based on dialog with the fumigation industry, a

<sup>14</sup> To view the final rule, go to: <https://www.regulations.gov/document/APHIS-2010-0082-0031>.

containerized ship of Chilean grapes carries approximately between 3856 MT and 5716 MT of grapes, and is fumigated at a cost of approximately \$150,000 per vessel. If 99,000 MT of grapes are shipped to the United States under the systems approach, this equates to between 18 and 26 vessel shipments of grapes to the United States, resulting in foregone revenue of between \$2.7 million and \$3.9 million in aggregate for domestic fumigators. Again, this is a conservative, high-end estimate, and actual import volumes could be significantly lower for reasons discussed above. We have revised the EEA to include this estimate, and are making the revised EEA available alongside this notice.

Therefore, in accordance with the regulations in § 319.56–4(c), we are announcing our decision to authorize the importation into the United States of grapes from Chile subject to the conditions listed in the CIED that accompanies this final notice.

These conditions will be listed in the ACIR database (available at <https://acir.aphis.usda.gov/s/>). In addition to these specific measures, grapes from Chile will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Finally, we note that, in addition to the changes to the CIED discussed earlier in this document (requiring SAG to retain records for 3 years, and requiring PPQ Form 203 or vessel report in addition to a phytosanitary certificate), we have made additional non-substantive edits to the CIED to improve its clarity. We are publishing the revised CIED alongside this notice.

#### *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 included under the Office of Management and Budget (OMB) control number 0579–0049.

#### *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) 851–2533.

*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 15th day of July 2024.

**Michael Watson,**

*Administrator, Animal and Plant Health Inspection Service.*

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## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Notice of Request for Information (RFI) Inviting Input About the \$50 Million Non-Traditional Shelf-Stable Commodities Pilot Program

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

**ACTION:** Request for information.

**SUMMARY:** The Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture requests comments from the public to inform an understanding on non-traditional, shelf-stable commodities that could be used in food assistance programming. FAS seeks to learn what commodities could be considered outside the traditional food assistance commodities. This RFI offers interested parties the opportunity to provide FAS with information regarding non-traditional, shelf-stable food aid commodities.

**DATES:** Comments on this notice must be received by August 23, 2024 in the **Federal Register** to be assured of consideration.

**ADDRESSES:** USDA invites submission of the requested information through one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Email:* FAS will accept electronic submissions emailed to [PPDED@usda.gov](mailto:PPDED@usda.gov). The email should contain the subject line, “Response to RFI: \$50 million pilot program.”

*Instructions:* Response to this RFI is voluntary. All comments submitted in response to this RFI will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the comments publicly available via <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Molly Kairn, Program and Management

Analyst, U.S. Department of Agriculture, Foreign Agricultural Service, email [PPDED@usda.gov](mailto:PPDED@usda.gov), Phone 202–713–8673.

#### SUPPLEMENTARY INFORMATION:

##### Background

In October 2023, USDA announced with USAID the use of \$1 billion of Credit Commodity Corporation funding to help fill food security gaps and supply safe and nutritious food to the global community in need.

Of this funding, up to \$50 million will be set aside for use in a pilot program that will operate to utilize U.S. commodities that:

1. Have not recently been substantially included in international food assistance programming,
2. Are shelf-stable, and
3. Are suitable for use in feeding food-insecure populations.

These U.S.-grown commodities could include, but are not limited to, nuts; dried fruits; grains such as quinoa, farro, and oats; and canned fish or canned meats.

##### Request for Information

FAS requests information from the public to help identify non-traditional, shelf-stable commodities that could be used in food assistance programming under the proposed \$50 million pilot program. Non-traditional commodities could include, but are not limited to, commodities that have never been used before in food assistance programming, commodities that have not been used in food assistance programming in at least the last 5 years, and/or commodities that can be made into a new product. Additionally, FAS requests information from the public about non-traditional commodities including:

1. Cost per metric tonnage, or other customary commercial unit of measure, including cost to the U.S. Government,
2. Estimated cost of delivery of commodities to a U.S. port,
3. Packaging details, including transportation/containerization requirements and costs,
4. The expected shelf life under normal storage conditions and adverse conditions that might be expected in developing countries (*i.e.* high humidity and temperatures),
5. Any history/documentation of successful storage performance for the commodity,
6. Nutritional benefits for adults and for children,
7. Essential minerals,
8. Testing requirements for food safety,
9. Consumer preparation instructions, if any, including requirements for potable water, fuel, and cooking time,