



# Federal Register

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**Wednesday,  
July 18, 2007**

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**Part II**

## **Department of Agriculture**

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**Animal and Plant Health Inspection  
Service**

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**7 CFR Parts 305, 319 and 352  
Revision of Fruits and Vegetables Import  
Regulations; Final Rule**

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Parts 305, 319, and 352**

[Docket No. APHIS-2005-0106]

RIN 0579-AB80

**Revision of Fruits and Vegetables Import Regulations****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Final rule.

**SUMMARY:** We are revising and reorganizing the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations into territories under U.S. administration, and make various editorial and nonsubstantive changes to regulations to make them easier to use. We are also making substantive changes to the regulations, including: Establishing criteria that, if met, will allow us to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries more effectively and expeditiously and doing away with the practice of listing in the regulations specific commodities that may be imported subject to certain types of phytosanitary measures. These changes are intended to simplify and expedite our processes for approving certain new imports and pest-free areas while continuing to allow for full public participation in the processes. This rule revises the structure of the fruits and vegetables import regulations and establishes a new process for approving certain new commodities for importation into the United States. It does not, however, allow the importation of any specific new fruits or vegetables, nor does it alter the conditions for importing currently approved fruits or vegetables except as specifically described in this document. To the extent that our trading partners consider the length of time it takes to conduct the rulemaking process a trade barrier, these changes may facilitate the export of U.S. agricultural commodities by reducing that time for fruits and vegetables that meet this rule's criteria. The changes do not alter the manner in which the risk associated with a commodity import request is evaluated,

nor do they alter the manner in which those risks are ultimately mitigated.

**EFFECTIVE DATE:** August 17, 2007.**FOR FURTHER INFORMATION CONTACT:**

Regarding the commodity import request evaluation process, contact Mr. Matthew Rhoads, Program Manager, Planning, Analysis, and Regulatory Coordination, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737; (301) 734-8790.

Regarding import conditions for particular commodities, contact Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ-PRI, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734-8758.

**SUPPLEMENTARY INFORMATION:****Background**

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56-8, referred to below as the regulations on the fruits and vegetables regulations) the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA or the Department) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

On April 27, 2006, we published in the **Federal Register** (71 FR 25010-25057, Docket No. APHIS-2005-0106) a proposal<sup>1</sup> to amend the regulations by revising and reorganizing the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations into territories under U.S. administration, and make various editorial and nonsubstantive changes to regulations to make them easier to use. We also proposed to make substantive changes to the regulations, including: (1) Establishing criteria within the regulations that, if met, would allow us to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries more effectively and expeditiously; (2) doing away with the practice of listing specific commodities that may be imported

<sup>1</sup>To view the proposed rule and the comments we received, go to <http://www.regulations.gov>, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS-2005-0106, then click "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

subject to certain types of phytosanitary measures; and (3) providing for the issuance of special use permits for fruits and vegetables.

We solicited comments on our proposal for 60 days ending on July 26, 2006. On August 1, 2006, we published a document in the **Federal Register** (71 FR 43385, Docket No. APHIS-2005-0106) reopening the comment period for our proposed rule until August 25, 2006. We received 49 comments by the close of the extended comment period. The comments were from representatives of State and foreign governments, industry organizations, importers and exporters, distributors, and private citizens. The majority of the commenters supported the proposed rule in terms of improving transparency and reorganizing the structure of part 319; however, some commenters also raised questions or concerns about our proposal, which are discussed below by topic.

*Changes to the Proposed Rule*

We made changes to the proposed rule which we will note in this paragraph as an easy reference for the reader. We established a notice-based approach for pest-free areas, added "commercial consignments only" as one of the measures eligible for the notice-based approach, removed proposed requirements that would have provided for the issuance of special use permits, and made several other nonsubstantive editorial and technical changes to our proposed rule. The reasons for those changes are discussed later in this document.

*Pest-Free Areas*

Proposed § 319.56-5 included provisions that would govern our recognition of pest-free areas. In those proposed provisions, we stated that after determining that an area was free of a specified pest, we would publish a notice in the **Federal Register** announcing that the area meets the criteria for pest freedom in § 319.56-5. Several commenters raised concerns with this approach because pest-free areas would be recognized by APHIS without an opportunity for public comment. The commenters asked that we allow for public input before taking such an action.

We agree with the commenters and have amended § 319.56-5(c) in this final rule to provide for a 60-day comment period following publication of a notice announcing that an exporting country has provided us with the documentation required by the regulations to support a determination that an area is free of a specified pest and that we have

completed our evaluation of the request. Only after any comments received in response to the notice have been carefully considered and our initial conclusion affirmed, would we publish a notice recognizing the area's freedom from the particular pest. Removal of an area's pest-free status will continue to be effective immediately.

One commenter asked if APHIS will develop standards or requirements that countries will need to comply with when establishing pest-free areas. A second commenter stated that the proposed provisions were not strenuous enough in setting out how a pest-free area is identified and confirmed and relied too heavily on participants in the source country.

A country seeking APHIS recognition of a pest-free area must submit official documentation that establishes the pest-free status of that area in accordance with the criteria found in International Standards for Phytosanitary Measures (ISPM) No. 4 "Requirements for the Establishment of Pest Free Areas," which is incorporated by reference into the regulations. Further, the country must provide us with the survey protocol used to determine and maintain pest-free status, as well as protocols for remedial actions to be performed upon detection of a pest. Assembling the documentation necessary to address the criteria of ISPM No. 4 and designing the required survey and response protocols is the responsibility of the national plant protection organization (NPPO) of the requesting country; we believe this is entirely appropriate and is not at all an indication of undue reliance on the requesting country. We note in this regard that the regulations provide that the submitted protocols require APHIS approval before an area would be recognized as pest free and that pest-free areas are subject to audit by APHIS to verify their status.

One commenter asked if we could presume that a pest was absent or had always been absent if there are no records of the pest's presence in any pest surveillance data.

If the pest surveillance data referred to by the commenter were collected using accepted and reliable methods and covered a reasonable time period, it is reasonable to expect that we could consider those data as supporting a claim of pest freedom. We would not, however, make a determination on the basis of those data alone; as noted in our response to the previous comment, there are several factors that must be addressed before we will recognize an area as free from a particular pest.

#### *APHIS' Mission*

Two commenters expressed the opinion that APHIS' mission has shifted from trying to prevent the introduction of foreign pests and diseases into the United States to one which enables the implementation of trade agreements that could have negative impacts on domestic producers. One of those commenters added that responding to foreign countries' claims, increasing the supply of foreign commodities, and increasing the variety of commodities in the United States are not part of APHIS' mission. Three other commenters stated that expediting and simplifying rulemaking does not correspond with APHIS' mission to safeguard American agriculture. The commenters stated that APHIS was not justified in proposing the notice-based approach.

APHIS' mission is to protect the health and value of American agriculture and natural resources, and we remain focused on preventing the introduction of pests and diseases into the United States. Without the activities that APHIS undertakes to protect America's animal and plant resources from agricultural pests and diseases, threats to our food supply and to our Nation's economy would be enormous. In recent years, the scope of APHIS' protection function has expanded beyond pest and disease exclusion and management. Because of its technical expertise and leadership in assessing and regulating the risks associated with agricultural imports, APHIS has an expanded role in the global agricultural arena. Now, the Agency must also respond effectively to other countries' animal and plant health import requirements and secure the acceptance of science-based standards that ensure America's agricultural exports, worth over \$50 billion annually, are protected from unjustified trade restrictions. Nonetheless, APHIS has finite resources, and we must explore and implement proven and prudent measures to improve the regulatory process in order to allow us to allocate our available resources more effectively and to better address new risks as they emerge. We are convinced that simplifying the administrative process for dealing with low-risk commodity import issues will allow us to improve our effectiveness in protecting the plant health of American agriculture.

#### *Eligible Measures for Notice-Based Approach*

In the proposed rule, we noted that pest risk analyses for the importation of new commodities often consider only the risks posed by commercially

produced and shipped fruit, and that noncommercial shipments may pose an entirely different pest risk than commercial shipments. For that reason, the regulations have provided that many fruits and vegetables could only be imported in commercial shipments, and the table in paragraph (a) of proposed § 319.56-13, "Fruits and vegetables allowed importation subject to specified conditions," included a number of articles for which "commercial shipments only" was the only specified condition. We were open to the idea of including "commercial shipments only" as one of the designated phytosanitary measures listed in § 319.56-4 and specifically solicited comment on the subject.

We received two comments on the addition of "commercial shipments only" as a designated measure, both of which supported the idea. We have concluded that this approach has merit and we have added this measure as one of the measures eligible for the notice-based approach in § 319.56-4. (We note, however, that in the regulatory text of this final rule, we refer to "consignments," rather than "shipments." In our proposed rule, we discussed replacing the term "shipment" with "consignment," but that change was not reflected consistently throughout the proposed rule. The terms *commercial consignment*, *consignment*, and *noncommercial consignment* are all defined in § 319.56-2 in this final rule, as they were in the proposal.)

In our proposal, we stated that if the notice-based process was adopted for use by APHIS, we would remove from the regulations those listed commodities that are currently approved for importation subject only to one or more of the designated measures. In keeping with that intent and to reflect our addition of "commercial consignments only" to the list of designated measures, we have amended the list in § 319.56-13(a) in this final rule by removing those articles that had been listed in the proposed rule for which "commercial shipments only" was the only specified condition. Those articles we have removed in this final rule, like other articles omitted from the proposed regulations by virtue of their being subject only to one or more designated measures, will continue to be listed in APHIS' fruits and vegetables manual, and the documentation supporting their approval will be made available on the Internet.

One commenter stated that he did not support the notice-based system because he believed that the determination as to which commodity import requests

could be addressed using the notice-based system and which must be addressed through rulemaking is a subjective one.

We strongly disagree with this commenter. After we receive a request from a foreign government, we will conduct a pest risk analysis. If the pest risk analysis finds that the commodity can be imported under one or more of the mitigation measures eligible for the notice-based approach, then we will follow the notice-based process. If we find that additional measures are required, then we will follow the rulemaking process.

One commenter stated that we did not provide enough information as to why the conditions we listed in the proposed rule warrant the notice-based process.

We designed this notice-based system to target commodities that will require mitigations that are widely accepted by plant health experts and have a proven track record of efficacy. As stated previously, APHIS is a regulatory agency that has finite resources, and we have been exploring ways to improve the regulatory process for several years. The notice-based process will simplify the administrative process, while having no adverse effects on the scientific rigor of our analysis, the transparency of the process, or the public's ability to comment and participate in the process.

Two commenters asked that we clarify that rulemaking will be required if the pest risk analysis process determines that a systems approach is necessary.

A systems approach utilizes a series of risk mitigation measures intended to individually and cumulatively reduce pest risk. Such measures include sampling regimens, pest surveys, packing requirements, and other measures determined to be necessary to mitigate the pest risk posed by the particular commodity. By this definition, a systems approach could be eligible for the notice-based process if the system consists only of the designated measures we have determined qualify for the notice-based process; *e.g.*, if a commodity requires origin from a pest-free area, pre-export inspection and certification, an approved post-harvest treatment, and inspection at the port of arrival in the United States. However, if additional mitigations such as field pest surveys, packinghouse safeguards, etc., were required, the commodity would not be eligible for the notice-based process.

One commenter asked how APHIS will consider approving additional measures for the notice-based process in the future.

Trading partners may petition us requesting specific additional measures to be included in the notice-based process and we would consider those requests at that time, or we may propose additional measures on our own initiative. Any additions to the list of designated measures would occur only through rulemaking. If we believe that additional measures should be eligible for the notice-based process, we would develop a new proposal, publish it in the **Federal Register** for comment, and follow with a final rule explaining our decision.

One commenter stated that we should consider adding systems approaches as one of the measures eligible for the notice-based process, especially in cases where similar species of fruits and vegetables are involved, or for which there is already an existing systems approach in a country. The commenter also asked about including places and sites of production that are free from specific pests and low pest prevalence areas in the notice-based approach.

We have chosen to initiate this new process with basic requirements and phytosanitary measures that are widely accepted and have a proven track record of efficacy, but may consider making the measures requested by the commenter part of the notice-based process in the future.

#### *Information Provided to Public*

On June 19, 2001, we published a notice in the **Federal Register** (66 FR 32923–32928, Docket No. 00–082–1) describing the procedures and standards that govern the consideration of import requests by the Agency's Plant Protection and Quarantine (PPQ) programs. That notice was published in response to a specific direction in sec. 412(d) of the Plant Protection Act (7 U.S.C. 7712(d)). One commenter stated that APHIS never published a followup to that notice and that the notice did not comply with all of the directives in the Plant Protection Act.

We revisited our June 2001 notice and reviewed the elements we were directed to address by sec. 412(d), and we believe, as we did at the time it was published, that our notice addressed all the elements specified in the Plant Protection Act. While we did not publish a document that formally responded to the comments we received on the notice, we have taken actions consistent with the recommendations made in some of those comments, such as developing and publishing amendments to our fruits and vegetables regulations, establishing a peer review system, and establishing regulations that govern the submission of import

requests (see 7 CFR 319.5). We are in the process of developing a follow-up notice to our June 2001 notice that will offer an updated description of the procedures that govern our consideration of import requests. We will publish that notice in a future edition of the **Federal Register**.

Several commenters requested that APHIS routinely provide more information to the public in the form of country-specific operational work plans, internal communications within the Agency, and communications between APHIS and the petitioning country. One commenter specifically requested that we include country-specific work plans in our pest risk analyses as to allow for the public to comment on the work plans as well.

The operational work plans referred to by commenters (also known as bilateral work plans) are agreements between PPQ, officials of the NPPO of the foreign government involved, and, when necessary, foreign commercial entities that specify in detail the application of phytosanitary measures that will comply with our regulations governing the import or export of a specific commodity. An operational work plan is not finalized until after the final rule, or in the case of the notice-based approach, a final notice, has been published. As a longstanding matter of policy, APHIS does not make operational work plans available for public comment, but copies can be obtained by request. A more detailed description of how bilateral work plans are developed and used by APHIS can be found in a notice we published in the **Federal Register** on May 10, 2006 (71 FR 27221–27224). With respect to the suggestion that we routinely publish internal APHIS communications and bilateral communications between APHIS and foreign NPPOs, we strongly believe that it would not be appropriate or constructive. We must, of course, communicate very clearly to the public the basis for our decisions. We will present our pest risk analyses and other documents supporting our regulatory decisionmaking in a manner that provides the public with a complete picture of what led to our decision. Furthermore, we will continue to answer questions and share additional background information whenever possible in response to specific requests. There will be no substantive alteration of the public's opportunity to review and comment on our conclusions.

One commenter asked how foreign governments could obtain the manual that includes the lists of names and production areas of enterable fruits and vegetables.

The manual, "Fresh Fruits and Vegetables Import Manual," can be viewed on the Internet at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/fv.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf).

In our proposed rule, we stated that we were in the early stages of converting APHIS' fruits and vegetables manual into a searchable database that will allow interested persons to search by commodity or by country, and that will list clearly the conditions that apply to each particular commodity from a specified country. One commenter asked when the import database will be available and how often it will be updated.

Our goal is to have the system operating as soon as possible after the publication of this rule. The import database will be updated whenever the fruits and vegetables manual is updated. In the meantime, a searchable database is currently available at: <https://manuals.cphst.org/q56/Q56Main.cfm>.

#### *Operations in Other Countries*

One commenter asked that we provide an outline of what information we would require from a foreign country to process an import request.

As noted previously, we have established regulations in § 319.5 that govern the submission of import requests. Those regulations provide that persons who wish to import plants, plant parts, or plant products that are not allowed importation under the conditions in part 319 (including the fruits and vegetables regulations) must file a request with APHIS in order for us to consider whether the new commodity can be safely imported into the United States. The completed request must address, among other things, questions about the party submitting the request, about the commodity proposed for importation into the United States, the proposed end use of the imported commodity (e.g., propagation, consumption, milling, decorative, processing, etc.), shipping information, description of pests and diseases associated with the commodity, and current strategies for risk mitigation or management in order for us to consider their import requests.

Several commenters questioned the ability of all foreign countries to provide all the data necessary for the preparation of pest risk analyses. The commenters stated that APHIS should be required to provide an assessment of the quality of the data provided or a description of the effort that APHIS had to expend to gather the necessary data so as to better allow stakeholders to

assess the relative comprehensiveness of the data.

It is APHIS' responsibility to ensure we have a sufficient and reliable body of data to enable us to prepare an analysis that provides an accurate picture of pest risk. In some cases, the NPPO or other entity making the request may provide a draft pest risk analysis along with their submission; in such cases, that pest risk analysis is subject to rigorous review by APHIS to verify the accuracy of the information. In other cases, APHIS will prepare a draft pest risk analysis using the information described above that is required by the regulations in § 319.5. In either case, we will conduct a literature search, examine interception records, and perform site visits as appropriate. All of this information will be used in preparation of the pest risk analysis and will be made available for public comment. We expect that stakeholders and other reviewers will focus on the content of the pest risk analysis and the comprehensiveness and quality of the data used in its preparation, rather than on a report as to the level of effort that went into its preparation.

One commenter stated that the pest risk analysis should contain a report that the NPPO of the exporting country has the resources, experience, staff, capability, and willingness to do the work to prevent pests and diseases from entering the United States. The commenters asked specifically how APHIS will determine that the NPPO has adequate and competent resources available to effectively carry out prescribed mitigation measures.

Our past experiences with an NPPO and the information gained through site visits allow us to determine if an exporting country's NPPO will have the appropriate staff and resources to carry out the actions it would need to comply with particular mitigation requirements; if it does not, then we would explore alternative mitigation measures or, if none were available, deny the import request. It would be an empty gesture if we were to approve the importation of a commodity subject to risk mitigation requirements that the exporting country was unable to meet effectively, just as it would be a failure of risk management from our perspective to assign risk mitigation requirements that we did not expect could be met or did not conclude would be met.

One commenter stated that APHIS assumes that NPPOs are similar to each other and that the pests and diseases are the same or similar and can be addressed with similar mitigation measures. The commenter stated that when assessing a country's risk, we

should factor in resources that are available and past experience with the organization.

We disagree strongly and can assure all interested parties that APHIS makes no such assumptions. The commenter's suggestion appears to confuse risk assessment with the operational aspects of risk management. In the risk assessment phase, the risk presented by a particular commodity is assessed scientifically and objectively; the ability of an NPPO to undertake activities that will mitigate the identified risks does not become a factor until after the unmitigated risk has been assessed and risk management measures are being considered. At that point, we most certainly take an NPPO's capabilities into account when considering the import request. While we may require similar mitigation measures for the same commodity from two different locations when pest conditions and climate conditions in the two exporting countries are similar, we evaluate each import petition on an individual basis, taking into consideration the unique risks associated with the commodity and the efficacy, feasibility, and impacts of the risk mitigation options. As noted above, we evaluate very carefully the capability of the NPPO and its plant health infrastructure.

One commenter noted that proposed § 305.3(a) states that "all treatments approved under part 305 are subject to monitoring and verification by APHIS." The commenter said that in the case of imports from Chile, that provision should not imply any additional actions will be required beyond those already performed by APHIS and Chile's Servicio Agrícola y Ganadero (SAG) under current operational instructions for the existing preclearance program in Chile.

The provision pointed out by the commenter does not alter the existing preclearance program in Chile. We explained in the proposed rule that many sections of the fruits and vegetables regulations have required that treatments be monitored by an inspector, and that in establishing § 305.3(a), we were simply consolidating those requirements into a single new section.

#### *Stakeholder Participation*

Several commenters stated that the 60-day comment period APHIS would provide for pest risk analyses might not allow enough time for those outside of APHIS to conduct their own scientific review.

We note that the regulations would provide for a comment period of 60 days, which does not preclude us from

extending the comment period when necessary.

Several commenters said that we can improve transparency by allowing stakeholders to become involved during the pest risk analysis process. Those commenters asked that we take comments from the public on our pest risk analyses during the drafting stage. One commenter asked that APHIS notify stakeholders at the time an import request is received. Two other commenters stated that the proposed rule, if adopted, would reduce or eliminate stakeholder input.

With respect to allowing the public to comment on pest risk analyses during the drafting phase, such a process would have a serious adverse impact on the timely preparation of pest risk analyses. We believe a process in which an analysis is prepared, reviewed, and brought to a point where wider circulation and publication for comment is appropriate yields constructive comments that can be considered before any analysis is finalized. Therefore, we do not plan to take comments on pest risk analyses while they are under development.

With regard to notifying commenters at the time import requests are received, we will begin making available, on a quarterly basis, a document that lists all outstanding pest risk analysis import requests made by countries that have provided the information required under the regulations in § 319.5 for us to begin the risk analysis process. The list will be available on the Internet and will include contact information if stakeholders want additional information on the status of specific pest risk analyses.

Finally, we must again emphasize that the changes made in this rule will not reduce or impair in any way the opportunities that stakeholders will have to offer input or comments. As has been the case prior to this final rule, the public will be afforded ample opportunity to offer comments on any proposed import action. The only difference under this final rule will be that in some cases, comments will be solicited through the notice-based process.

One commenter stated that commenters often raise valid regulatory or science-based concerns during the comment period that tend to be discounted by APHIS and that commodities are permitted entry regardless of biological threats.

We disagree strongly with the view expressed by the commenter. First, we must point out that the comment does not address the substance of the rule, but the commenter's apparent

disagreement with prior agency decisions. Second, it must be noted again that when we receive comments on a proposed rule or its supporting analyses, we consider carefully the individual issues raised in those comments and respond as comprehensively as we can to each of them in our final rule. In some cases, we agree with the points raised by the commenters and change our approach accordingly in the final rule; indeed, in some cases we will withdraw a particular proposal in light of new information offered by commenters. Conversely, when we do not agree with a point raised by a commenter, we provide an explanation in our final rule as to why we disagree and why we are continuing with a particular approach. We will continue to consider carefully all comments under the notice-based approach and to address those comments in the context of the final pest risk analyses that will be made available prior to the approval of new imports. We have stated in the past that if zero tolerance for pest risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh agricultural commodity to any other country. Our pest risk analysis process will identify and assign appropriate effective mitigations for any identified pest risks, i.e., the biological threats referred to by the commenter. If, based on our pest risk analysis, we conclude that the available mitigation measures against identified pest risks are insufficient to provide an appropriate level of protection, then we will not authorize the importation of the particular commodity.

#### *Benefits of Implementing Notice-Based Approach*

Several commenters stated that we cited benefits to consumers, but none to domestic producers. Three commenters stated that the benefits to consumers seem overstated and the risks to domestic agriculture from increased and expanded imports are downplayed. One of those commenters added that she was worried that we were opening the floodgates to cheap imports that would put domestic producers at a disadvantage.

The risks associated with new imports are not downplayed and will continue to be considered and addressed with scientific rigor. Benefits to domestic consumers were a factor in developing the notice-based approach, but certainly not the only one. APHIS can attest to the fact that many trading partners do at times consider the length of the process

to be burdensome and indefensible. We emphasized in the proposed rule that to the extent that our trading partners consider the length of time it takes to conduct the import approval process through rulemaking a trade barrier, the changes to that process in this rule could facilitate the export of U.S. agricultural commodities by demonstrating our commitment to eliminating trade barriers and encouraging our trading partners to do the same. Such an outcome would be of benefit to domestic producers. While we recognize that new imports may occasionally have some negative economic impacts on some domestic producers due to increased competition, our decisionmaking is tied under our plant health authorities to the assessment of risk, not issues of economic competitiveness.

Several commenters stated that there are often barriers to domestic producers that are not always based on science and asked what assurances domestic producers had that facilitating our import approval process will prompt a similar response from foreign countries. Two commenters asked if each of the countries which have been granted access to the U.S. market have an equivalent and reciprocal process. Three commenters added that we should obtain assurances from our trading partners that they will simplify their import processes as well.

USDA actively and vigorously pursues foreign market access for U.S. products. While we anticipate that this rulemaking will support these efforts, there are no guarantees. We are obligated to follow the principles and procedures of World Trade Organization (WTO) agreements, including the obligation to base our regulations on science. Other members of the WTO are obligated to do so as well. We view this rule as a measure for improving the timeliness of our action on import requests, and of our emphasis on science as a basis for decisionmaking while maintaining the fullest practicable opportunity for all interested parties to participate in the process. We expect our trading partners to evaluate our requests with equivalent dispatch. Each country has its own process, with some being more complex than others; our process is one of the most scientifically rigorous, but one which will be improved by this final rule.

One commenter asked that we conduct yearly examinations of changes in market access, response to petitions, etc., and another asked that we identify instances in which foreign trading partners have substantially modified their approach to U.S. fruit and

vegetable exports on the basis of how APHIS has reduced the administrative burden on fruit and vegetable exports to the United States.

APHIS has produced reports that document our activities and accomplishments in support of both phytosanitary (plant health) and sanitary (zoonotics and animal health) trade activities on a regular basis for several years. Those reports describe the activities pertaining to U.S. export market access, retention, and expansion, as well as changes in import market access. Reports through fiscal year 2005 can be found at <http://www.aphis.usda.gov/is/tst/Publications.html>. We will continue to analyze our accomplishments in both import and export activities on a regular basis. These reports provide an opportunity for the public to evaluate our performance in facilitating imports and exports.

Several commenters disagreed that the current rulemaking process was an impediment to trade and stated that we need to allow maximum opportunity for public comment. One commenter stated that whether or not our rulemaking process was an impediment to trade is a matter for WTO, not foreign countries, to determine.

As stated previously, the notice-based approach will not in any way diminish the opportunity for public comment. We have stated and believe that some countries view our process for approval of import requests as a substantial impediment to trade. We proposed this action with the intent of making the Agency more effective and efficient, while still employing an exceptionally transparent, science-based risk analysis process with the widest possible opportunity for public input. We believe that by modifying the administrative part of our import evaluation process, we will be better able to focus our resources. Given the considerable improvements in risk management documentation and the increase in the number of personnel dedicated to risk management in PPQ in recent years, we are convinced that the notice-based process will expedite the import evaluation process and make it more open and transparent than it has ever been.

#### *APHIS' Resources*

Two commenters asked whether we had sufficient staff to handle expedited scientific reviews. The commenters asked that APHIS provide the number of scientists currently dedicated to fruit and vegetable pest and disease risk analyses. One of the commenters asked that this information be provided to the

public each time a new import request is made. The commenter asked that we clarify the current backlog on risk analyses.

The commenters clearly misunderstand the purpose, intent, and import of this rule. As stated previously, the notice-based process is not an expedited scientific review. The science-based risk analysis process will remain the same—it is the administrative process that will be expedited. With regard to personnel, we have sufficient personnel available to handle the review of data and information for the completion of pest risk analyses. We are unable to provide the exact number of scientists dedicated to fruit and vegetable pest risk analyses because all are not dedicated to import-related issues. Some of those scientists are also completing assessments for issues related to the facilitation of exports<sup>2</sup> and crucial domestic programs. In addition, at any given time, the numbers can vary based on whether the scientists are assigned to one area or another in response to workload and changing priorities.

With regard to notifying the public of new import requests, we noted earlier in this document that we will be providing, on a quarterly basis, a document that lists all outstanding pest risk analysis import requests, by commodity and country, made by countries that have provided the information required under the regulations in § 319.5 for us to begin the risk analysis process. That document will be posted on the Internet and distributed to persons who have signed up to the PPQ stakeholder registry. To join the registry, go to PPQ's Internet home page ([http://www.aphis.usda.gov/plant\\_health/](http://www.aphis.usda.gov/plant_health/)) and follow the "Join the PPQ Stakeholder Registry" link.

With respect to the backlog of risk analyses, we noted in the proposed rule that we have approximately 400 "requests" in the queue. However, we received many of these requests some time ago but have been unable to take action on them because they were incomplete or otherwise lacking and a response to our inquiries has not yet been received from the requestor. If, for the purposes of estimating the backlog, we were to count only those official requests that are supported by required information at this time, we have approximately 70 that are pending assignment and prioritization and 110 in various stages of development.

<sup>2</sup> Pest risk analyses needed to help us address export issues are always assigned high priority, and there is no backlog of outstanding export issues.

Three commenters raised concerns with issues brought up in the National Plant Board (NPB) report titled, "Safeguarding American Plant Resources (A Stakeholder Review of the APHIS-PPQ Safeguarding System)." The report, published in July of 1999, examined APHIS' safeguarding system and made recommendations to improve upon the system. The commenters stated that there should be no changes to the regulations until the report is finalized and its recommendations are taken into full account. One of those commenters stated that the report contains references to fragmented and dispersed risk management functions; the need for a better process to monitor the efficacy of risk mitigation measures; and more training and actual field experience to ensure that mitigation measures chosen are operationally feasible. The commenter added that the risk analysis program is not yet adequately funded.

In August 2005, we reported that PPQ had completed the implementation process for the recommendations contained in the stakeholder review, with virtually all of the more than 300 recommendations in the Safeguarding Review fully evaluated and implemented or in the process of being implemented.<sup>3</sup> Among our accomplishments during the first 5 years of the implementation phase were the strengthening and restructuring of our risk assessment work and the building of a strong methods development program through our Center for Plant Health Science and Technology (CPHST). We have clarified roles and responsibilities for risk management in PPQ and dedicated additional resources to that function.

In terms of monitoring the efficacy of risk mitigation measures, we work closely with the Bureau of Customs and Border Protection (CBP) on measures such as fruit cutting at the port of entry and port of entry inspections. Inspection guidelines based on our pest risk analyses are developed for each new commodity allowed entry into the United States. In addition, APHIS' International Services staff also monitors programs in exporting countries to ensure that mitigation measures are being appropriately applied and that they are effective.

With regard to the need for more training and actual field experience to assure that the mitigation measures

<sup>3</sup> We made the decision not to implement a small number of recommendations after completing our evaluation, and a number of other recommendations were passed on to the Department of Homeland Security after the 2003 reorganization.



chosen are operationally feasible, we routinely provide opportunities for our risk managers, some of whom have extensive operational experience, to observe and participate in the application of field measures.

Finally, we disagree that the risk analysis program is not yet adequately funded. As noted previously, we believe that we have sufficient personnel available to handle the review of data and information for the completion of pest risk analyses and have recently hired several additional risk analysts.

Four commenters raised concerns with CBP having sufficient resources and staff to monitor the increased imports that would be associated with this rule. Three of those commenters referenced a recent Government Accountability Office (GAO) report in which GAO determined that despite some positive developments, "the agencies face management and coordination problems that increase the vulnerability of U.S. agriculture to foreign pests. CBP has not developed sufficient performance measures that take into account the agency's expanded mission or that consider all pathways by which prohibited agricultural items or foreign pests may enter the country." The commenters stated CBP faces significant resource and performance issues and that this could lead to future pest infestations. One commenter stated that there would be an increased need for additional APHIS staff to monitor the imports and the conditions imposed on future imports. The commenter noted that if we were to presume that most of those requests are eligible for the notice-based process and the commodities start to enter the United States, it appears that APHIS does not have the staff to monitor its mitigation measures.

We consult with CBP at various stages of the rulemaking process, beginning once a regulatory work plan has been developed and through the publication of a final rule. We will similarly consult with CBP about actions that we may take based on the notice-based process established by this rule. CBP may raise any concerns with monitoring required for mitigation measures at those times. If CBP does not have the appropriate resources to monitor mitigations as determined by the pest risk analysis, then we will modify our mitigations or otherwise work with CBP to find efficacious mitigation measures that CBP can monitor.

Further, increased imports will also generate more revenue for APHIS and CBP through the collection of additional user fees. This increase in funds can be used to increase staffing and improve

upon other resources that will be used to monitor mitigations. With regard to CBP not having developed sufficient performance measures, new performance measures were developed by CBP and were implemented on October 1, 2006.

One commenter asked if more resources would be devoted toward export petitions as a result of this final rule.

APHIS employs trade directors who are assigned specific geographic areas of responsibility, and each trade director works with one import specialist and one export specialist. There will be no changes to this structure as a result of this final rule. As noted previously, when pest risk analyses are needed for export issues, they are always assigned a high priority.

#### *Import Requirements for Specific Commodities*

One commenter wanted to clarify that pineapple from Thailand will be subject to general requirements under § 319.56–3 and proposed paragraphs (b)(2)(vi) and (b)(5)(vii) of § 319.56–13, but no other requirements. The commenter also asked why pineapple from Thailand has been restricted importation to Hawaii.

Section 319.56–13 of our proposed rule erroneously stated that pineapple from Thailand was prohibited entry into Hawaii only, when in fact it is currently prohibited entry into all U.S. States and territories except for Guam and the Commonwealth of the Northern Mariana Islands (CNMI). To correct this error, we are revising the entry in the table for pineapples from Thailand in § 319.56–13 to provide that pineapple from Thailand is allowed entry into Guam and CNMI only.

Two commenters requested that we remove the preclearance inspection requirement for sand pears from Korea because it had not been required previously.

The commenters are incorrect. As stated previously, the proposed rule did not make any changes to existing import requirements, except for those specifically mentioned in the rule. We have been requiring preclearance inspections for sand pears from Korea since 1990, and while that requirement was not listed in the regulations it has been contained in the fruits and vegetables manual and is implemented by administrative order.

We proposed to clarify that only *Allium* spp. without tops may be imported into Guam, due to the presence of the leaf tip die back disease, *Mycosphaerella schoenoprasii*, and exotic species of leaf miners of *Allium* spp. in countries that regularly trade

with Guam. One commenter asked that we continue to allow *Allium* spp. from South Korea into Guam under the same conditions that we have in the past. The commenter added that tops of Welsh onion (*Allium fistulosum*) and stems of garlic (*Allium sativum*) have historically been allowed importation into Guam from South Korea and that the sudden prohibition of those vegetable parts as a result of the proposed changes would have an effect on Korean residents living in Guam.

We proposed to allow only *Allium* spp. without tops to be imported into Guam, due to the presence of the leaf tip die back disease, *Mycosphaerella schoenoprasii*, and exotic species of leaf miners of *Allium* spp. in countries that regularly trade with Guam. Those pests, which are associated with the *Allium* spp. tops and are not pests of *Allium* spp. bulbs, are not present in Guam. The restrictions on the importation of *Allium* spp. tops are necessary to prevent the introduction of *Mycosphaerella schoenoprasii* and exotic species of leaf miners into Guam.

One commenter asked that the regulations, where they provide for the importation of pineapples, be amended to cover all varieties of pineapple, not just varieties that are limited to at least 50 percent smooth Cayenne by lineage.

We cannot make such a change in this final rule. We would need to consider and document the risks associated with such a change and publish a proposed rule before we could amend the regulations to expand the number of pineapple varieties eligible for importation.

Two commenters asked that we remove the phytosanitary certificate requirement for peppers from the Netherlands because a method to ensure full traceability is still under discussion.

Following an interception of Mediterranean fruit fly (Medfly) in a consignment of habanero peppers shipped via the Netherlands, we began requiring consignments of peppers from the Netherlands to be accompanied by a phytosanitary certificate stating that the fruit had originated in a greenhouse in the Netherlands. When we began drafting our proposal, we believed it was necessary to reflect that administrative phytosanitary certificate requirement, which was cited in the fruits and vegetables manual, in the regulations. However, since the publication of the proposed rule, we have engaged in additional discussions with officials of the Dutch NPPO and have agreed that they have adequately addressed the Medfly issue that prompted the phytosanitary certificate requirement. That requirement had been



the only specified condition that necessitated peppers from the Netherlands being listed in the table in § 319.56–13, so that entry does not appear in this final rule. We have also removed proposed paragraph (b)(5)(xi) in § 319.56–13, which contained the phytosanitary requirement, because it is not applicable to any other entries in the table and have redesignated the remaining subparagraphs in paragraph (b)(5) accordingly.

#### Pest Risk Analyses

One commenter asked how we will handle issues raised in the comment period that call into question the use of the notice-based approach on an import request.

As established by this rule, the notice-based process is appropriate when we conclude, based on pest risk analysis, that the risks associated with a particular candidate for importation can be addressed using one or more of the designated measures listed in § 319.56–4(b). Accordingly, if information submitted during the comment period led us to change our conclusion about the appropriateness of those measures, then the notice-based process would end without the issuance of a permit. If the submitted information did not lead us to change our conclusions, we would likely proceed with a subsequent **Federal Register** notice announcing that we will begin issuing import permits; in that notice, we would discuss all the comments we received and our reasons for proceeding as we did.

One commenter asked under what specific circumstances would APHIS publish a notice in the **Federal Register**, revising import requirements for certain imports, or prohibiting or restricting the importation of certain products as provided for in § 319.56–4(d). The commenter also asked if APHIS would publish a followup notice if it resolves the problem which prompted publication of such an action and notice in the **Federal Register**.

Paragraph (d) of § 319.56–4 in the proposed rule and in this final rule provides that if we determine that one or more of the designated measures is not sufficient to mitigate the risk posed by any fruit or vegetable that has been authorized for importation under permit in accordance with § 319.56–4, then APHIS will prohibit or further restrict the importation of the fruit or vegetable, and that we may publish a notice to inform the public of our findings. That notice would specify the amended import requirements, provide an effective date for the change, and invite public comment on the subject. As for what specific circumstances might lead

us to take the actions described in § 319.56–4(d), our proposed rule offered examples such as interceptions of new pests in imported fruits or vegetables or new evidence of risk or evidence of poor program implementation or performance. With respect to whether we would publish a followup notice following the resolution of a problem, we expect that such a decision would depend on the circumstances leading up to our initial action and the nature of our action (i.e., a prohibition on imports, a temporary suspension, the addition of new requirements, etc.). In any case, our goal will be to keep the public informed and ensure the transparency of our decisionmaking.

One commenter asked why we were requiring exporting countries to conduct pest risk analyses when ISPM standards require that importing countries do so.

We are not requiring that exporting countries conduct their own pest risk analyses, although an exporting country may provide substantial inputs and they may benefit by doing so. The main benefit of an exporting country assisting in conducting the pest risk analysis is that it can improve the quality of the data and conclusions and the validity and credibility of the analysis. In some cases, it might also expedite the approval of the commodity the country wishes to export. However, all externally prepared pest risk analyses are thoroughly evaluated by APHIS for completeness and consistency with APHIS-prepared analyses and revised as necessary.

#### *Insect-Proof Packaging*

Section 319.56–2dd has contained restrictions on the importation of tomatoes from certain countries. In our proposal, we discussed moving that section to new § 319.56–28 and stated that one of the changes we were proposing in conjunction with that move was to require the use of insect-proof containers or coverings, rather than fruit fly-proof containers or coverings. One commenter took issue with this proposed change, stating that it was unnecessary to address pest risk and citing significant economic costs that would be associated with covering tomatoes.

Our statement in the proposed rule that “[t]he current regulations require packaging and containers to be fruit fly-proof, not insect-proof” was in error; we should not have presented the subject as a proposed change in the regulations. The regulations in § 319.56–2dd have required insect-proof containers or coverings since June 25, 2003, when we published a final rule (68 FR 37904–37923, Docket No. 02–026–4) making

that change among many others. Prior to that, fruit fly-proof coverings and containers had been required, and that requirement had been in place since the regulations in § 319.56–2dd were established in 1998.

One commenter stated that it is unnecessary to require that tomatoes be packed in insect-proof cartons or containers or covered by insect-proof mesh or plastic tarpaulins during transport to the airport and subsequent exportation to the United States because any harmful insects that are present in a greenhouse will leave the tomatoes at the time of harvesting due to the moving of the plants. The commenter added that tomatoes which have been picked and are subsequently transported with the production facility do not attract additional insects.

While the commenter may be correct with regard to specific targeted pests, the insect-proof mesh or plastic tarpaulin is intended to prevent hitchhiking pests that may attach to fruit while in transit, and not only pests that could attach at the time of growing, harvesting, or packing.

#### *Use of Terms*

One commenter noted that proposed § 319.56–6 provides that if APHIS is to be present in an exporting country to facilitate the exportation of fruits and vegetables and APHIS services are to be funded by the NPPO of the exporting country or a private export group, then the NPPO or private group must enter into a trust fund agreement with APHIS. The commenter contrasted that provision with proposed §§ 319.56–23(b) and 319.56–38(f), which specifically state that the importation of the authorized commodities from Chile would be possible only if the Servicio Agrícola y Ganadero (SAG) has entered into a trust fund agreement. The commenter asked that we clarify that the same would be expected of a private export group.

We agree with the commenter and have amended §§ 319.56–23(b) and 319.56–38(f) in this final rule to be consistent with the wording of § 319.56–6.

One commenter noted that proposed § 319.56–29 refers to the Chinese Ministry of Agriculture, while § 319.56–39 refers to the NPPO of China.

For consistency’s sake, both of those sections in this final rule refer to the NPPO of China.

#### *Frozen Fruit and Quick Freezing*

One commenter stated that there is some confusion around the concept of frozen fruit and asked that we add a definition of frozen fruit in § 319.56–2.

We use the term frozen fruits and vegetables as a description and quick freezing as the method used to obtain the frozen state. However, to provide clarification, this final rule includes a definition of *frozen fruit or vegetable* in § 319.56–2, i.e.: “Any variety of raw fruit or vegetable preserved by commercially acceptable freezing methods in such a way that the commodity remains at  $-6.7^{\circ}\text{C}$  ( $20^{\circ}\text{F}$ ) or below for at least 48 hours prior to release.”

Proposed § 319–56–12 provided that the importation from foreign countries of frozen fruits and vegetables is not authorized when such fruits and vegetables are subject to attack in the area of origin by plant pests that may not, in the judgment of the Administrator, be destroyed by quick freezing. One commenter asked how the Administrator will communicate the list of plant pests that are not destroyed by quick freezing.

Section 305.17(b) of our phytosanitary treatments regulations contains a list of fruits and vegetables and their countries of origin for which quick freezing is not an authorized treatment. We have amended § 319.56–12 in this final rule to provide that quick freezing is not an authorized treatment for those fruits and vegetables listed in § 305.17(b).

One commenter asked if quick freezing would also be subject to the monitoring and certification requirements under § 305.3.

Yes, quick freezing is considered a treatment and therefore, will be subject to the requirements in § 305.3, “Monitoring and certification of treatments.”

#### General Comments

One commenter stated that we did not specify whether the notice published with APHIS’ final determination will contain responses to public comments. The commenter noted that the opportunity for comment is meaningless unless the Agency responds to the significant points raised by the public.

We intend to carefully review all comments we receive on the risk analyses. We are soliciting comments to help us determine the appropriate course of action and may change course based on comments. While the flow chart we presented on page 25017 of the proposed rule makes reference to a discussion of the comments being included with the pest risk analysis in the second notice, our discussion of the process may not clearly communicate our intention to respond to the comments we receive. We did not intend to imply that the notice-based process would eliminate our responding

to the comments we receive on the notices. We will continue to respond to all substantive comments and will make the comments and our responses available as attachments to draft or final pest risk analyses.

One commenter noted that proposed § 319.56–4(d) states that APHIS “may” prohibit or further restrict the importation of the fruit or vegetable that has been approved for importation under § 319.56–4 when we determine that additional risk mitigation measures are necessary. The commenter stated that the use of the word “may” made it unclear whether or not we would in fact act to prohibit or further restrict a commodity should it become necessary. The commenter suggested rewording the sentence to read that “APHIS shall prohibit or further restrict importation \* \* \*.”

We agree that our use of the word “may” could leave some doubt as to whether we will prohibit or further restrict imports if we determine that one of the designated phytosanitary measures is not sufficient to mitigate the risk posed by authorized imports. Therefore, we have amended § 319.56–4(d) in this final rule so that it reads “APHIS will prohibit or further restrict importation of the fruit or vegetable. APHIS also may publish a notice in the **Federal Register** advising the public of its finding.”

One commenter stated that we should consider limiting consignments of fruits and vegetables into States like Florida that have crops that are highly susceptible to infestation by pests and diseases from countries which do not have equivalent plant pest agencies.

We consider limiting distribution of imports on a case-by-case basis when the findings of pest risk analysis indicate that such an action might be necessary and if it is operationally feasible. Limited distribution is not, however, one of the designated measures listed in this rule.

Our consideration of this comment brought to mind an issue that we believe bears clarifying. The pest risk analyses we use to inform our decisionmaking with respect to specific commodities are usually prepared by PPQ’s Center for Plant Health Science and Technology (CPHST). In an effort to be as responsive as possible, CPHST routinely limits the scope of its analyses to the continental United States because doing so reduces the complexity of the analysis and thus saves time. (CPHST will, of course, broaden the scope of the analysis to include Hawaii and/or U.S. territories if the requesting country asks that they do so.) When scope of a pest risk analysis is limited to the continental United

States, the scope of the import authorization we may issue for the commodity that was the subject of the analysis is likewise limited to the continental United States. Such a limitation on distribution is applied not as a mitigation in response to an identified pest risk, but rather because we have not examined the risks associated with the movement of that commodity into Hawaii and/or any U.S. territories or possessions. We view this as entirely distinct from those situations where the findings of a pest risk assessment lead our risk managers to recommend limited distribution as a risk mitigation measure, such as is the case, for example, with litchi from certain countries being prohibited from movement into Florida due to the litchi rust mite. We believe that the first situation—where distribution is authorized only within the continental United States due simply to the scope of pest risk analysis—does not preclude the use of the notice-based approach if the use of that approach is otherwise appropriate. In the latter situation, the notice-based approach would not be appropriate, given that limited distribution assigned as a mitigation measure in response to an identified risk is not among the designated measures.

One commenter stated that increasing amounts of imports have increased pest infestations and that APHIS’ pest risk analyses and mitigation procedures do not always work, especially in the case of imports from developing countries.

The commenter provided no evidence to support the assertion that increasing imports have led to an increase in pest infestations. As stated previously in this document, there will always be some degree of pest risk associated with the movement of agricultural products; APHIS’ goal is to provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States while facilitating trade in agricultural products. Further, there are several factors that contribute to pest infestations, including smuggling, undeclared fruits and vegetables in passenger baggage, and, as with soybean rust, climatic conditions. We also note that legal imports undergo a rigorous scientific evaluation before being approved for importation and are subject to mitigation measures to which illegal imports are not.

Three commenters stated that it was unfair to expedite the importation of foreign fruits and vegetables when changes in interstate consignments of produce governed by Federal quarantine continue to be subject to rulemaking. One of those commenters specifically

requested that we also allow imports from Hawaii and the territories to be eligible for a similar notice-based process in the final rule.

While we are not making any changes in this final rule in response to this comment, we are currently considering revising part 318 to provide the same notice-based process for Hawaii and the territories. Further, we are reviewing our domestic quarantine regulations in part 301 to determine whether opportunities exist to expedite movements of regulated products.

One commenter asked for clarification of the respective responsibilities of APHIS and CBP. Another commenter encouraged APHIS to provide increased compliance assistance to U.S. import companies and to exporting countries where new commodities are approved for entry.

CBP personnel at ports of entry have many responsibilities, among them examining agricultural imports for the protection of America's agriculture, environment, and food supply from pests, diseases, and agroterrorism. CBP conducts inspections and facilitates the clearance of most agricultural products. APHIS-staffed plant inspection stations are responsible for the inspection and clearance of the majority of propagative material consignments as well as certain material arriving under permit. CBP and APHIS work together as a team to safeguard U.S. agriculture, setting policy, training officers, and improving the import processes.

APHIS is currently studying and working with CBP on standard operating procedures that can be used by carriers to ensure that agricultural commodities are handled and transported in accordance with APHIS regulations. These new standards will allow carriers to more easily handle consignments in accordance with U.S. requirements. Importers, shippers, and ultimately the public will benefit from this new uniform policy.

We meet regularly with our counterparts in exporting countries to develop bilateral work plans detailing specific procedures when new commodities are approved for entry and we will continue to do so. In addition, we provide an individual contact person for each notice who can be reached should specific questions arise.

One commenter stated that fruits and vegetables should be subject to strict inspections. The commenter also suggested that we should conduct a trial run of the notice-based process in a few countries to see how effective this approach is.

All imported fruits and vegetables are currently and will continue to be subject

to inspection at the port of entry. With regard to the suggested trial, the rule does not make any changes to operations or the pest risk analysis process, it is simply providing for an expedited administrative process. Accordingly, we do not believe that implementing this rule on a trial basis would be appropriate or useful. At the same time, we regularly review our processes to ensure their continued effectiveness and make changes whenever necessary.

One commenter asked what type of peer review process will be utilized under the notice-based approach.

If the information that will be disseminated in a pest risk analysis is determined to be "influential" or "highly influential" as those terms are used in the Office of Management and Budget's "Final Information Quality Bulletin for Peer Review," (see 70 FR 2664-2667, published January 14, 2005), then a peer review will be conducted in accordance with USDA's peer review guidance (see [http://www.ocio.usda.gov/qi\\_guide/scientific\\_research.html](http://www.ocio.usda.gov/qi_guide/scientific_research.html)).

One commenter questioned the basis for APHIS decisionmaking regarding approval of import requests.

Under the Plant Protection Act, the Secretary may prohibit or restrict the importation of plants and plant products if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of a plant pest or noxious weed. Thus, our determinations as to whether a new agricultural commodity can be safely imported are based on the findings of pest risk analysis.

One commenter stated that the proposed changes did nothing to address the fact that APHIS' regulations continue to prohibit the importation of fruits and vegetables for which no import request has been made, or for which an import request has been made but an assessment of quarantine risk has not yet been completed. The commenter stated that this "a priori" prohibition on the importation of fresh fruits or vegetables into the United States is inconsistent with the APHIS' obligations under the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), as they are not based on an assessment of risks or scientific principles, nor maintained with sufficient scientific evidence.

We believe it is appropriate to make a distinction between commodities that are "prohibited" and disciplined by Article 5 of the SPS Agreement, and commodities that are "not yet

approved" or "pending evaluation" and disciplined by Annex C of the SPS Agreement. Articles that are prohibited have been evaluated and prohibition is the measure that has been determined to be appropriate. This status may be changed based on new information and a reevaluation using pest risk analysis. Likewise, pest risk analysis is used to evaluate the risk associated with a request for a new commodity not previously evaluated. It is true that our regulations do not make the distinction between (1) commodities that have been evaluated and prohibited, (2) commodities that are not currently allowed importation but that are undergoing risk evaluation, and (3) commodities that are not allowed importation and for which no request for risk evaluation exists. We recognize that our regulatory terminology is not the same as that used in the SPS Agreement; however, regardless of the terminology, APHIS only allows new imports of fruits and vegetables following the completion of a risk analysis that enables us to determine that the pest risks posed by the commodity are known, and that the risks can and will be mitigated. We believe that this policy is entirely consistent with the SPS Agreement.

One commenter stated that phytosanitary certificates should be required for all consignments of imported fruits and vegetables.

On August 29, 2001, we published in the **Federal Register** (66 FR 45637-45648) a proposal to require phytosanitary certificates for all imported fruits and vegetables. During the comment period, some commenters raised issues that put into question whether this approach was warranted. In response to those commenters, we prepared a risk assessment that considered the plant pest risks associated with fruits and vegetables imported in passenger baggage and the probable impact of phytosanitary certification requirements. On May 24, 2006, we published in the **Federal Register** (71 FR 29846-29847) a notice of availability of that risk assessment. We are considering adopting only the proposed requirements that pertain to fruits and vegetables imported in air passenger baggage and are currently assessing the comments we received.

One commenter cautioned against the labeling requirements contained in proposed § 319.56-5. Specifically, the commenter took issue with our requiring the orchard or grove of origin/name of grower and the name of the municipality and State where the fruits or vegetables were produced. The commenter was concerned that our

trading partners would require the same of U.S. grain and grain products.

We made no changes to the labeling requirements that are now contained in § 319.56–5. The labeling requirements in § 319.56–5 apply to fruits and vegetables grown in pest-free areas. Therefore, we must require that information about the origin of the product be included on the label in order to verify that the fruit is indeed from a pest-free area. This information also allows us to work effectively with the NPPO of the exporting country to conduct tracebacks if quarantine pests are found in a consignment.

One commenter stated that the 60-day comment period was too long. The commenter asked that the comment period be reduced so that import approvals can be issued no later than 6 months after the completion of the pest risk analysis.

When developing our proposed rule, we wanted to ensure that we did not reduce the opportunity for public comment. We believe maintaining a 60-day comment period is reasonable and appropriate. Further, even with a 60-day comment period, import approvals could be issued within 6 months of announcing the availability of a pest risk analysis.

One commenter asked if we will still produce, as we have in the past, proposed rules covering a wide variety of articles (often referred to as “periodic amendments”) and if so, how those periodic amendments will relate to the notice-based approach.

Implementation of the notice-based process will likely reduce the need to group import requests together in periodic amendments, but we expect we will continue to use periodic amendments (as opposed to standalone rulemakings) to add some commodities to the regulations that require mitigations beyond the designated measures.

One commenter asked how the notice-based process will affect pending import requests from Guatemala. The commenter asked if previously submitted import requests needed to be resubmitted for the commodity to qualify for the notice-based approach.

This rule will be applied to pending requests. If an import request has already been submitted and the results of our pest risk analysis lead us to conclude that the commodity can be safely imported under one or more designated measures, then we will follow the notice-based approach. It is not necessary to resubmit any import requests.

One commenter asked if the United States or the exporting country makes

decisions on which products are to be exported.

While there may be instances where the impetus for a specific import request comes from an importer or other entity in the United States, it is the NPPO of the exporting country that submits the formal petition to APHIS.

One commenter asked if the exporting country needs to inspect the commodity as well.

Under some circumstances, we find that inspection prior to exportation is a necessary part of mitigating pest risk and the exporting country would need to inspect the commodity. Such an inspection requirement would be one of the mitigations included in the pest risk analysis.

One commenter disagreed with not conducting an economic analysis on future imports that are approved under the notice-based process. The commenter stated that the economic impacts on domestic producers should be part of any trade agreement the United States negotiates. The commenter added that foreign producers are not subject to the same environmental and phytosanitary restrictions under which U.S. domestic producers operate, which puts our domestic producers at a distinct competitive disadvantage.

As stated previously in this document, our determination as to whether a new agricultural commodity can be safely imported is based on the findings of pest risk analysis, not on economic factors. While the notices published using the notice-based approach will not contain economic analyses, we will certainly consider the potential economic consequences of pest introduction in the pest risk analysis.

One commenter stated that the measures listed for use at the port of Wilmington, NC, should incorporate measures to monitor any Medfly that may escape treatment and should include measures to ensure the cold treatment facility has a contingency plan for disposing of the fruit. The commenter stated that the measures employed at the Port of Wilmington should be at least as stringent as those for Seattle, WA, and Atlanta, GA.

We did not propose to make any changes to the cold treatment requirements performed at ports of entry in the United States, we simply proposed to move these requirements into a different section. Further, the measures to which the commenter refers are determined by risk and Wilmington, NC, is not considered a high pest risk port because it is unlikely that exotic

fruit flies will become established in the Wilmington area.

Two commenters raised issues regarding the irradiation of fruits and vegetables. Specifically, one of the commenters questioned the use of irradiation because there is evidence that there is nutrient depletion when foods are subjected to it. The commenter also stated that certain fruits and vegetables may produce cyclobutanones when irradiated which in some studies have shown to act as tumor promoters. The second commenter stated that irradiation is not safe and allowing fruits and vegetables that have not been pretreated to enter the United States opens the doors to pest infestation.

The Food and Drug Administration (FDA) has primary regulatory responsibility for ensuring that approved irradiation doses do not render foods unsafe to eat. FDA regulations (21 CFR 179.26) establish a limit of 1.0 kilogray for disinfestation of arthropod pests in fresh fruits and vegetables. With respect to the second commenter’s additional concern, we established the irradiation-related provisions in part 305 through earlier rulemakings and did not propose any changes to those provisions in our proposed rule.

#### *Additional Changes*

In addition to the changes discussed above in response to comments, we have made the following changes in this final rule:

- We have amended § 305.15(b) by removing Washington Dulles International Airport as a port where cold treatment may be conducted. There is not currently an approved cold treatment facility at that airport.

- Paragraph (a) of § 305.31 includes a list of several plant pests for which irradiation is an authorized treatment, but paragraph (n) of that section has referred to “the listed fruit flies.” Because the list also includes borers, weevils, moths, etc., we have amended § 305.31(n) by replacing the reference to fruit flies with a more general reference to plants pests.

- We have removed proposed paragraph (b)(7) of § 319.56–3, which would have provided for the issuance of special use permits to authorize the importation of small lots of otherwise prohibited fruits or vegetable under certain conditions. After reconsidering the issue, we no longer believe that we have adequate resources to devote to these types of permits.

- We have removed proposed paragraphs (b)(5)(i) and (b)(5)(xii) from § 319.56–13 and have renumbered the remaining paragraphs in § 319.56–

13(b)(5) accordingly. The first of those paragraphs referred to a phytosanitary certificate requirement that does not apply to any of the commodities listed in the table in paragraph (a) of that section. The second of those paragraphs referred to a phytosanitary certificate/ additional declaration requirement regarding freedom from the gray pineapple mealybug (*Dysmicoccus neobrevipes*). That paragraph was cited only in the entry for honeydew melon from Peru in the table, and that honeydew melon entry also cites paragraph (b)(1)(iv), which includes, among other things, the same phytosanitary certificate requirement. Therefore, proposed (b)(5)(xii) was redundant and has been removed.

#### *Changes to the Regulations Since the Publication of Our Proposal*

Since the publication of the proposed rule, several final rules that amended the regulations in part 319 have become effective, and the changes made to the regulations in those final rules need to be reflected in this rule.

On May 1, 2006 (see 71 FR 25487–25495, Docket No. 03–113–3), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2pp, “Conditions governing the importation of citrus from Peru,” to allow the importation, under certain conditions, of fresh commercial citrus fruit (grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos) from approved areas of Peru into the United States. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as § 319.56–41.

On May 22, 2006 (see 71 FR 29241–29244, Docket No. 05–068–2), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2qq, “Administrative instructions: Conditions governing the entry of peppers from the Republic of Korea,” to allow the importation into the continental United States of peppers from the Republic of Korea under certain conditions. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as § 319.56–42.

On May 24, 2006 (see 71 FR 29766–29769, Docket No. 05–059–2), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2f, “Conditions governing the entry of baby corn and

baby carrots from Zambia,” to allow the importation into the continental United States of fresh, dehusked, immature (baby) sweet corn and fresh baby carrots from Zambia. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as § 319.56–43.

On June 8, 2006 (see 71 FR 33172–33178, Docket No. 03–048–3), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2rr, “Administrative instructions: Conditions governing the importation of untreated grapefruit, sweet oranges, and tangerines from Mexico for processing,” to provide for the importation of untreated citrus (grapefruit, sweet oranges, and tangerines) from Mexico for processing under certain conditions. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as § 319.56–44.

On August 23, 2006 (see 71 FR 49319–49326, Docket No. 00–086–2), we published a final rule that amended the plant quarantine safeguard regulations in 7 CFR part 352. Among other things, that final rule amended paragraph (e) of § 352.30 by removing a reference to the State of Sonora in order to make it clear that oranges, tangerines, and grapefruit that are moving in transit to foreign countries may be imported into the United States from any municipality in Mexico that has been recognized as a fruit fly-free area. To reflect that change, we have removed the reference to Sonora in this final rule’s revision of § 352.30(e).

On August 25, 2006 (see 71 FR 50320–50328, Docket No. APHIS–2006–0096), we published an interim rule that, among other things, amended the general permit in § 319.56–2(c) for fruits and vegetables grown in Canada to state that Canadian-grown fruits and vegetables are subject to the inspection and other requirements of § 319.56–6 (§ 319.56–3(d) in this final rule). In this final rule, we have amended the text of the general permit for fruits and vegetables grown in Canada, which now appears in § 319.56–10(a), to reflect that change.

On August 28, 2006 (see 71 FR 50837–50843, Docket No. APHIS–2006–0009), we published a final rule that amended the regulations in § 319.56–2dd, “Administrative instructions: Conditions governing the entry of tomatoes,” by adding a new paragraph (f) to allow pink and red tomatoes

grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as paragraph (f) of § 319.56–28.

On September 21, 2006 (see 71 FR 55087–55090, Docket No. APHIS 2006–0025), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2ss, “Conditions governing the entry of grapes from Namibia,” to allow for the importation into the United States of fresh table grapes from Namibia under certain conditions. The final rule required that the grapes be cold treated for specific pests, fumigated for specific pests, accompanied by a phytosanitary certificate, and imported in commercial consignments only, all of which are measures that are eligible for the notice-based approach. Therefore, the provisions regarding the entry of table grapes from Namibia do not appear in this final rule; rather, those conditions will be listed in the fruits and vegetables manual.

Section 319.56–30, “Hass avocados from Michoacan, Mexico,” has been updated to reflect the changes made in a technical amendment published on October 18, 2006 (see 71 FR 61373–61374, Docket No. 03–022–7).

On October 24, 2006 (see 71 FR 62197–62198, Docket No. APHIS–2006–0073), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2bb, “Conditions governing the entry of shelled garden peas from Kenya,” to allow for the importation into the United States of shelled garden peas from Kenya into the continental United States under certain conditions. Because the import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as § 319.56–45.

On December 18, 2006 (see 71 FR 75649–75659, Docket No. 03–086–3), we published a final rule that made a number of amendments to the fruits and vegetables regulations that need to be reflected in this final rule. Specifically:

- We added a requirement that consignments of *Allium* spp. consisting of the whole plant or above ground parts be accompanied by a phytosanitary certificate issued by the NPPO of Canada with an additional declaration stating that the articles are free from

*Acrolepiopsis assectella* (Zeller). That phytosanitary certificate requirement for *Allium* spp. from Canada appears in § 319.56–10 of this final rule as paragraph (a)(1).

- We amended the table that has appeared in § 319.56–2t by adding several fruits and vegetables and by revising existing entries for several fruits and vegetables. Many of those changes were reflected in our April 2006 proposed rule, and many of the commodities we added require only mitigations that are eligible for the notice-based approach, so it is not necessary to list them in this final rule. There was, however, one commodity added to the table—citrus (*Citrus* spp.) fruit from New Zealand—that must meet requirements that go beyond the designated measures, so we have added an entry for New Zealand citrus to the table in § 319.56–13 of this final rule. We also amended the entry for pineapple (*Ananas* spp.) fruit from South Africa to indicate that the fruit may only be imported into the continental United States. That change is also reflected in this final rule.

- We amended the conditions for importing tomatoes from Chile in § 319.56–2dd(d) by adding provisions to allow the importation of tomatoes from Chile without treatment for Medfly and other pests if the tomatoes are grown and packed in accordance with specified requirements and accompanied by a phytosanitary certificate. Because those import requirements include additional measures beyond the designated measures, they need to remain in the regulations; those provisions appear in this final rule as paragraph (d)(2) in § 319.56–28.

- We amended the conditions for importing mangoes from the Philippines in § 319.56–2ii by adding provisions to allow mangos to be imported from all areas of the Philippines, except the island of Palawan, into Guam and Hawaii under certain conditions. In this final rule, the provisions for importing mangoes from the Philippines, as amended by Docket No. 03–086–3, appear in § 319.56–33.

On March 12, 2007 (see 72 FR 10902–10907, Docket No. APHIS–2006–0121), we published a final rule that amended the regulations by adding a new § 319.56–2tt, “Conditions governing the entry of mangoes from India,” to allow the importation into the continental United States of mangoes from India under certain conditions. Because the import requirements include additional measures beyond the designated measures, they need to remain in the

regulations; those provisions appear in this final rule as § 319.56–46.

On June 21, 2007 (see 72 FR 34163–34176, Docket No. APHIS–2006–0040), we published a final rule that amended the fruits and vegetables regulations by adding a new § 319.56–2uu, “Administrative instructions: Conditions governing the entry of certain fruits from Thailand” to allow the importation into the United States of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand under certain conditions. Mango, mangosteen, pineapple and rambutan require only mitigations that are eligible for the notice-based approach, so it is not necessary to list them in this final rule. Litchi and longan, however, have labeling requirements, which go beyond the designated measures, so we have added entries for litchi and longan from Thailand to the table in § 319.56–13 of this final rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

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

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this final rule. It provides a cost-benefit analysis as required by Executive Order 12866, as well as a final regulatory flexibility analysis that considers the potential economic effects of this final rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available from the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. APHIS–2005–0106 when requesting copies. The full analysis is also available on the Regulations.gov Web site (see footnote 1 at the beginning of this final rule for instructions for accessing Regulations.gov).

In accordance with the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the spread of plant pests into or through the United States, which includes regulating the importation of fruits and vegetables into the United States. The Secretary has delegated the responsibility for enforcing the Plant Protection Act to the Administrator of APHIS.

This rule revises and reorganizes the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations of fruits and vegetables into U.S. territories, and make various editorial and nonsubstantive changes to regulations to make them easier to use. APHIS is also making substantive changes to the regulations, including: (1) Establishing criteria within the regulations that, if met, would allow APHIS to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries without undertaking rulemaking; and (2) doing away with the process of listing specific commodities that may be imported subject to certain types of risk management measures. These changes are necessary to make the APHIS process for approving new imports and pest-free areas more effective and efficient while continuing to provide for public participation in the process.

#### **Summary of Cost-Benefit Analysis**

International trade in fruits and vegetables—in particular, many new and newly traded commodities—expanded rapidly over the past two decades. This increased trade also reflects a marked change in the variety of products sought by American consumers. According to Food and Agriculture Organization (FAO) data, the average value share of fruits and vegetables (including pulses and tree nuts) in global agricultural exports increased from 11.7 percent in the period 1977–81 to 15.1 percent in 1987–91 and reached an all-time high of 16.5 percent in 1997–2001.<sup>4</sup> Imports have become increasingly important for domestic fresh fruit and vegetable consumption. In 2004, the United States imported more than \$7 billion in fresh fruits and vegetables. Maintaining the current process will make it difficult to keep pace with this rapidly increasing volume of import requests.

The process for approving imports adopted in this rule will apply only to commodities that, based on the findings of our risk analyses, APHIS determines can be safely imported subject to one or more of the designated risk management measures.

By eliminating the need for specific prior rulemaking for notice-based

<sup>4</sup>Huang, Sophia Wu, Global Trade Patterns in Fruits and Vegetables. Chapter 2. Economic Research Service/USDA.

process commodities, considerable time savings could be reaped. The current process for approving new imports takes a notable period of time, ranging on average from 18 months to upwards of 3 years (beginning with the initial request and ending with the publication of the final rule). A significant portion of this time is accounted for in the rulemaking process. This rule will reduce the time needed for the administrative portion of the approval process of some fruits and vegetables for import without eliminating opportunity for public participation in our analysis of risk and without affecting the science-based review of the request. In addition, this rule will help relieve the burden on the APHIS regulatory mechanism, given the volume of new commodity import requests APHIS has been receiving, and the large volume of rulemaking initiatives already underway in APHIS.

Consumers benefit from the ability to purchase fruits and vegetables from a variety of sources, foreign as well as domestic. Consumer expenditures for fruit and vegetables are growing faster than for any food group other than meats. Many of the commodities that will be covered by this rule are niche products, currently unavailable or limited in availability in the United States. This rule allows importers to more quickly meet consumer demand for those niche products. In addition, climate causes most domestic fruit and vegetable production to be seasonal, with the largest harvests occurring during the summer and fall. Imports supplement domestic supplies, especially of fresh products during the winter, resulting in increased choices for consumers. Even where the new imports would compete directly with domestic production, consumers would benefit when increased competition results in lower prices.

In the current process, once APHIS has conducted a risk analysis and identified what phytosanitary measures are necessary to address the pest risk posed by the commodity subject to an import request, APHIS then proceeds through rulemaking. Through rulemaking, APHIS amends the fruits and vegetables regulations by listing the commodity from a specific part of the world as eligible, under specified conditions, for importation into the United States. Some import requests that might otherwise have very quickly led to new imports are delayed considerably by the rulemaking process. One reason for this is the complexities of the rulemaking process itself. There are certain statutory, executive branch, and departmental process requirements

that are typically not required under a notice-based process. Another is the nature of the requests. Few if any of these requests warrant an entire rulemaking in and of themselves. These requests are primarily for small volume imports either because they are specialty crops or are grown in limited quantities in the requesting area. Therefore these requests, when their risk analyses have been completed and needed phytosanitary measures have been identified, are necessarily grouped together for movement through the rulemaking process. These changes, along with other minor regulatory changes, are covered in rulemakings referred to as periodic amendments to Q56.

A significant number of the commodity import requests that APHIS receives will likely fit the notice-based process criteria as laid out in this rule. The number of import requests has grown significantly. As noted previously, there are currently approximately 400 commodity import requests that are pending before APHIS, of which approximately 70 are awaiting assignment and prioritization and 110 are in various stages of development; the remaining requests are incomplete or otherwise lacking and a response to our inquiries has not yet been received from the requestor. Because of the nature of the import requests likely to qualify for the notice-based approach, those commodities would most likely otherwise be included in periodic amendments to Q56.

Included in the 11th periodic amendment<sup>5</sup> were numerous herbs from Central America, figs from Mexico, peppers from Chile, cape gooseberry from Colombia, longan from China, persimmon from Spain, yard-long-bean from Nicaragua, and yellow pitaya from Colombia. These commodities would fit the notice-based process criteria of this rule, subject only to designated mitigation measures. Had these commodities followed the notice-based process of this rule, these commodities would have been available to U.S. consumers far sooner than was actually the case. For example, all of the pest risk analyses and risk management decisions associated with the herbs from Central America were completed by the end of 2001. The final rule allowing the import of these commodities was not published and effective until June 25, 2003.

<sup>5</sup> Importation of Fruits and Vegetables. Final Rule. Docket No. 02-024-6. *Federal Register*/Vol. 68, No. 122/Wednesday, June 25, 2003/Rules and Regulations.

In 2004 and 2005, approximately 454,000 kg of the above commodities were imported into the United States from the countries covered in the amendment. It is estimated that the average monthly value per commodity of these consignments was about \$3,900.<sup>6</sup> A significant percentage of commodity import requests currently being processed by APHIS may fit the notice-based process criteria of this rule. The rulemaking process is an inherently longer process than a notice-based process. There are complexities in the rulemaking process that are not present in the notice-based process. In addition, few if any of the requests that would fall into the notice-based process warrant an entire rulemaking in and of themselves, and are therefore grouped with other commodities for rulemaking. Therefore, a notice-based approach to commodity import approvals could be 6 to 12 months shorter than under a rulemaking approach.

For the purposes of estimating the benefits of a notice-based approach to approving commodity import requests, we make the following assumptions: The commodities that are approved for import under this notice-based process have values similar to those approved under the 11th periodic amendment; 30 to 50 percent (120 to 200) of current commodity import requests would be approved under this process; and those commodities approved in the notice-based process would reach the U.S. market 6 to 12 months earlier than they would under rulemaking.

Based on these assumptions, we could expect imports valued at between \$2.8 million and \$9.4 million to occur under a notice-based process that would not occur under the current rulemaking process. These added sales represent benefits of this rule. The rule will also have the benefit of improving trade relations with other countries by speeding import approvals. In addition, by moving to a notice-based process for certain commodities, fewer APHIS resources will have to be devoted to rulemaking for these commodities.

This rule does not alter the manner in which the risks associated with a commodity import request are evaluated, nor does it alter the manner in which those risks are ultimately mitigated. The change merely allows a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined

<sup>6</sup> Shipment information was obtained from APHIS' PQ280 database. Information on value is from the U.S. Census Bureau, Foreign Trade Statistics (for cowpeas, figs, fruit not elsewhere specified, other spices and herbs, other berries, and peppers) for 2004 and 2005, in 2005 dollars.



that the commodity can be safely imported subject to one or more designated risk management measures.

APHIS currently recognizes changes in the pest-free status of countries via rulemaking. Under this rule, APHIS will use **Federal Register** notices and public comment to acknowledge pest-free areas in foreign countries without undertaking rulemaking. This will allow APHIS to be more responsive in recognizing changes in the pest-free status of foreign areas.

This rule also clarifies and strengthens requirements regarding safeguarding of fruits and vegetables that are imported from pest-free areas. These safeguards provide necessary protection of imported commodities against pest infestations while they are in transit to the United States and are consistent with standard operating procedures of all current programs that export fruits and vegetables from pest-free areas. These changes should therefore have little, if any, impact on users of the system.

The commodities approved under the notice-based approach will no longer be listed in the regulations, nor will commodities that are currently approved for importation subject to one or more of the designated measures described previously be listed. Rather, the fruits and vegetables manual<sup>7</sup> will contain a listing of all commodities approved for importation into the United States and will serve as a comprehensive list and reference of enterable fruits and vegetables. In addition, as stated previously, we are in the process of converting APHIS' fruits and vegetables manual into a searchable database that will allow interested persons to search by commodity or by country, and that will list clearly the conditions that apply to each particular commodity from a specified country. We anticipate having the system operating by the end of 2007.

These changes will not alter the decisionmaking process for determining whether a commodity is approved for importation, merely how that decision is presented.

This rule makes several changes to the issuance of permits for the importation of fruits and vegetables. This rule amends the regulations pertaining to permits to state that certain dried, cured, or processed fruits and vegetables; certain fruits and vegetables grown in Canada; and certain fruits and vegetables grown in the British Virgin

Islands that are imported into the U.S. Virgin Islands; may be imported without a permit, while all other fruits and vegetables must be imported under permit. Because this change merely removes an unnecessarily confusing distinction between specific and general written permits, the change should have little, if any, impact on users.

Other current provisions regarding application for permits; issuance of permits; amendment, denial, or withdrawal of permits; and appeals are relocated in this rule. The provisions for applying for permits are also updated to reflect the various means now available for applying for permits. These changes will not affect program operations, and should therefore have little, if any, impact on users of the system.

This rule revises, reorganizes, and updates some of the regulations, updates terms and removes outdated requirements and references, and makes various editorial and nonsubstantive changes to regulations to make them easier to use. The reorganization of the regulations does not affect any requirements for importing commodities but simplifies the regulations and organizes them to facilitate future revisions. In addition, this rule also clarifies treatment requirements in 7 CFR part 305. These changes do not represent a change in program operations and therefore should not affect users of the system.

This rule also amends the various restrictions on the importation of okra from countries where the pink bollworm is known to exist. The regulations were outdated and contained differing restrictions for the importation of okra from countries even though the regulations are all aimed at excluding pink bollworm from the United States. Under this rule, all imports from pink bollworm-infested areas are subject to the same requirements. The conditions are equivalent to our domestic regulations that pertain to pink bollworm.

In 2004, okra was imported from 11 countries into the United States with a value of \$17.4 million. Mexico has been the primary source of these imports. In 2004, Mexico accounted for nearly 70 percent of the imports. Other major sources are El Salvador, Honduras, and Nicaragua, which together accounted for the remainder of the okra imports in 2004.

Currently, the regulations contain varying restrictions on the importation of okra from countries where pink bollworm is known to exist. These restrictions include fumigation of imports from pink bollworm infested countries that are moving into infested

areas of the United States. This rule removes this restriction. This may reduce the cost associated with some imports. However, this change will primarily impact Mexican imports. Mexico is already, by far, the United States' largest foreign source of okra. In addition, this change only affects a limited portion of those okra imports. Therefore, this change should have at most a minor effect on okra imports and domestic okra prices.

This rule also updates the regulations to reflect current APHIS operating practices regarding biometric sampling of apricots, nectarines, peaches, plumcot, and plums from Chile. Under the rule, the current sampling regimens are removed and replaced with provisions that require sampling, but do not specify the percentage of fruit to be sampled or the confidence level of the inspection. Chile is the primary source of U.S. stone fruit imports, accounting for more than 97 percent \$73 million in such imports in 2005. However, these modifications in this rule do not represent a change in current program operations and therefore should not affect users of the system.

In sum, APHIS expects little impact on the total volume of U.S. imports of fruits and vegetables, with small effects on U.S. marketers and consumers. In addition, those additional measures in this rule that affect specific commodities are also expected to have limited impact. The main portions of this rule represent a significant structural revision of the fruits and vegetables import regulations and establish a new process for approving certain new commodities for importation into the United States. However, those commodity import requests most likely to qualify for the notice-based process are for small volume imports. This is either because they are for specialty crops that are currently unavailable or limited in availability in the United States, or are for crops grown in limited quantities in the requesting area. In addition, the rule does not alter the conditions for importing the majority of currently approved fruits or vegetables.

Of particular note with respect to the changes to the approval process, the change merely allows a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined that the commodity can be safely imported subject to one or more designated risk management measures. The rule does not alter the manner in which the risk associated with a commodity import request is evaluated, nor does it alter the manner in which those risks are

<sup>7</sup> The manual, "Fresh Fruits and Vegetables Import Manual," can be viewed on the Internet at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/fv.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf).

ultimately mitigated. Consumers will have quicker access to imported fruits and vegetables, though risks will still be evaluated and appropriate mitigations required, as they are currently. Also, given the growing number of requests to ship foreign fruits and vegetables to the United States, some trading partners may perceive the time required to conduct the rulemaking process as a barrier to trade. Such perception may impede their consideration of U.S. requests to ship U.S. commodities to their markets. To the extent our trading partners consider the time it takes to conduct the rulemaking process a trade barrier, as many of them do, this rule may facilitate the export of U.S. agricultural commodities.

### Summary of Regulatory Flexibility Analysis

#### *Objectives of and Legal Basis*

By eliminating the need for specific prior rulemaking for notice-based process commodities, considerable time savings could be reaped. The current process for approving new imports takes a notable period of time, ranging on average from 18 months to 3 years (beginning with the initial request and ending with the publication of the final rule).

Consumers benefit from the ability to purchase fruits and vegetables from a variety of sources, foreign as well as domestic. Many of the commodities that likely to be covered by this rule are niche products, unavailable or limited in availability in the United States. This rule will allow importers to more quickly meet consumer demand for those niche products. In addition, climate causes most domestic fruit and vegetable production to be seasonal, with the largest harvests occurring during the summer and fall. Imports supplement domestic supplies, especially of fresh products during the winter, resulting in increased choices for consumers. Even where the new imports would compete directly with domestic production, consumers would benefit when increased competition results in lower prices.

Under the regulations in "Subpart-Fruits and Vegetables," APHIS prohibits or restricts the importation of fresh fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States. Those regulations are based on our authority under the Plant Protection Act.

#### *Significant Issues Raised by Public Comments*

In accordance with 5 U.S.C. 603, we prepared an initial regulatory flexibility analysis for the interim rule. We invited comments about the interim rule as it relates to small entities and stated that we were interested in determining the number and kind of small entities that may incur benefits or costs from implementation of the interim rule. We did not receive any comments that were responsive to our request for additional economic information.

#### *Description and Estimate of Small Entities*

Those entities most likely to be economically affected by the rule are domestic importers and producers of fruits and vegetables. The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small. Import/export merchants, agents, and brokers are identified within the broader wholesaling trade sector. A firm primarily engaged in wholesaling fresh fruits and vegetables is considered small if it employs not more than 100 persons. In 1997,<sup>8</sup> more than 96 percent (5,456 of 5,657) of fresh fruit and vegetable wholesalers would be considered small by SBA standards.<sup>9</sup> All types of fruit and vegetable farms are considered small if they have annual receipts of \$0.75 million or less. With some exceptions, vegetable and melon farms are largely individually owned and relatively small, with two-thirds harvesting fewer than 25 acres. In 2002, between 80 and 84 percent of vegetable and melon farms would be considered small. Similarly, although numbers have declined, fruit and tree nut production is still dominated by small family or individually run farm operations. In 2002, between 92 and 95 percent of all fruit and tree nut farms would be considered small.<sup>10</sup>

The number of entities that will be affected by this rule is unknown but those affected would likely be considered small entities. However, based on the information that is available, the effects of this rule should be small whether the entity affected is

<sup>8</sup> Establishment and firm size is not yet available for the 2002 Economic Census.

<sup>9</sup> 1997 Economic Census. Department of Commerce, U.S. Bureau of the Census. North American Industry Classification System (NAICS) Category 424480 (Fresh fruit & vegetable wholesalers).

<sup>10</sup> 1997 Census of Agriculture. USDA, National Agricultural Statistics Service. NAICS Categories 1112 (Vegetable and melon farming) and 1113 (Fruit and tree nut farming).

small or large. Those commodity import requests most likely to qualify for the notice-based process are for small volume imports. This is either because they are for specialty crops currently unavailable or limited in availability in the United States, or are for crops grown in limited quantities in the requesting area. This rule merely allows a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined that the commodity can be safely imported subject to one or more designated risk management measures. Hence, we expect little impact on the total volume of U.S. imports of fruits and vegetables, with small effects on U.S. marketers and consumers.

#### *Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

These requirements are addressed in the proposed rule and later in this document under the heading "Paperwork Reduction Act."

#### *Alternatives*

One alternative to this rule considered was to simply continue under APHIS' current process of authorizing the importation of fruits and vegetables. In this case, we would continue to list all newly approved fruits and vegetables in the regulations through notice-and-comment rulemaking, as we have been doing since 1987. This approach is no longer satisfactory, because the number of requests we receive from foreign exporters and domestic importers to amend the regulations has been steadily increasing. Maintaining the current process will make it difficult to keep pace with the volume of import requests. Therefore, this alternative was rejected. We believe that the new approach will enable us to be more responsive to the import requests of our trading partners while maintaining the transparency of our decisionmaking afforded by notice-and-comment rulemaking.

Prior to 1987, APHIS authorized the importation of a fruit or vegetable by simply issuing a permit once the Agency was satisfied that the relevant criteria in the regulations had been met. Another alternative to this rule was to return to this method of authorizing fruit and vegetable importations. This approach is unsatisfactory, because it does not provide the opportunity for public analysis of and comment on the science associated with such imports. Therefore, this alternative was rejected. Again, we believe that the new approach will enable us to be more responsive to the import requests of our

trading partners while maintaining the transparency of our decisionmaking afforded by notice-and-comment rulemaking.

#### Executive Orders 12988 and 13132

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform, and Executive Order 13132, Federalism. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Because the rule's preemptive effect is derived from an express statutory provision, this rule does not have federalism implications within the meaning of Executive Order 13132, and therefore does not warrant the preparation of a federalism summary impact statement.

Specifically, pursuant to section 436 of the Plant Protection Act, no State or political subdivision of a State may regulate in foreign commerce any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order to control a plant pest or noxious weed, to eradicate a plant pest or noxious weed, or to prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed. State and local laws and regulations regarding fruits and vegetables imported under the provisions of this rule are preempted. USDA's longstanding interpretation of the scope of the preemption remains unchanged. Because fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, they remain in foreign commerce until sold to the ultimate consumer.

#### National Environmental Policy Act

The majority of the regulatory changes in this document are nonsubstantive, and would therefore have no effects on the environment. However, this rule will allow APHIS to approve certain new fruits and vegetables for importation into the United States without undertaking rulemaking. Despite the fact that those fruits and vegetable imports will no longer be contingent on the completion of rulemaking, the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) will still apply. As such, for each additional fruit or vegetable approved for importation, APHIS will make available to the public documentation related to our analysis of

the potential environmental effects of such new imports. This documentation will likely be made available at the same time and via the same **Federal Register** notice as the risk analysis for the proposed new import.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0293.

#### E-Government Act Compliance

APHIS is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### Lists of Subjects

##### 7 CFR Part 305

Agricultural commodities, Chemical treatment, Cold treatment, Garbage treatment, Heat treatment, Imports, Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Quick freeze, Reporting and recordkeeping requirements, Transportation.

##### 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

##### 7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR chapter III as follows:

#### PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for part 305 continues to read as follows:

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

#### § 305.2 [Amended]

■ 2. In § 305.2, paragraph (h)(2)(i), the table is amended as follows:

■ a. In the entry for acorns and chestnuts from all countries, by removing the reference to “§ 319.56-2b” and adding a reference to “§ 319.56-11” in its place.

■ b. In the entry for yam from all countries, by removing the words “(see § 319.56-2l of this chapter)”.

■ c. In the entry for papaya from Belize, by removing the words “(see § 319.56-2(j) of this part)”.

■ d. In the entry for cherimoya from Chile, by removing the words “(see § 319.56-2z of this chapter for additional treatment information)”.

■ 3. A new § 305.3 is added to read as follows:

#### § 305.3 Monitoring and certification of treatments.

(a) All treatments approved under part 305 are subject to monitoring and verification by APHIS.

(b) Any treatment performed outside the United States must be monitored and certified by an inspector or an official from the national plant protection organization (NPPO) of the exporting country. If monitored and certified by an official of the NPPO of the exporting country, the treated commodities must be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country certifying that treatment was applied in accordance with APHIS regulations. The phytosanitary certificate must be provided to an inspector when the commodity is offered for entry into the United States. During the entire interval between treatment and export, the consignment must be stored and handled in a manner that prevents any infestation by pests and noxious weeds.

■ 4. Section 305.15 is revised to read as follows:

#### § 305.15 Treatment requirements.

(a) *Approval of treatment facilities.* All facilities or locations used for refrigerating fruits or vegetables in accordance with § 305.16 must be approved by APHIS. Re-approval of the facility or carrier is required annually, or as often as APHIS directs, depending on treatments performed, commodities handled, and operations conducted at the facility. In order to be approved, facilities and carriers must:

(1) Be capable of keeping treated and untreated fruits, vegetables, or other articles separate so as to prevent infestation of articles and spread of pests;

(2) Have equipment that is adequate to effectively perform cold treatment.

(b) *Places of treatment; ports of entry.* Precooling and refrigeration may be performed prior to, or upon arrival of fruits and vegetables in the United States, provided treatments are performed in accordance with applicable requirements of this section. Fruits and vegetables that are not treated prior to arrival in the United States must be treated after arrival only in cold storage warehouses approved by the Administrator and located in the area north of 39° longitude and east of 104° latitude or at one of the following ports: The maritime ports of Wilmington, NC; Seattle, WA; Corpus Christi, TX; and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; and Hartsfield-Atlanta International Airport, Atlanta, GA.

(c) *Cold treatment enclosures.* All enclosures in which cold treatment is performed, including refrigerated containers, must:

(1) Be capable of precooling and holding fruits or vegetables at temperatures less than or equal to 2.2 °C (36 °F) or the maximum temperature prescribed in an approved treatment schedule for any fruit or vegetable that is to be treated in the enclosure.

(2) Maintain pulp temperatures according to treatment schedules with no more than a 0.3 °C (0.54 °F) variation in temperature.

(3) Be structurally sound and adequate to maintain required temperatures.

(4) Be equipped with recording devices, such that automatic, continuous temperature records are maintained and secured. Recording devices must be capable of generating temperature charts for verification of treatment by an inspector.

(d) *Precooling.* Before loading in cold treatment containers, packages of fruit must be precooled to a treatment temperature or to a uniform temperature not to exceed 4.5 °C (40 °F) or precooled at the terminal to 2.2 °C (36 °F).

(1) *Treatment in transit.* Fruit that is to be treated in transit must be precooled either at a dockside refrigeration plant prior to loading aboard the carrying vessel, or aboard the carrying vessel. If precooling is accomplished prior to loading aboard the carrying vessel, an official authorized by the national plant protection organization (NPPO) of the country of origin must supervise the precooling operation and certify the treatment by recording pulp temperatures of fruit sampled at different locations of the lot to ensure that the precooling was complete and uniform.

(2) *Treatment upon arrival in the United States.* Fruit that is to be treated upon arrival in the United States must arrive at a temperature sufficiently low to prevent insect activity and must be promptly precooled and refrigerated. Fruit to be both precooled and refrigerated after arrival in the United States must be delivered to the treatment facility subject to safeguards required by an inspector.

(e) *Treatment procedures.* (1) All material, labor, and equipment for cold treatment performed on vessels must be provided by the vessel or vessel agent.

(2) Refrigeration must be completed in the container, compartment, or room in which it is begun.

(3) Fruit that may be cold treated must be safeguarded to prevent cross-contamination or mixing with other infested fruit.

(4) Breaks, damage, etc., in the treatment enclosure that preclude maintaining correct temperatures must be repaired before use.

(5) An inspector must approve loading of compartment, number and placement of sensors, and initial fruit temperature readings before beginning the treatment.

(6) At least three temperature sensors must be used in the treatment compartment during treatment.

(7) The time required to complete the treatment begins when the temperature inside the fruit reaches the required temperature. Refrigeration continues until the vessel arrives at the port of destination and the fruit is released for unloading by an inspector even though this may prolong the period required for the cold treatment.

(8) Only the same type of fruit in the same type of package may be treated together in a container; no mixture of fruits in containers will be treated.

(9) Fruit must be stacked to allow cold air to be distributed throughout the enclosure, with no pockets of warmer air, and to allow random sampling of pulp temperature in any location in load. Temperatures must be recorded at intervals no longer than 1 hour apart. Gaps of longer than 1 hour may invalidate the treatment or indicate treatment failure.

(10) Cold treatment is not completed until so designated by an inspector or the certifying official of the foreign country; consignments of treated commodities may not be discharged until full APHIS clearance has been completed, including review and approval of treatment record charts.

(11) Pretreatment conditioning (heat shock or 100.4 °F for 10 to 12 hours) of fruits is optional and is the responsibility of the shipper.

(12) Cold treatment of fruits in break-bulk vessels or containers must be initiated by an inspector if there is not a treatment technician who has been trained to initiate cold treatments for either break-bulk vessels or containers.

(13) *Inspection of fruits after cold treatment for Mediterranean fruit fly.* An inspector will sample and cut fruit from each consignment cold treated for Mediterranean fruit fly (Medfly) to monitor treatment effectiveness. If a single live Medfly in any stage of development is found, the consignment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the safeguards contained in this section do not appear to be effective against the Medfly, APHIS may suspend the importation of fruits from the originating country and conduct an investigation into the cause of the deficiency.

(14) *Caution and disclaimer.* The cold treatments required for the entry of fruit are considered necessary for the elimination of plant pests, and no liability shall attach to the U.S. Department of Agriculture or to any officer or representative of that Department in the event injury results to fruit offered for entry in accordance with these instructions. In prescribing cold treatments of certain fruits, it should be emphasized that inexactness and carelessness in applying the treatments may result in injury to the fruit or its rejection for entry.

(15) *Additional requirements for treatments performed after arrival in the United States.*

(i) *Maritime port of Wilmington, NC.* Consignments of fruit arriving at the maritime port of Wilmington, NC, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(A) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized consignments of fruit must be cold-treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(D) The cold treatment facility must remain locked during non-working hours.

(ii) *Maritime port of Seattle, WA.* Consignments of fruit arriving at the maritime port of Seattle, WA, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(A) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized consignments of fruit must be cold-treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(D) The cold treatment facility must remain locked during non-working hours.

(E) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(F) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(iii) *Airports of Atlanta, GA, and Seattle, WA.* Consignments of fruit arriving at the airports of Atlanta, GA, and Seattle, WA, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(A) Bulk and containerized consignments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized consignments of fruit arriving for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the aircraft on which they arrived at the airport and the

cold treatment facility. The movement of consignments from aircraft to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(D) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(E) The cold treatment facility must remain locked during non-working hours.

(F) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(G) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(iv) *Maritime ports of Gulfport, MS, and Corpus Christi, TX.* Consignments of fruit arriving at the ports of Gulfport, MS, and Corpus Christi, TX, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(A) All fruit entering the port for cold treatment must move in maritime containers. No bulk consignments (those consignments which are stowed and unloaded by the case or bin) are permitted.

(B) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(C) All consignments of fruit arriving at the port for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(D) The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of consignments from vessel to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(E) Advance reservations for cold treatment space at the port must be made prior to the departure of a consignment from its port of origin.

(F) Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements:

(1) All containers must be unloaded within the cold treatment facility; and

(2) Untreated fruit may not be exposed to the outdoors under any circumstances.

(G) The cold treatment facility must remain locked during non-working hours.

(H) Blacklights or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility at the maritime port of Gulfport, MS, and within the 5 square miles surrounding the cold treatment facility at the maritime port of Corpus Christi, TX.

(I) During cold treatment, a backup system must be available to cold treat the consignments of fruit should the primary system malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruits.

(J) The cold treatment facility must have the ability to conduct methyl bromide fumigations on site.

(K) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(f) *Monitoring.* Treatment must be monitored by an inspector to ensure proper administration of the treatment. An inspector must also approve the recording devices and sensors used to monitor temperatures and conduct an operational check of the equipment before each use and ensure sensors are calibrated. An inspector may approve, adjust, or reject the treatment.

(g) *Compliance agreements.* Facilities located in the United States must operate under a compliance agreement with APHIS. The compliance agreement must be signed by a representative of the cold treatment facility and APHIS. The compliance agreement must contain requirements for equipment, temperature, circulation, and other operational requirements for performing cold treatment to ensure that treatments are administered properly. Compliance agreements must allow officials of APHIS to inspect the facility to monitor compliance with the regulations.

(h) *Work plans.* Facilities located outside the United States may operate in accordance with a bilateral work plan. The work plan, if and when required, must be signed by a representative of the cold treatment facility, the national plant protection organization (NPPO) of the country of origin, and APHIS. The work plans must contain requirements for equipment, temperature, circulation,

and other operational requirements for performing cold treatment to ensure that cold treatments are administered properly. Work plans for facilities outside the United States may also include trust fund agreement information regarding payment of the salaries and expenses of APHIS employees on site. Work plans must allow officials of the NPPO and APHIS to inspect the facility to monitor compliance with APHIS regulations.

#### § 305.17 [Amended]

■ 5. In ( 305.17, paragraph (a) is amended by removing the citation “319.56–2c” and adding the citation “319.56–12” in its place.

#### § 305.31 [Amended]

■ 6. In § 305.31, paragraph (n), the first sentence after the paragraph heading is amended by removing the words “fruit flies” and adding the words “plant pests” in their place.

### PART 319—FOREIGN QUARANTINE NOTICES

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

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

#### § 319.28 [Amended]

■ 8. Section 319.28 is amended as follows:

■ a. In paragraph (a)(2), by removing the words “(except as provided by § 319.56–2f of this part)”.

■ b. In paragraph (e), by removing the words “the Fruits and Vegetables Quarantine (§ 319.56)” and adding the words “Subpart—Fruits and Vegetables of this part” in their place.

#### § 319.37–2 [Amended]

■ 9. In § 319.37–2, paragraph (a), in the table, the entry for “*Cocos nucifera*” is amended by removing the citation “§ 319.56” in column 1 and adding the citation “§ 319.56–11” in its place.

#### § 319.40–2 [Amended]

■ 10. In § 319.40–2, paragraph (c) is amended by removing the words “§§ 319.56 through 319.56–8,”.

#### § 319.40–9 [Amended]

■ 11. In § 319.40–9, paragraph (a)(4)(i), footnote 4 is amended by removing the words “§§ 319.56 through 319.56–8,”.

#### § 319.41a [Amended]

■ 12. In § 319.41a, paragraph (c) is amended by removing the citation “§ 319.56–2” and adding the citation “§ 319.56–3” in its place.

■ 13. Subpart—Fruits and Vegetables, §§ 319.56 through 319.56–8, is revised to read as follows:

#### Subpart—Fruits and Vegetables

Sec.

- 319.56–1 Notice of quarantine.
- 319.56–2 Definitions.
- 319.56–3 General requirements for all imported fruits and vegetables.
- 319.56–4 Approval of certain fruits and vegetables for importation.
- 319.56–5 Pest-free areas.
- 319.56–6 Trust fund agreements.
- 319.56–7 Territorial applicability and exceptions.
- 319.56–8 through 319.56–9 [Reserved]
- 319.56–10 Importation of fruits and vegetables from Canada.
- 319.56–11 Importation of dried, cured, or processed fruits, vegetables, nuts, and legumes.
- 319.56–12 Importation of frozen fruits and vegetables.
- 319.56–13 Additional requirements for certain fruits and vegetables.
- 319.56–14 through 319.56–19 [Reserved]
- 319.56–20 Apples and pears from Australia (including Tasmania) and New Zealand.
- 319.56–21 Okra from certain countries.
- 319.56–22 Apples and pears from certain countries in Europe.
- 319.56–23 Apricots, nectarines, peaches, plumcot, and plums from Chile.
- 319.56–24 Lettuce and peppers from Israel.
- 319.56–25 Papayas from Central America and Brazil.
- 319.56–26 Melon and watermelon from certain countries in South America.
- 319.56–27 Fuji variety apples from Japan and the Republic of Korea.
- 319.56–28 Tomatoes from certain countries.
- 319.56–29 Ya variety pears from China.
- 319.56–30 Hass avocados from Michoacan, Mexico.
- 319.56–31 Peppers from Spain.
- 319.56–32 Peppers from New Zealand.
- 319.56–33 Mangoes from the Philippines.
- 319.56–34 Clementines from Spain.
- 319.56–35 Persimmons from the Republic of Korea.
- 319.56–36 Watermelon, squash, cucumber, and oriental melon from the Republic of Korea.
- 319.56–37 Grapes from the Republic of Korea.
- 319.56–38 Clementines, mandarins, and tangerines from Chile.
- 319.56–39 Fragrant pears from China.
- 319.56–40 Peppers from certain Central American countries.
- 319.56–41 Citrus from Peru.
- 319.56–42 Peppers from the Republic of Korea.
- 319.56–43 Baby corn and baby carrots from Zambia.
- 319.56–44 Untreated grapefruit, sweet oranges, and tangerines from Mexico for processing.
- 319.56–45 Shelled garden peas from Kenya.
- 319.56–46 Mangoes from India.

#### Subpart—Fruits and Vegetables

##### § 319.56–1 Notice of quarantine.

(a) Under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

(b) The Secretary has determined that it is necessary to prohibit the importation into the United States of fruits and vegetables and associated plants and portions of plants except as provided in this part.

##### § 319.56–2 Definitions.

**Above ground parts.** Any plant parts, such as stems, leaves, fruit, or inflorescence (flowers), that grow solely above the soil surface.

**Administrator.** The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the United States Department of Agriculture delegated to act in his or her stead.

**APHIS.** The Animal and Plant Health Inspection Service, United States Department of Agriculture.

**Commercial consignment.** A lot of fruits or vegetables that an inspector identifies as having been imported for sale and distribution. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

**Commodity.** A type of plant, plant product, or other regulated article being moved for trade or other purpose.

**Consignment.** A quantity of plants, plant products, and/or other articles, including fruits or vegetables, being moved from one country to another and covered, when required, by a single phytosanitary certificate (a consignment may be composed of one or more commodities or lots).

**Country of origin.** Country where the plants from which the plant products are derived were grown.

**Cucurbits.** Any plants in the family Cucurbitaceae.

**Field.** A plot of land with defined boundaries within a place of production on which a commodity is grown.

**Frozen fruit or vegetable.** Any variety of raw fruit or vegetable preserved by commercially acceptable freezing methods in such a way that the

commodity remains at  $-6.7^{\circ}\text{C}$  ( $20^{\circ}\text{F}$ ) or below for at least 48 hours prior to release.

**Fruits and vegetables.** A commodity class for fresh parts of plants intended for consumption or processing and not for planting.

**Import and importation.** To move into, or the act of movement into, the territorial limits of the United States.

**Inspector.** Any individual authorized by the Administrator of APHIS or the Commissioner of the Bureau of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this subpart.

**Lot.** A number of units of a single commodity, identifiable by its homogeneity of composition and origin, forming all or part of a consignment.

**National plant protection organization (NPPO).** Official service established by a government to discharge the functions specified by the International Plant Protection Convention.

**Noncommercial consignment.** A lot of fruits or vegetables that an inspector identifies as having been imported for personal use and not for sale.

**Permit.** A written, oral, or electronically transmitted authorization to import fruits or vegetables in accordance with this subpart.

**Phytosanitary certificate.** A document, including electronic versions, that is related to a consignment and that:

(1) Is patterned after the model certificate of the International Plant Protection Convention (IPPC), a multilateral convention on plant protection under the authority of the Food and Agriculture Organization of the United Nations (FAO);

(2) Is issued by an official of a foreign national plant protection organization in one of the five official languages of the FAO;

(3) Is addressed to the plant protection service of the United States (Animal and Plant Health Inspection Service);

(4) Describes the consignment;

(5) Certifies the place of origin for all contents of the consignment;

(6) Certifies that the consignment has been inspected and/or tested according to appropriate official procedures and is considered to be free from quarantine pests of the United States;

(7) Contains any additional declarations required by this subpart; and

(8) Certifies that the consignment conforms with the phytosanitary requirements of the United States and is considered eligible for importation pursuant to the laws and regulations of the United States.

**Phytosanitary measure.** Any legislation, regulation, or official procedure having the purpose to prevent the introduction and/or spread of quarantine pests, or to limit the economic impact of regulated non-quarantine pests.

**Place of production.** Any premises or collection of fields operated as a single production or farming unit. This may include a production site that is separately managed for phytosanitary purposes.

**Plant debris.** Detached leaves, twigs, or other portions of plants, or plant litter or rubbish as distinguished from approved parts of clean fruits and vegetables, or other commercial articles.

**Port of first arrival.** The first port within the United States where a consignment is offered for consumption entry or offered for entry for immediate transportation in bond.

**Production site.** A defined portion of a place of production utilized for the production of a commodity that is managed separately for phytosanitary purposes. This may include the entire place of production or portions of it. Examples of portions of places of production are a defined orchard, grove, field, or premises.

**Quarantine pest.** A pest of potential economic importance to the area endangered by it and not yet present there, or present but not widely distributed there and being officially controlled.

**United States.** All of the States of the United States, the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, and any other territory or possession of the United States.

**West Indies.** The foreign islands lying between North and South America, the Caribbean Sea, and the Atlantic Ocean, divided into the Bahamas, the Greater Antilles (including Hispaniola), and the Lesser Antilles (including the Leeward Islands, the Windward Islands, and the islands north of Venezuela).

### **§ 319.56–3 General requirements for all imported fruits and vegetables.**

All fruits and vegetables that are allowed importation under this subpart must be imported in accordance with the following requirements, except as specifically provided otherwise in this subpart.

(a) **Freedom from plant debris.** All fruits and vegetables imported under this subpart, whether in commercial or noncommercial consignments, must be free from plant debris, as defined in § 319.56–2.

(b) **Permit.** (1) All fruits and vegetables imported under this subpart, whether commercial or noncommercial consignments, must be imported under permit issued by APHIS, must be imported under the conditions specified in the permit, and must be imported in accordance with all applicable regulations in this part; *except for*:

(i) Dried, cured, or processed fruits and vegetables (except frozen fruits and vegetables), including cured figs and dates, raisins, nuts, and dried beans and peas, except certain acorns and chestnuts subject to § 319.56–11 of this subpart;

(ii) Fruits and vegetables grown in Canada (except potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road, which are prohibited importation into the United States); and

(iii) Fruits and vegetables, except mangoes, grown in the British Virgin Islands that are imported into the U.S. Virgin Islands.

(2) **Applying for a permit.** Permit applications must be submitted in writing or electronically as provided in this paragraph and must be submitted in advance of the proposed importation. Applications must state the country or locality of origin of the fruits or vegetables, the anticipated port of first arrival, the name and address of the importer in the United States, and the identity (scientific name preferred) and quantity of the fruit or vegetable. Use of PPQ Form 587 or Internet application is preferred.

(i) **By mail.** Persons who wish to apply by mail for a permit to import fruits or vegetables into the United States must submit their application to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permit Services, 4700 River Road Unit 136, Riverdale, MD 20737–1236.

(ii) **Via the Internet.** Persons who wish to apply for a permit to import fruits or vegetables into the United States via the internet must do so using APHIS Plant Protection and Quarantine's permit Web site at [http://www.aphis.usda.gov/plant\\_health/permits/index.shtml](http://www.aphis.usda.gov/plant_health/permits/index.shtml).

(iii) **By fax.** Persons who wish to apply by fax for a permit to import fruits or vegetables into the United States must do so by faxing their application to: Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permit Services, (301) 734–5786.

(3) **Issuance of permits.** If APHIS approves a permit application, APHIS will issue a permit specifying the



conditions applicable to the importation of the fruit or vegetable.

(4) *Issuance of oral permits.* Oral permits may be issued at ports of entry for noncommercial consignments if the commodity is admissible with inspection only. Oral permits may be issued for commercial consignments of fruits and vegetables that are not accompanied by a written permit upon arrival in the United States if all applicable entry requirements are met and proof of application for a written permit is supplied to an inspector.

(5) *Amendment, denial, or withdrawal of permits.* The Administrator may amend, deny, or withdraw a permit at any time if he or she determines that conditions exist that present an unacceptable risk of the fruit or vegetable introducing quarantine pests or noxious weeds into the United States. If the withdrawal is oral, the withdrawal of the permit and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow.

(6) *Appeals.* Any person whose permit has been amended, denied, or withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the decision. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully amended, denied, or withdrawn. The Administrator will grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal, as promptly as circumstances permit. If there is a conflict as to any material fact and the person who has filed an appeal requests a hearing, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. The permit withdrawal will remain in effect pending resolution of the appeal or the hearing.

(c) *Ports of entry.* (1) Fruits and vegetables must be imported into specific ports if so required by this subpart or by part 305 of this chapter, or if so required by a permit issued under paragraph (b) of this section for the importation of the particular fruit or vegetable. If a permit issued for the importation of fruits or vegetables names specific port(s) where the fruits or vegetables must be imported, the fruits and vegetables may only be imported into the port(s) named in the permit. If a permit issued for the importation of fruits or vegetables does not name specific port(s) where the fruits or vegetables must be imported, the fruits and vegetables may be imported into any port referenced in paragraph (c)(2) of this section.

(2) Fruits and vegetables imported under this subpart may be imported into any port listed in 19 CFR 101.3(b)(1), except as otherwise provided by part 319 or by a permit issued in accordance with part 319, and except as provided in § 330.104 of this chapter. Fruits and vegetables that are to be cold treated at ports in the United States may only be imported into specific ports as provided in § 305.15 of this chapter.

(d) *Inspection, treatment, and other requirements.* All imported fruits or vegetables are subject to inspection, are subject to such disinfection at the port of first arrival as may be required by an inspector, and are subject to reinspection at other locations at the option of an inspector. If an inspector finds plants or portions of plants, or a plant pest or noxious weed, or evidence of a plant pest or noxious weed on or in any fruit or vegetable or its container, or finds that the fruit or vegetable may have been associated with other articles infested with plant pests or noxious weeds, the owner or agent of the owner of the fruit or vegetable must clean or treat the fruit or vegetable and its container as required by an inspector, and the fruit or vegetable is also subject to reinspection, cleaning, and treatment at the option of an inspector at any time and place until all applicable requirements of this subpart have been accomplished.

(1) *Notice of arrival; assembly for inspection.* Any person importing fruits and vegetables into the United States must offer those agricultural products for inspection and entry at the port of first arrival. The owner or agent must assemble the fruits and vegetables for inspection at the port of first arrival, or at any other place designated by an inspector, and in a manner designated by the inspector. All fruits and vegetables must be accurately disclosed and made available to an inspector for examination. The owner or the agent must provide an inspector with the name and address of the consignee and must make full disclosure of the type, quantity, and country and locality of origin of all fruits and vegetables in the consignment, either orally for noncommercial consignments or on an invoice or similar document for commercial consignments.

(2) *Refusal of entry.* If an inspector finds that an imported fruit or vegetable is prohibited, or is not accompanied by required documentation, or is so infested with a plant pest or noxious weed that, in the judgment of the inspector, it cannot be cleaned or treated, or contains soil or other prohibited contaminants, the entire lot

or consignment may be refused entry into the United States.

(3) *Release for movement.* No person may move a fruit or vegetable from the port of first arrival unless an inspector has either:

(i) Released it;

(ii) Ordered treatment at the port of first arrival and, after treatment, released the fruit or vegetable;

(iii) Authorized movement of the fruit or vegetable to another location for treatment, further inspection, or destruction; or

(iv) Ordered the fruit or vegetable to be reexported.

(4) *Notice to owner of actions ordered by inspector.* If an inspector orders any disinfection, cleaning, treatment, reexportation, recall, destruction, or other action with regard to imported fruits or vegetables while the consignment is in foreign commerce, the inspector will issue an emergency action notification (PPQ Form 523) to the owner of the fruits or vegetables or to the owner's agent. The owner must, within the time and in the manner specified in the PPQ Form 523, destroy the fruits and vegetables, ship them to a point outside the United States, move them to an authorized site, and/or apply treatments or other safeguards to the fruits and vegetables as prescribed to prevent the introduction of plant pests or noxious weeds into the United States.

(e) *Costs and charges.* APHIS will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty and at the usual places of duty.<sup>1</sup> The owner of imported fruits or vegetables is responsible for all additional costs of inspection, treatment, movement, storage, destruction, or other measures ordered by an inspector under this subpart, including any labor, chemicals, packing materials, or other supplies required. APHIS will not be responsible for any costs or charges, other than those identified in this section.

(f) *APHIS not responsible for damage.* APHIS assumes no responsibility for any damage to fruits or vegetables that results from the application of treatments or other measures required under this subpart (or under part 305 of this chapter) to protect against the introduction of plant pests into the United States.

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

<sup>1</sup> Provisions relating to costs for other services of an inspector are contained in part 354 of this chapter.

**§ 319.56-4 Approval of certain fruits and vegetables for importation.**

(a) *Determination by the Administrator.* The Administrator has determined that the application of one or more of the designated phytosanitary measures cited in paragraph (b) of this section to certain imported fruits and vegetables mitigates the risk posed by those commodities, and that such fruits and vegetables may be imported into the United States subject to one or more of those measures, as provided in paragraphs (c) and (d) of this section. The name and origin of all fruits and vegetables authorized importation under this section, as well as the applicable requirements for their importation, may be found on the Internet at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/fv.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf). Commodities that require phytosanitary measures other than one or more of the designated phytosanitary measures cited in paragraph (b) of this section may only be imported in accordance with applicable requirements in § 319.56-3 and commodity-specific requirements contained elsewhere in this subpart.

(b) *Designated phytosanitary measures.* (1) Fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56-3.

(2) The fruits or vegetables are imported from a pest-free area in the country of origin and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin.

(3) The fruits or vegetables are treated in accordance with part 305 of this chapter.

(4) The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by risk analysis as likely to follow the import pathway.

(5) The fruits or vegetables are imported as commercial consignments only.

(c) *Fruits and vegetables authorized importation under this section.* (1) *Previously approved fruits and vegetables.* Fruits and vegetables that were authorized importation under this subpart either directly by permit or by specific regulation as of August 17, 2007 and that were subject only to one or more of the designated phytosanitary measures cited in paragraph (b) of this section and the general requirements of § 319.56-3, may continue to be imported into the United States under the same requirements that applied

before August 17, 2007, except as provided in paragraph (d) of this section.

(2) *Other fruits and vegetables.* Fruits and vegetables that do not meet the criteria in paragraph (c)(1) of this section may be authorized importation under this section as follows:

(i) *Pest risk analysis.* The risk posed by the particular fruit or vegetable from a specified country or other region has been evaluated and publicly communicated as follows:

(A) *Availability of pest risk analysis.* APHIS published in the **Federal Register**, for 60 days public comment, a notice announcing the availability of a pest risk analysis that evaluated the risks associated with the importation of the particular fruit or vegetable.

(B) *Determination of risk; factors considered.* The Administrator determined, and announced in the notice referred to in the previous paragraph, that, based on the information available, the application of one or more of the designated phytosanitary measures described in paragraph (b) of this section is sufficient to mitigate the risk that plant pests or noxious weeds could be introduced into or disseminated within the United States via the imported fruit or vegetable. In order for the Administrator to make the determination described in this paragraph, he or she must conclude based on the information presented in the risk analysis for the fruit or vegetable that the risk posed by each quarantine pest associated with the fruit or vegetable in the country or other region of origin is mitigated by one or more of the following factors:

(1) *Inspection.* A quarantine pest is associated with the commodity in the country or region of origin, but the pest can be easily detected via inspection;

(2) *Pest freedom.* No quarantine pests are known to be associated with the fruit or vegetable in the country or region of origin, or a quarantine pest is associated with the commodity in the country or region of origin but the commodity originates from an area in the country or region that meets the requirements of § 319.56-5 for freedom from that pest;

(3) *Effectiveness of treatment.* A quarantine pest is associated with the fruit or vegetable in the country or region of origin, but the risk posed by the pest can be reduced by applying an approved post-harvest treatment to the fruit or vegetable.

(4) *Pre-export inspection.* A quarantine pest is associated with the commodity in the country or region of origin, but the commodity is subject to pre-export inspection, and the

commodity is to be accompanied by a phytosanitary certificate that contains an additional declaration that the commodity has been inspected and found free of such pests in the country or region of origin.

(5) *Commercial consignments.* A quarantine pest is associated with the fruit or vegetable in the country or region of origin, but the risk posed by the pest can be reduced by commercial practices.

(ii) *Issuance of import permits.* The Administrator will announce his or her decision in a subsequent **Federal Register** notice. If appropriate, APHIS would begin issuing permits for importation of the fruit or vegetable subject to requirements specified in the notice because:

(A) No comments were received on the pest risk analysis;

(B) The comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or

(C) Changes to the pest risk analysis 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.

(d) *Amendment of import requirements.* If, after August 17, 2007, the Administrator determines that one or more of the designated phytosanitary measures is not sufficient to mitigate the risk posed by any of the fruits and vegetables that are authorized importation into the United States under this section, APHIS will prohibit or further restrict importation of the fruit or vegetable. APHIS may also publish a notice in the **Federal Register** advising the public of its finding. The notice will specify the amended import requirements, provide an effective date for the change, and will invite public comment on the subject.

(Approved by the Office of Management and Budget under control number 0579-0293)

**§ 319.56-5 Pest-free areas.**

As provided elsewhere in this subpart, certain fruits and vegetables may be imported into the United States provided that the fruits or vegetables originate from an area that is free of a specific pest or pests. In some cases, fruits or vegetables may only be imported if the area of export is free of all quarantine pests that attack the fruit or vegetable. In other cases, fruits and vegetables may be imported if the area of export is free of one or more quarantine pests that attack the fruit or vegetable, and provided that the risk posed by the remaining quarantine pests that attack the fruit or vegetable is mitigated by other specific

phytosanitary measures contained in the regulations in this subpart.

(a) *Application of international standard for pest free areas.* APHIS requires that determinations of pest-free areas be made in accordance with the criteria for establishing freedom from pests found in International Standard for Phytosanitary Measures No. 4, "Requirements for the establishment of pest free areas." The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in § 300.5 of this chapter.

(b) *Survey protocols.* APHIS must approve the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be performed upon detection of a pest. Pest-free areas are subject to audit by APHIS to verify their status.

(c) *Determination of pest freedom.* (1) For an area to be considered free of a specified pest for the purposes of this subpart, the Administrator must determine, and announce in a notice or rule published in the **Federal Register** for 60 days public comment, that the area meets the criteria of paragraphs (a) and (b) of this section.

(2) The Administrator will announce his or her decision in a subsequent **Federal Register** notice. If appropriate, APHIS would begin issuing permits for importation of the fruit or vegetable from a pest-free area because:

(i) No comments were received on the notice or

(ii) The comments on the notice did not affect the overall conclusions of the notice and the Administrator's determination of risk.

(d) *Decertification of pest-free areas; reinstatement.* If a pest is detected in an area that is designated as free of that pest, APHIS would publish in the **Federal Register** a notice announcing that the pest-free status of the area in question has been withdrawn, and that imports of host crops for the pest in question are subject to application of an approved treatment for the pest. If a treatment for the pest is not available, importation of the host crops would be prohibited. In order for a decertified pest-free area to be reinstated, it would have to meet the criteria of paragraphs (a) and (b) of this section.

(e) *General requirements for fruits and vegetables imported from pest-free areas.*

(1) *Labeling.* Each box of fruits or vegetables that is imported into the United States from a pest-free area under this subpart must be clearly labeled with:

(i) The name of the orchard or grove of origin, or the name of the grower; and

(ii) The name of the municipality and State in which the fruits or vegetables were produced; and

(iii) The type and amount of fruit the box contains.

(2) *Phytosanitary certificate.* A phytosanitary certificate must accompany the imported fruits or vegetables, and must contain an additional declaration that the fruits originate from a pest-free area that meets the requirements of paragraphs (a) and (b) of this section.

(3) *Safeguarding.* If fruits or vegetables are moved from a pest-free area into or through an area that is not free of that pest, the fruits or vegetables must be safeguarded during the time they are present in a non-pest-free area by being covered with insect-proof mesh screens or plastic tarpaulins, including while in transit to the packinghouse and while awaiting packaging. If fruits or vegetables are moved through an area that is not free of that pest during transit to a port, they must be packed in insect-proof cartons or containers or be covered by insect-proof mesh or plastic tarpaulins during transit to the port and subsequent export to the United States. These safeguards described in this section must be intact upon arrival in the United States.

(Approved by the Office of Management and Budget under control numbers 0579-0049, 0579-0316 and 0579-0293)

#### § 319.56-6 Trust fund agreements.

If APHIS personnel need to be physically present in an exporting country or region to facilitate the exportation of fruits or vegetables and APHIS services are to be funded by the national plant protection organization (NPPO) of the exporting country or a private export group, then the NPPO or the private export group must enter into a trust fund agreement with APHIS that is in effect at the time the fruits or vegetables are exported. Under the agreement, the NPPO of the exporting country or the private export group must pay in advance all estimated costs that APHIS expects to incur in providing inspection services in the exporting country. These costs will include administrative expenses incurred in conducting the services and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing services. The agreement must require the NPPO of the exporting country or region or a private export group to deposit a certified or cashier's

check with APHIS for the amount of those costs, as estimated by APHIS. The agreement must further specify that, if the deposit is not sufficient to meet all costs incurred by APHIS, the NPPO of the exporting country or a private export group must deposit with APHIS, before the services will be completed, a certified or cashier's check for the amount of the remaining costs, as determined by APHIS. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the NPPO of the exporting country or region or a private export group, or held on account.

#### § 319.56-7 Territorial applicability and exceptions.

(a) The regulations in this subpart apply to importations of fruits and vegetables into any area of the United States, except as provided in this section.

(b) *Importations of fruits and vegetables into Guam.* (1) The following fruits and vegetables may be imported into Guam without treatment, except as may be required under § 319.56-3(d), and in accordance with all the requirements of this subpart as modified by this section:

(i) All leafy vegetables and root crops from the Bonin Islands, Volcano Islands, and Ryukyu Islands.

(ii) All fruits and vegetables from Palau and the Federated States of Micronesia (FSM), except *Artocarpus* spp. (breadfruit, jackfruit, and chempedak), citrus, curacao apple, guava, Malay or mountain apple (*Syzygium* spp.), mango, and papaya, and except dasheen from the Yap district of FSM and from Palau, and bitter melon (*Momordica charantia*) from Palau. The excepted products are approved for entry into Guam after treatment with an approved treatment listed in part 305 of this chapter.

(iii) *Allium* (without tops), artichokes, bananas, bell peppers, cabbage, carrots, celery, Chinese cabbage, citrus fruits, eggplant, grapes, lettuce, melons, okra, parsley, peas, persimmons, potatoes, rhubarb, squash (*Cucurbita maxima*), stone and pome fruits, string beans, sweetpotatoes, tomatoes, turnip greens, turnips, and watermelons from Japan and Korea.

(iv) Leafy vegetables, celery, and potatoes from the Philippine Islands.

(v) Carrots (without tops), celery, lettuce, peas, potatoes, and radishes (without tops) from Australia.

(vi) Arrowroot, asparagus, bean sprouts, broccoli, cabbage, carrots (without tops), cassava, cauliflower, celery, chives, cow-cabbage, dasheen, garlic, gingerroot, horseradish, kale,

kudzu, leek, lettuce, onions, Portuguese cabbage, turnip, udo, water chestnut, watercress, waterlily root, and yam bean root from Taiwan.

(vii) Lettuce from Papua New Guinea.  
 (viii) Carrots (without tops), celery, lettuce, loquats, onions, persimmons, potatoes, tomatoes, and stone fruits from New Zealand.

(ix) Asparagus, carrots (without tops), celery, lettuce, and radishes (without tops) from Thailand.

(x) Green corn on the cob.

(xi) All other fruits and vegetables approved for entry into any other part or port of the United States, and except any which are specifically designated in this subpart as not approved.

(2) An inspector in Guam may accept an oral application and issue an oral permit for products listed in paragraph (a) of this section, which is deemed to fulfill the requirements of § 319.56-3(b) of this subpart. The inspector may waive the documentation required in § 319.56-3 for such products whenever the inspector finds that information available from other sources meets the requirements under this subpart for the information normally supplied by such documentation.

(3) The provisions of § 319.56-11 do not apply to chestnuts and acorns imported into Guam, which are enterable into Guam without permit or other restriction under this subpart. If chestnuts or acorns imported under this paragraph are found infected, infested, or contaminated with any plant pest and are not subject to disposal under this subpart, disposition may be made in accordance with § 330.106 of this chapter.

(4) Baskets or other containers made of coconut fronds are not approved for use as containers for fruits and vegetables imported into Guam. Fruits and vegetables in such baskets or containers offered for importation into Guam will not be regarded as meeting § 319.56-3(a).

(c) *Importation of fruits and vegetables into the U.S. Virgin Islands.*

(1) Fruits and vegetables grown in the British Virgin Islands may be imported

into the U.S. Virgin Islands in accordance with § 319.56-3, except that:

(i) Such fruits and vegetables are exempt from the permit requirements of § 319.56-3(b); and

(ii) Mangoes grown in the British Virgin Islands are prohibited entry into the U.S. Virgin Islands.

(2) Okra produced in the West Indies may be imported into the U.S. Virgin Islands without treatment but are subject to inspection at the port of arrival.

**§§ 319.56-8 through 319.56-9 [Reserved]**

**§ 319.56-10 Importation of fruits and vegetables from Canada.**

(a) *General permit for fruits and vegetables grown in Canada.* Fruits and vegetables grown in Canada and offered for entry into the United States will be subject to the inspection, treatment, and other requirements of § 319.56-3(d), but may otherwise be imported into the United States without restriction under this subpart; provided, that:

(1) Consignments of *Allium* spp. consisting of the whole plant or above ground parts must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Canada with an additional declaration stating that the articles are free from *Acrolepiopsis assectella* (Zeller).

(2) Potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road are prohibited importation into the United States in accordance with § 319.37-2 of this part.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0579-0316)

**§ 319.56-11 Importation of dried, cured, or processed fruits, vegetables, nuts, and legumes.**

(a) Dried, cured, or processed fruits and vegetables (except frozen fruits and vegetables), including cured figs and dates, raisins, nuts, and dried beans and peas, may be imported without permit, phytosanitary certificate, or other compliance with this subpart, except as

specifically provided otherwise in this section or elsewhere in this part.

(b) *Acorns and chestnuts.* (1) *From countries other than Canada and Mexico; treatment required.* Acorns and chestnuts intended for purposes other than propagation, except those grown in and shipped from Canada and Mexico, must be imported into the United States under permit, and subject to all the requirements of § 319.56-3, and must be treated with an approved treatment listed in part 305 of this chapter.<sup>2</sup>

(2) *From Canada and Mexico.* Acorns and chestnuts grown in and shipped from Canada and Mexico for purposes other than propagation may be imported in accordance with paragraph (a) of this section.

(3) *For propagation.* Acorns and chestnuts from any country may be imported for propagation only in accordance with the applicable requirements in §§ 319.37 through 319.37-14 of this part.

(c) *Macadamia nuts.* Macadamia nuts in the husk or shell are prohibited importation into the United States unless the macadamia nuts were produced in, and imported from, St. Eustatius.

**§ 319.56-12 Importation of frozen fruits and vegetables.**

Frozen fruits and vegetables may be imported into the United States in accordance with § 319.56-3. Such fruits and vegetables must be held at a temperature not higher than 20 °F during shipping and upon arrival in the United States, and in accordance with the requirements for importing frozen fruits and vegetables in part 305 of this chapter. Paragraph (b) of § 305.17 lists frozen fruits and vegetables for which quick freezing is not an authorized treatment.

**§ 319.56-13 Fruits and vegetables allowed importation subject to specified conditions.**

(a) The following fruits and vegetables may be imported in accordance with § 319.56-3 and any additional requirements specified in paragraph (b) of this section.

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
Algeria .....	Pineapple .....	<i>Ananas comosus</i> .....	Fruit .....	(b)(2)(vi).
Angola .....	Pineapple .....	<i>Ananas comosus</i> .....	Fruit .....	(b)(2)(vi).
Antigua and Barbuda	Pineapple .....	<i>Ananas comosus</i> .....	Fruit .....	(b)(2)(vi).
Argentina .....	Pineapple .....	<i>Ananas comosus</i> .....	Fruit .....	(b)(2)(vi).
Australia (Tasmania only).	Pineapple .....	<i>Ananas comosus</i> .....	Fruit .....	(b)(2)(vi).
Austria .....	Asparagus, white .....	<i>Asparagus officinalis</i> .....	Shoot .....	(b)(4)(iii).
Bahamas .....	Pineapple .....	<i>Ananas comosus</i> .....	Fruit .....	(b)(2)(vi).

<sup>2</sup> Acorns and chestnuts imported into Guam are subject to the requirements of § 319.56-7(b).

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements	
Barbados	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Belgium	Apricot	<i>Prunus armeniaca</i>	Fruit	(b)(5)(xi).	
	Fig	<i>Ficus carica</i>	Fruit	(b)(5)(xi).	
	Nectarine	<i>Prunus persica</i> var. <i>nucipersica</i>	Fruit	(b)(5)(xi).	
	Peach	<i>Prunus persica</i>	Fruit	(b)(5)(xi).	
	Plum	<i>Prunus domestica</i>	Fruit	(b)(5)(xi).	
Belize	Papaya	<i>Carica papaya</i>	Fruit	(b)(1)(i), (b)(2)(iii).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(ii).	
Benin	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Bolivia	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Brazil	Cantaloupe	<i>Cucumis melo</i> var. <i>cantaloupensis</i>	Fruit	(b)(1)(v), (b)(3).	
	Cassava	<i>Manihot esculenta</i>	Fruit	(b)(2)(vii).	
	Honeydew melon	<i>Cucumis melo</i>	Fruit	(b)(1)(v), (b)(3).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Watermelon	<i>Citrullus lanatus</i> var. <i>lanatus</i>	Fruit	(b)(1)(v), (b)(3).	
Burkina Faso	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Cameroon	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Cayman Islands	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Chile	African horned cucumber.	<i>Cucumis metuliferus</i>	Fruit	(b)(2)(i).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
China	Litchi	<i>Litchi chinensis</i>	Fruit	(b)(2)(v).	
Columbia	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Yellow pitaya	<i>Selinicereus megalanthus</i>	Fruit	(b)(5)(xiii).	
Congo, Democratic Republic of.	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Cook Islands	Ginger	<i>Zingiber officinalis</i>	Root	(b)(2)(ii).	
	Banana	<i>Musa</i> spp.	Fruit	(b)(4)(i).	
Costa Rica	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi), (b)(5)(vi).	
	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(ii).	
Cote d'Ivoire	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Dominica	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Dominican Republic	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).	
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(iii), (b)(2)(vi).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(iii), (b)(2)(vi).	
Ecuador	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(iii), (b)(2)(vi).	
Egypt	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
El Salvador	Fennel	<i>Foeniculum vulgare</i>	Leaf and stem	(b)(2)(i).	
	German chamomile	<i>Matricaria recutita</i> and <i>Matricaria chamomilla</i>	Flower and leaf	(b)(2)(i).	
	Oregano or sweet marjoram.	<i>Origanum</i> spp.	Leaf and stem	(b)(2)(i).	
	Parsley	<i>Petroselinum crispum</i>	Leaf and stem	(b)(2)(i).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(ii).	
	Rosemary	<i>Rosmarinus officinalis</i>	Leaf and stem	(b)(2)(i).	
	Waterlily or lotus	<i>Nelumbo nucifera</i>	Roots without soil	(b)(2)(i).	
	Yam-bean or jicama	<i>Pachyrhizus</i> spp.	Roots without soil	(b)(2)(i).	
	Fiji	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi), (b)(5)(vi).
	France	Bean	<i>Glycine max</i> (Soybean); <i>Phaseolus coccineus</i> , (Scarlet or french runner bean); <i>Phaseolus lunatus</i> (lima bean); <i>Phaseolus vulgaris</i> (green bean, kidney bean, navy bean, pinto bean, red bean, string bean, white bean); <i>Vicia faba</i> (faba bean, broadbean, haba, habichuela, horsebean, silkworm bean, windsor bean); <i>Vigna radiata</i> (mung bean); <i>Vigna unguiculata</i> (includes: ssp. <i>cylindrica</i> , ssp. <i>dekintiana</i> , ssp. <i>sesquipedalis</i> (yard-long bean, asparagus bean, long bean), ssp. <i>unguiculata</i> (southern pea, black-eyed bean, black-eyed pea, cowpea, crowder pea)).	Fruit	(b)(5)(x).
		Tomato	<i>Lycopersicon esculentum</i>	Fruit, stem, and leaf	(b)(4)(ii).
	French Guiana	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
French Polynesia, including Tahiti.	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi), (b)(5)(vi).	
Ghana	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Grenada	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
Guadeloupe	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Guatemala	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	Fennel	<i>Foeniculum vulgare</i>	Leaf and stem	(b)(2)(i).
	German chamomile	<i>Matricaria recutita</i> and <i>Matricaria chamomilla</i>	Flower and leaf	(b)(2)(i).
	Papaya	<i>Carica papaya</i>	Fruit	(b)(1)(i), (b)(2)(iii).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(ii).
	Rosemary	<i>Rosmarinus officinalis</i>	Leaf and stem	(b)(2)(i).
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3), (b)(4)(ii).
	Waterlily or lotus	<i>Nelumbo nucifera</i>	Roots without soil	(b)(2)(i).
	Yam-bean or jicama	<i>Pachyrhizus</i> spp.	Roots without soil	(b)(2)(i).
Guinea	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Guyana	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Haiti	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Honduras	Basil	<i>Ocimum basilicum</i>	Leaf and stem	(b)(2)(i), (b)(5)(iii).
	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	German chamomile	<i>Matricaria recutita</i> and <i>Matricaria chamomilla</i>	Flower and leaf	(b)(2)(i).
	Oregano or sweet marjoram.	<i>Origanum</i> spp.	Leaf and stem	(b)(2)(i).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(ii).
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3), (b)(4)(ii).
	Waterlily or lotus	<i>Nelumbo nucifera</i>	Roots without soil	(b)(2)(i).
	Yam-bean or jicama	<i>Pachyrhizus</i> spp.	Roots without soil	(b)(2)(i).
India	Litchi	<i>Litchi chinensis</i>	Fruit	(b)(2)(v).
Indonesia	Dasheen	<i>Colocasia</i> spp., <i>Alocasia</i> spp., and <i>Xanthosoma</i> spp.	Tuber	(b)(2)(iv).
Israel	Melon	<i>Cucumis melo</i> only	Fruit	(b)(5)(vii).
	Tomato (green)	<i>Lycopersicon esculentum</i>	Fruit	(b)(3), (b)(4)(ii) or (b)(3), (b)(5)(xiv).
	Tomato (red or pink)	<i>Lycopersicon esculentum</i>	Fruit	(b)(3), (b)(5)(viii) or (b)(3), (b)(5)(xiv).
Italy	Garlic	<i>Allium sativum</i>	Bulb	(b)(5)(v) <sup>1</sup> .
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3), (b)(4)(ii).
Jamaica	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(iii), (b)(2)(iv), (b)(3).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Japan	Bean (garden)	<i>Phaseolus vulgaris</i>	Fruit	(b)(2)(x), (b)(5)(xi).
	Cucumber	<i>Cucumis sativas</i>	Fruit	(b)(2)(x), (b)(5)(xii).
	Pepper	<i>Capsicum</i> spp.	Fruit	(b)(2)(x), (b)(5)(xi).
	Sand pear	<i>Pyrus pyrifolia</i> var. <i>culta</i>	Fruit	(b)(5)(ix).
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(2)(x), (b)(5)(xii).
Kenya	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Liberia	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Mali	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Martinique	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Mauritania	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Mexico	Coconut	<i>Cocos nucifera</i>	Fruit with milk and husk <sup>2</sup> .	(b)(5)(iv).
	Fig	<i>Ficus carica</i>	Fruit	(b)(1)(iii), (b)(2)(i).
	Pitaya	<i>Hylocereus</i> spp.	Fruit	(b)(1)(iv), (b)(2)(i).
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(ii).
Montserrat	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Morocco	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Morocco and Western Sahara.	Tomato	<i>Lycopersicon esculentum</i>	Fruit, stem, and leaf	(b)(4)(ii).
Netherlands	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	Peach	<i>Prunus persica</i>	Fruit	(b)(5)(xi).
Netherlands Antilles	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
New Zealand	Citrus	<i>Citrus</i> spp.	Fruit	(b)(3), (b)(5)(xvi).
	Passion fruit	<i>Passiflora</i> spp.	Fruit	(b)(2)(vi).
Nicaragua	Fennel	<i>Foeniculum vulgare</i>	Leaf and stem	(b)(2)(i).
	German chamomile	<i>Matricaria recutita</i> and <i>Matricaria chamomilla</i>	Flower and leaf	(b)(2)(i).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(ii).
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3), (b)(4)(ii).
	Waterlily or lotus	<i>Nelumbo nucifera</i>	Roots without soil	(b)(2)(i).

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
Niger	Yam-bean or jicama	<i>Pachyrhizus</i> spp.	Roots without soil	(b)(2)(i).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Nigeria	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Panama	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(ii).
Paraguay	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3), (b)(4)(ii).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Peru	Honeydew melon	<i>Cucumis melo</i>	Fruit	(b)(1)(v), (b)(2)(i), (b)(3).
Philippines	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(5)(vi).
Portugal (including Azores)	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Portugal (Azores only)	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3), (b)(4)(ii).
Republic of Korea	Dasheen	<i>Colocasia</i> spp., <i>Alocasia</i> spp., and <i>Xanthosoma</i> spp.	Root	(b)(2)(iv).
St. Kitts and Nevis	Sand pear	<i>Pyrus pyrifolia</i> var. <i>culta</i>	Fruit	(b)(5)(ix).
	Strawberry	<i>Fragaria</i> spp.	Fruit	(b)(5)(i).
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).
St. Lucia	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).
St. Martin	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).
St. Vincent	Barbados cherry	<i>Malpighia glabra</i>	Fruit	(b)(2)(vi).
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).
Senegal	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Sierra Leone	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
South Africa	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(xii).
Spain	Garlic	<i>Allium sativum</i>	Bulb	(b)(5)(v) <sup>1</sup> .
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(4)(ii).
Sri Lanka	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi), (b)(5)(vi).
Taiwan	Brassica	<i>Brassica oleracea</i>	Above ground parts	(b)(2)(viii).
	Carambola	<i>Averrhoa carambola</i>	Fruit	(b)(2)(ix), (b)(5)(xv).
Thailand	Litchi	<i>Litchi chinensis</i>	Fruit	(b)(2)(v).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(xi), (b)(5)(vi).
	Litchi	<i>Litchi chinensis</i>	Fruit	(b)(2)(v).
Togo	Longan	<i>Dimocarpus longan</i>	Fruit	(b)(2)(v).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Trinidad and Tobago	Cassava	<i>Manihot esculenta</i>	Fruit	(b)(2)(vi).
	Cucurbit	Cucurbitaceae	Above ground parts	(b)(2)(iii), (b)(3).
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Tunisia	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Turkey	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Uruguay	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Venezuela	Cantaloupe	<i>Cucumis melo</i> var. <i>cantaloupensis</i>	Fruit	(b)(1)(v), (b)(3).
	Honeydew melon	<i>Cucumis melo</i>	Fruit	(b)(1)(v), (b)(3).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Watermelon	<i>Citrullus lanatus</i> var. <i>lanatus</i>	Fruit	(b)(1)(v), (b)(3).

<sup>1</sup>Also eligible for importation if treated with an approved treatment listed in part 305 of this chapter.

<sup>2</sup>Fruit without husk may be imported subject to the requirements of § 319.56–5.

(b) Additional restrictions for applicable fruits and vegetables as specified in paragraph (a) of this section.

(1) *Pest-free areas.*

(i) The commodity must be from an area that meets the requirements of § 319.56–5 for freedom from the Mediterranean fruit fly (Medfly), and must meet applicable requirements of § 319.56–5.

(ii) The commodity must be from an area that meets the requirements of § 319.56–5 for freedom from the

Mediterranean fruit fly (Medfly), and must meet applicable requirements of § 319.56–5. Fruit from outside Medfly-free areas must be treated in accordance with an approved treatment listed in part 305 of this chapter.

(iii) The commodity must be from an area that meets the requirements of § 319.56–5 for freedom from fruit flies, and must meet applicable requirements of § 319.56–5.

(iv) The commodity must be from an area that meets the requirements of § 319.56–5 for freedom from fruit flies,

and must meet applicable requirements of § 319.56–5. The phytosanitary certificate must also include an additional declaration stating: “Upon inspection, these articles were found free of *Dysmicoccus neobrevipes* and *Planococcus minor*.”

(v) The commodity must be from an area that meets the requirements of § 319.56–5 for freedom from the South American cucurbit fly, and must meet applicable requirements of § 319.56–5.

(2) *Restricted importation and distribution.*



(i) Prohibited entry into Puerto Rico, U.S. Virgin Islands, Hawaii, and Guam. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within PR, VI, HI, or Guam."

(ii) Prohibited entry into Puerto Rico, U.S. Virgin Islands, and Guam. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within PR, VI, or Guam."

(iii) Prohibited entry into Hawaii. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within HI."

(iv) Prohibited entry into Guam. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within Guam."

(v) Prohibited entry into Florida. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within FL."

(vi) Prohibited entry into Hawaii.

(vii) Prohibited entry into Puerto Rico, U.S. Virgin Islands, and Hawaii.

(viii) Prohibited entry into Alaska.

(ix) Prohibited entry into Florida.

(x) Allowed importation into Hawaii only.

(xi) Allowed importation into Guam and Commonwealth of the Northern Mariana Islands only.

(xii) Prohibited entry into Puerto Rico, Virgin Islands, Northern Mariana Islands, Hawaii, and Guam. Cartons in which commodity is packed must be stamped "For distribution in the continental United States only."

(3) Commercial consignments only.

(4) *Stage of development.*

(i) The bananas must be green at the time of export. Inspectors at the port of arrival will determine that the bananas were green at the time of export if:

(A) Bananas shipped by air are still green upon arrival in the United States; and

(B) Bananas shipped by sea are either still green upon arrival in the United States or yellow but firm.

(ii) The tomatoes must be green upon arrival in the United States. Pink or red fruit may only be imported in accordance with other provisions of § 319.56–13 or § 319.56–28 of this subpart.

(iii) No green may be visible on the shoot.

(5) *Other conditions.*

(i) Entry permitted only from September 15 to May 31, inclusive, to prevent the introduction of a complex of exotic pests including, but not limited to a thrips (*Haplothrips chinensis*) and a leafroller (*Capua tortrix*).

(ii) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of

the country of origin with an additional declaration stating that the fruit is free from *Coccus moestus*, *C. viridis*, *Dysmicoccus neobrevipes*, *Planococcus lilacinus*, *P. minor*, and *Pseudococcus landoi*; and all damaged fruit was removed from the consignment prior to export under the supervision of the national plant protection organization.

(iii) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin with an additional declaration stating that the fruit is free from *Planococcus minor*.

(iv) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin with an additional declaration stating that the fruit is of the Malayan dwarf variety or Maypan variety (=F<sub>1</sub> hybrid, Malayan Dwarf × Panama Tall) (which are resistant to lethal yellowing disease) based on verification of the parent stock.

(v) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin with an additional declaration stating that the commodity is free of living stages of *Brachycerus* spp. and *Dyspessa ulula* (Bkh.), based on field inspection and certification and reexamination at the port of departure prior to exportation.

(vi) Only the Tahiti Queen cultivar and varieties which are at least 50 percent smooth Cayenne by lineage are admissible. The importer or the importer's agent must provide the inspector with documentation that establishes the variety's lineage. This document is necessary only with the first importation.

(vii) Prohibited from the Palestinian controlled portions of the West Bank and Gaza Strip; otherwise, must be accompanied by a phytosanitary certificate which declares that the melons were grown in approved areas in the Arava Valley or the Kadash-Barnea area of Israel, the fields where the melons were grown were inspected prior to harvest, and the melons were inspected prior to export and found free of pests.

(viii) Prohibited from the Palestinian controlled portions of the West Bank and Gaza Strip; otherwise must be accompanied by a phytosanitary certificate which declares that only tomato varieties 111, 121, 124, 139, and 144 are included in the consignment and the tomatoes were packed into fruit-fly-proof containers within 24 hours after harvesting.

(ix) Only precleared consignments are authorized. The consignment must be accompanied by a PPQ Form 203 signed

by the APHIS inspector on site in the exporting country.

(x) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country that includes a declaration certifying that the products were grown and packed in the exporting country.

(xi) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country that includes a declaration certifying that the products were grown in a greenhouse in the exporting country.

(xii) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country that includes a declaration certifying that the products were grown in a greenhouse in the exporting country on Honshu Island or north thereof.

(xiii) Only precleared consignments that have been treated with an approved treatment listed in 7 CFR part 305 are authorized. The consignment must be accompanied by a PPQ Form 203 signed by the APHIS inspector on site in the exporting country.

(xiv) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Israel that declares "These tomatoes were grown in registered greenhouses in the Arava Valley of Israel."

(xv) Must be treated with an approved treatment listed in 7 CFR part 305.

(xvi) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin and with an additional declaration stating that the fruit is free from *Cnephasia jactatana*, *Coscinoptycha improbana*, *Ctenopseustis obliquana*, *Epiphyas postvittana*, *Pezothrips kellyanus*, and *Planotortrix excessana*; must undergo a port of entry inspection with a biometric sampling of 100 percent of 30 boxes selected randomly from each consignment; and the randomly selected boxes must be examined for hitchhiking pests.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0236, 0579–0264, and 0579–0316)

**§§ 319.56–14 through 319.56–19**  
**[Reserved]**

**§ 319.56–20 Apples and pears from Australia (including Tasmania) and New Zealand.**

Apples and pears from Australia (including Tasmania) and New Zealand may be imported only in accordance with this section and all other applicable provisions of this subpart.

(a) *Inspection and treatment for pests of the family Tortricidae.* An inspector must take a biometrically designed sample from each lot of apples or pears that are offered for entry into the United States. If inspection of the sample discloses that pests of the family Tortricidae (fruit-leaf roller moths) are not present in the lot sampled, the fruit may be imported without treatment. If any such pests are found upon inspection, the lot must be treated with methyl bromide as prescribed in part 305 of this chapter.

(b) *Treatment of apples and pears from Australia for fruit flies.* (1) Apples from Australia (including Tasmania) may be imported without treatment for the following fruit flies if they are imported from an area in Australia that meets the requirements of § 319.56–5 for pest freedom: Mediterranean fruit fly (*Ceratitidis capitata*), the Queensland fruit fly (*Bactrocera tryoni*), *Bactrocera aquilonis*, and *B. neohumeralis*.

(2) Pears from Australia (including Tasmania) may be imported without treatment for the following fruit flies if they are imported from an area in Australia that meets the requirements of § 319.56–5 for pest freedom: Mediterranean fruit fly (*Ceratitidis capitata*), the Queensland fruit fly (*Dacus tryoni*), *Bactrocera jarvisi*, and *B. neohumeralis*.

(3) Apples and pears from Australia that do not originate from an area that is free of fruit flies must be treated for such pests in accordance with part 305 of this chapter. If an authorized treatment does not exist for a specific fruit fly, the importation of such apples and pears is prohibited.

**§ 319.56–21 Okra from certain countries.**

Okra from Brazil, Colombia, Ecuador, Guyana, Mexico, Peru, Suriname, Venezuela, and the West Indies may be imported into the United States in accordance with this section and all other applicable provisions of this subpart.

(a) *Importations into pink bollworm generally infested or suppressive areas in the United States.* Okra may be imported into areas defined in § 301.52–2a as pink bollworm generally infested or suppressive areas, provided the okra is imported in accordance with the requirements of § 319.56–3. Upon entry into the United States, such okra is immediately subject to the requirements of Subpart—Pink Bollworm (§§ 301.52 through 301.52–10) of this chapter.

(b) *Importations into areas south of the 38th parallel that are not pink bollworm generally infested or suppressive areas.*

(1) During December 1 through May 15, inclusive, okra may be imported into areas of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of the 38th parallel subject to the requirements of § 319.56–3.

(2) During May 16 through November 30, inclusive, okra may be imported into areas of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of the 38th parallel if treated for the pink bollworm in accordance with an approved treatment listed in part 305 of this chapter.

(c) *Importations into areas north of the 38th parallel.* Okra may be imported into Alaska, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the District of Columbia, or the U.S. Virgin Islands, or any part of Illinois, Kentucky, Missouri, or Virginia, north of the 38th parallel, subject to the requirements of § 319.56–3.

(d) *Importations into areas of California that are not pink bollworm generally infested or suppressive areas.*

(1) During January 1 through March 15, inclusive, okra may be imported into California subject to the requirements of § 319.56–3.

(2) During March 16 through December 31, inclusive, okra may be imported into California if it is treated for the pink bollworm in accordance with an approved treatment listed in part 305 of this chapter.

(e) *Imports from Andros Island of the Bahamas.* Okra produced on Andros Island, Commonwealth of the Bahamas, may be imported into the United States in accordance with § 319.56–3.

**§ 319.56–22 Apples and pears from certain countries in Europe.**

(a) *Importations allowed.* The following fruits may be imported into the United States in accordance with this section and all other applicable provisions of this subpart:

(1) Apples from Belgium, Denmark, France, Germany, Great Britain, Italy, the Netherlands, Northern Ireland, Norway, Portugal, the Republic of Ireland, Spain, Sweden, and Switzerland;

(2) Pears from Belgium, France, Great Britain, Italy, the Netherlands, Portugal, and Spain.

(b) *Trust fund agreement.* Except as provided in paragraph (h) of this section, the apples or pears may be imported only if the national plant protection organization (NPPO) of the exporting country has entered into a trust fund agreement with APHIS in accordance with § 319.56–6.

(c) *Responsibilities of the exporting country.* The apples or pears may be imported in any single shipping season only if all of the following conditions are met:

(1) Officials of the NPPO must survey each orchard producing apples or pears for shipment to the United States at least twice between spring blossoming and harvest. If the officials find any leaf miners that suggest the presence of *Leucoptera malifoliella* in an orchard, the officials must reject any fruit harvested from that orchard during that growing season for shipment to the United States. If the officials find evidence in an orchard of any other plant pest referred to in paragraph (g) of this section, they must ensure that the orchard and all other orchards within 1 kilometer of that orchard will be treated for that pest with a pesticide approved by the APHIS, in accordance with label directions and under the direction of the plant protection organization. If the officials determine that the treatment program has not been applied as required or is not controlling the plant pest in the orchard, they must reject any fruit harvested from that orchard during that growing season for shipment to the United States.

(2) The apples or pears must be identified to the orchard from which they are harvested (the producing orchard) until the fruit arrives in the United States.

(3) The apples or pears must be processed and inspected in approved packing sheds as follows:

(i) Upon arrival at the packing shed, the apples or pears must be inspected for insect pests as follows: For each grower lot (all fruit delivered for processing from a single orchard at a given time), packing shed technicians must examine all fruit in one carton on every third pallet (there are approximately 42 cartons to a pallet), or at least 80 apples or pears in every third bin (if the fruit is not in cartons on pallets). If they find any live larva or pupa of *Leucoptera malifoliella*, they must reject the entire grower lot for shipment to the United States, and the NPPO must reject for shipment any additional fruit from the producing

orchard for the remainder of the shipping season.

(ii) The apples or pears must be sorted, sized, packed, and otherwise handled in the packing sheds on grading and packing lines used solely for fruit intended for shipment to the United States, or, if on grading and packing lines used previously for other fruit, only after the lines have been washed with water.

(iii) During packing operations, apples and pears must be inspected for insect pests as follows: All fruit in each grower lot must be inspected at each of two inspection stations on the packing line by packing shed technicians. In addition, one carton from every pallet in each grower lot must be inspected by officials of the plant protection service. If the inspections reveal any live larva or pupa of *Leucoptera malifoliella*, the entire grower lot must be rejected for shipment to the United States, and the plant protection service must reject for shipment any additional fruit from the producing orchard for the remainder of that shipping season. If the inspections reveal any other insect pest referred to in paragraph (g) of this section, and a treatment authorized in part 305 of this chapter is available, the fruit will remain eligible for shipment to the United States if the entire grower lot is treated for the pest under the supervision of an inspector. However, if the entire grower lot is not treated in this manner, or if a plant pest is found for which no treatment authorized in part 305 of this chapter is available, the entire grower lot will be rejected for shipment to the United States.

(4) Apples or pears that pass inspection at approved packing sheds must be presented to an inspector for preclearance inspection as prescribed in paragraph (d) of this section or for inspection in the United States as prescribed in paragraph (h) of this section.

(5) Apples and pears presented for preclearance inspection must be identified with the packing shed where they were processed, as well as with the producing orchard, and this identity must be maintained until the apples or pears arrive in the United States.

(6) Facilities for the preclearance inspections prescribed in paragraph (d) of this section must be provided in the exporting country at a site acceptable to APHIS.

(7) Any apples or pears rejected for shipment into the United States may not, under any circumstance, be presented again for shipment to the United States.

(d) *Preclearance inspection.* Preclearance inspection will be

conducted in the exporting country by an inspector. Preclearance inspection will be conducted for a minimum of 6,000 cartons of apples or pears, which may represent multiple grower lots from different packing sheds. The cartons examined during any given preclearance inspection will be known as an inspection unit. Apples or pears in any inspection unit may be shipped to the United States only if the inspection unit passes inspection as follows:

(1) Inspectors will examine, fruit by fruit, a biometrically designed statistical sample of 300 cartons drawn from each inspection unit.

(i) If inspectors find any live larva or pupa of *Leucoptera malifoliella*, they will reject the entire inspection unit for shipment to the United States. The inspectors also will reject for shipment any additional fruit from the producing orchard for the remainder of the shipping season. However, other orchards represented in the rejected inspection unit will not be affected for the remainder of the shipping season because of that rejection. Additionally, if inspectors reject any three inspection units in a single shipping season because of *Leucoptera malifoliella* on fruit processed by a single packing shed, no additional fruit from that packing shed will be accepted for shipment to the United States for the remainder of that shipping season.

(ii) If the inspectors find evidence of any other plant pest referred to in paragraph (g) of this section, and a treatment authorized in part 305 of this chapter is available, fruit in the inspection unit will remain eligible for shipment to the United States if the entire inspection unit is treated for the pest under the supervision of an inspector. However, if the entire inspection unit is not treated in this manner, or if a plant pest is found for which no treatment authorized in part 305 of this chapter is available, the inspectors will reject the entire inspection unit for shipment to the United States. Rejection of an inspection unit because of pests other than *Leucoptera malifoliella* will not be cause for rejecting additional fruit from an orchard or packing shed.

(iii) Apples and pears precleared for shipment to the United States as prescribed in this paragraph will not be inspected again in the United States (except as necessary to ensure that the fruit has been precleared) unless the preclearance program with the exporting country is terminated in accordance with paragraph (e) of this section. If the preclearance program is terminated with any country, precleared fruit in transit to the United States at the

time of termination will be spot-checked by inspectors upon arrival in the United States for evidence of plant pests referred to in paragraph (g) of this section. If any live larva or pupa of *Leucoptera malifoliella* is found in any carton of fruit, inspectors will reject that carton and all other cartons in that consignment that are from the same producing orchard. In addition, the remaining cartons of fruit in that consignment will be reinspected as an inspection unit in accordance with the preclearance procedures prescribed in paragraph (d) of this section.

(2) [Reserved]

(e) *Termination of preclearance programs.* The Administrator may terminate the preclearance program in a country if he or she determines that any of the conditions specified in paragraph (c) of this section are not met or because of pests found during preclearance inspections. Termination of the preclearance program will stop consignments of apples or pears from that country for the remainder of that shipping season. Termination of the preclearance program for findings of *Leucoptera malifoliella* in preclearance inspections in any country will be based on rates of rejection of inspection units as follows:

(1) Termination because of findings of *Leucoptera malifoliella*. The preclearance program will be terminated with a country when, in one shipping season, inspection units are rejected because of *Leucoptera malifoliella* as follows:

(i) Five inspection units in sequence among inspection units 1–20, or a total of 8 or more of the inspection units 1–20;

(ii) Five inspection units in sequence among inspection units 21–40, or a total of 10 or more of the inspection units 1–40;

(iii) Five inspection units in sequence among inspection units 41–60, or a total of 12 or more of the inspection units 1–60;

(iv) Five inspection units in sequence among inspection units 61–80, or a total of 14 or more of the inspection units 1–80;

(v) Five inspection units in sequence among inspection units 81–100, or a total of 16 or more of the inspection units 1–100;

(vi) Five inspection units in sequence among inspection units 101–120, or a total of 18 or more of the inspection units 1–120.

(vii) Sequence can be continued in increments of 20 inspection units by increasing the number of rejected inspection units by 2.

(2) Termination because of findings of other plant pests. The preclearance program will be terminated with a country when, in one shipping season, inspection units are rejected because of other insect pests as follows:

(i) Ten or more of the inspection units 1–20;

(ii) Fifteen or more of the inspection units 1–40;

(iii) Twenty or more of the inspection units 1–60;

(iv) Twenty-five or more of the inspection units 1–80;

(v) Thirty or more of the inspection units 1–100; or

(vi) Thirty-five or more of the inspection units 1–120.

(vii) Sequence can be continued in increments of 20 inspection units by increasing the number of rejected inspection units by 5.

(f) *Cold treatment.* In addition to all other requirements of this section, apples or pears may be imported into the United States from France, Italy, Portugal, or Spain only if the fruit is cold treated for the Mediterranean fruit fly in accordance with part 305 of this chapter.

(g) *Plant pests; authorized treatments.*

(1) Apples from Belgium, Denmark, France, Great Britain, Italy, the Netherlands, Northern Ireland, Norway, Portugal, the Republic of Ireland, Spain, Sweden, Switzerland, and Germany; and pears from Belgium, France, Great Britain, Italy, the Netherlands, Portugal, and Spain may be imported into the United States only if they are found free of the following pests or, if an authorized treatment is available, they are treated for: The pear leaf blister moth (*Leucoptera malifoliella* (O.G. Costa) (Lyonetiidae)), the plum fruit moth (*Cydia funebrana* (Treitschke) (Tortricidae)), the summer fruit tortrix moth (*Adoxophyes orana* (Fischer von Rosslerstamm) (Tortricidae)), a leaf roller (*Argyrotaenia pulchellana* (Haworth) (Tortricidae)), and other insect pests that do not exist in the United States or that are not widespread in the United States.

(2) Authorized treatments are listed in part 305 of this chapter.

(h) *Inspection in the United States.* Notwithstanding provisions to the contrary in paragraphs (c) and (d) of this section, the Administrator may allow apples or pears imported under this section to be inspected at a port of arrival in the United States, in lieu of a preclearance inspection, under the following conditions:

(1) The Administrator has determined that inspection can be accomplished at the port of arrival without increasing the

risk of introducing insect pests into the United States;

(2) Each pallet of apples or pears must be completely enclosed in plastic, to prevent the escape of insects, before it is offloaded at the port of arrival;

(3) The entire consignment of apples or pears must be offloaded and moved to an enclosed warehouse, where adequate inspection facilities are available, under the supervision of an inspector.

(4) The Administrator must determine that a sufficient number of inspectors are available at the port of arrival to perform the services required.

(5) The method of inspection will be the same as prescribed in paragraph (d) of this section for preclearance inspections.

**§ 319.56–23 Apricots, nectarines, peaches, plumcot, and plums from Chile.**

(a) *Importations allowed.* Apricots, nectarines, peaches, plumcot, and plums may be imported into the United States from Chile in accordance with this section and all other applicable provisions of this subpart.<sup>3</sup>

(b) *Trust fund agreement.* Apricots, nectarines, peaches, plumcot, and plums may be imported under the regulations in this section only if the national plant protection organization of Chile (Servicio Agrícola y Ganadero, referred to in this section as SAG) or a private export group has entered into a trust fund agreement with APHIS in accordance with § 319.56–6.

(c) *Responsibilities of Servicio Agrícola y Ganadero.* SAG will ensure that:

(1) Apricots, nectarines, peaches, plumcot, or plums are presented to inspectors for preclearance in their shipping containers at the shipping site as prescribed in paragraph (d) of this section.

(2) Apricots, nectarines, peaches, plumcot, and plums presented for inspection are identified in shipping documents accompanying each load of fruit that identify the packing shed where they were processed and the orchards where they were produced; and this identity is maintained until the apricots, nectarines, peaches, plumcot, or plums are released for entry into the United States.

(3) Facilities for the inspections prescribed in paragraph (d) of this section are provided in Chile at an inspection site acceptable to APHIS.

<sup>3</sup> As provided in § 319.56–4, apricots, nectarines, peaches, plumcot, and plums from Chile may also be imported if treated in accordance with a treatment listed in part 305 of this chapter and subject to other applicable regulations in this subpart.

(d) *Preclearance inspection.*

Preclearance inspection will be conducted in Chile under the direction of inspectors. An inspection unit will consist of a lot or consignment from which a statistical sample is drawn and examined. An inspection unit may represent multiple grower lots from different packing sheds. Apricots, nectarines, peaches, plumcot, or plums in any inspection unit may be shipped to the United States only if the inspection unit passes inspection as follows:

(1) Inspectors will examine the contents of the cartons based on a biometric sampling scheme established for each inspection unit.

(i) If the inspectors find evidence of any plant pest for which a treatment authorized in part 305 of this chapter is available, fruit in the inspection unit will remain eligible for shipment to the United States if the entire inspection unit is treated for the pest in Chile. However, if the entire inspection unit is not treated in this manner, or if a plant pest is found for which no treatment authorized in part 305 of this chapter is available, the entire inspection unit will not be eligible for shipment to the United States.

(ii) Apricots, nectarines, peaches, plumcot, and plums precleared for shipment to the United States as prescribed in this paragraph will not be inspected again in the United States except as necessary to ensure that the fruit has been precleared and for occasional monitoring purposes.

(2) [Reserved]

(e) *Termination of preclearance programs.* Consignments of apricots, nectarines, peaches, plumcot, and plums will be individually evaluated regarding the rates of infestation of inspection units of these articles presented for preclearance. The inspection program for an article will be terminated when inspections establish that the rate of infestation of inspection units of the article by pests listed in paragraph (f) of this section exceeds 20 percent calculated on any consecutive 14 days of actual inspections (not counting days on which inspections are not conducted). Termination of the inspection program for an article will require mandatory treatment in Chile, prior to shipment to the United States, of consignments of the article for the remainder of that shipping season. If a preclearance inspection program is terminated with Chile, precleared fruit in transit to the United States at the time of termination will be spot-checked by inspectors upon arrival in the United States for evidence of plant pests

referred to in paragraph (f) of this section.

(f) *Plant pests; authorized treatments.* (1) Apricots, nectarines, peaches, plumcot, or plums from Chile may be imported into the United States only if they are found free of the following pests or, if an authorized treatment is available, they are treated for: *Proeulia* spp., *Leptoglossus chilensis*, *Megalometis chilensis*, *Naupactus xanthographus*, *Listroderes subcinctus*, and *Conoderus rufangulus*, and other insect pests that the Administrator has determined do not exist, or are not widespread, in the United States.

(2) Authorized treatments are listed in part 305 of this chapter.

(g) *Inspection in the United States.* Notwithstanding provisions to the contrary in paragraphs (c) and (d) of this section, the Administrator may, in emergency or extraordinary situations, allow apricots, nectarines, peaches, plumcot, or plums imported under this section to be inspected at a port of arrival in the United States, in lieu of a preclearance inspection or fumigation in Chile, under the following conditions:

(1) The Administrator is satisfied that a unique situation exists which justifies a limited exception to mandatory preclearance;

(2) The Administrator has determined that inspection and/or treatment can be accomplished at the intended port of arrival without increasing the risk of introducing quarantine pests into the United States;

(3) The entire consignment of apricots, nectarines, peaches, plumcot, or plums must be offloaded and moved to an enclosed warehouse, where inspection and treatment facilities are available.

(4) The Administrator must determine that a sufficient number of inspectors are available at the port of arrival to perform the services required.

(5) The method of sampling and inspection will be the same as prescribed in paragraph (d) of this section for preclearance inspections.

#### § 319.56–24 Lettuce and peppers from Israel.

(a) Lettuce may be imported into the United States from Israel without fumigation for leafminers, thrips, and *Sminthuris viridis* only in accordance with this section and all other applicable provisions of this subpart.

(1) *Growing conditions.* (i) The lettuce must be grown in insect-proof houses covered with 50 mesh screens, double self-closing doors, and hard walks (no soil) between the beds;

(ii) The lettuce must be grown in growing media that has been sterilized by steam or chemical means;

(iii) The lettuce must be inspected during its active growth phase and the inspection must be monitored by a representative of the Israeli national plant protection organization;

(iv) The crop must be protected with sticky traps and prophylactic sprays approved for the crop by Israel;

(v) The lettuce must be moved to an insect-proof packinghouse at night in plastic containers covered by 50 mesh screens;

(vi) The lettuce must be packed in an insect-proof packinghouse, individually packed in transparent plastic bags, packed in cartons, placed on pallets, and then covered with shrink wrapping; and

(vii) The lettuce must be transported to the airport in a closed refrigerated truck for shipment to the United States.

(2) Each consignment of lettuce must be accompanied by a phytosanitary certificate issued by the Israeli national plant protection organization stating that the conditions of paragraph (a)(1) of this section have been met.

(b) Peppers (fruit) (*Capsicum* spp.) from Israel may be imported into the United States only under the following conditions:

(1) The peppers have been grown in the Arava Valley by growers registered with the Israeli Department of Plant Protection and Inspection (DPPI).

(2) Malathion bait sprays shall be applied in the residential areas of the Arava Valley at 6–to 10–day intervals beginning not less than 30 days before the harvest of backyard host material in residential areas and shall continue through harvest.

(3) The peppers have been grown in insect-proof plastic screenhouses approved by the DPPI and APHIS. Houses shall be examined periodically by DPPI or APHIS personnel for tears in either plastic or screening.

(4) Trapping for Mediterranean fruit fly (Medfly) shall be conducted by DPPI throughout the year in the agricultural region along Arava Highway 90 and in the residential area of Paran. The capture of a single Medfly in a screenhouse will immediately cancel export from that house until the source of the infestation is delimited, trap density is increased, pesticide sprays are applied, or other measures acceptable to APHIS are taken to prevent further occurrences.

(5) Signs in English and Hebrew shall be posted along Arava Highway 90 stating that it is prohibited to throw out/discard fruits and vegetables from passing vehicles.

(6) Sorting and packing of peppers shall be done in the insect-proof screenhouses in the Arava Valley.

(7) Prior to movement from approved insect-proof screenhouses in the Arava Valley, the peppers must be packed in either individual insect-proof cartons or in non-insect-proof cartons that are covered by insect-proof mesh or plastic tarpaulins; covered non-insect-proof cartons must be placed in shipping containers.

(8) The packaging safeguards required by paragraph (b)(7) of this section must remain intact at all times during the movement of the peppers to the United States and must be intact upon arrival of the peppers in the United States.

(9) Each consignment of peppers must be accompanied by a phytosanitary certificate issued by the Israeli national plant protection organization stating that the conditions of paragraphs (b)(1) through (b)(7) of this section have been met.

(Approved by the Office of Management and Budget under control number 0579–0210)

#### § 319.56–25 Papayas from Central America and Brazil.

The Solo type of papaya may be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands only in accordance with this section and all other applicable provisions of this subpart.

(a) The papayas were grown and packed for shipment to the United States in one of the following locations:

(1) *Brazil:* State of Espirito Santo; all areas in the State of Bahia that are between the Jequitinhonha River and the border with the State of Espirito Santo and all areas in the State of Rio Grande del Norte that contain the following municipalities: Touros, Pureza, Rio do Fogo, Barra de Maxaranguape, Taipu, Ceara Mirim, Extremoz, Ielmon Marinho, Sao Goncalo do Amarante, Natal, Maciaba, Parnamirim, Veracruz, Sao Jose de Mipibu, Nizia Floresta, Monte Aletre, Areas, Senador Georgino Avelino, Espirito Santo, Goianinha, Tibau do Sul, Vila Flor, and Canguaretama e Baia Formosa.

(2) *Costa Rica:* Provinces of Guanacaste, Puntarenas, San Jose.

(3) *El Salvador:* Departments of La Libertad, La Paz, and San Vicente.

(4) *Guatemala:* Departments of Escuintla, Retalhuleu, Santa Rosa, and Suchitpequez.

(5) *Honduras:* Departments of Comayagua, Cortés, and Santa Bárbara.

(6) *Nicaragua:* Departments of Carazo, Granada, Leon, Managua, Masaya, and Rivas.

(7) *Panama*: Provinces of Cocle, Herrera, and Los Santos; Districts of Aleanje, David, and Dolega in the Province of Chiriqui; and all areas in the Province of Panama that are west of the Panama Canal.

(b) Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the field where the papayas were grown were kept free of papayas that were one-half or more ripe (more than one-fourth of the shell surface yellow), and all culled and fallen fruits were buried, destroyed, or removed from the farm at least twice a week.

(c) The papayas were held for 20 minutes in hot water at 48 °C (118.4 °F).

(d) When packed, the papayas were less than one-half ripe (the shell surface was no more than one-fourth yellow, surrounded by light green), and appeared to be free of all injurious insect pests.

(e) The papayas were safeguarded from exposure to fruit flies from harvest to export, including being packaged so as to prevent access by fruit flies and other injurious insect pests. The package containing the papayas does not contain any other fruit, including papayas not qualified for importation into the United States.

(f) All cartons in which papayas are packed must be stamped "Not for importation into or distribution in HI."

(g) All activities described in paragraphs (a) through (f) of this section were carried out under the supervision and direction of plant health officials of the national plant protection organization (NPPO).

(h) Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at a rate of 1 trap per hectare and were checked for fruit flies at least once weekly by plant health officials of the NPPO. Fifty percent of the traps were of the McPhail type and 50 percent of the traps were of the Jackson type. If the average Jackson trap catch was greater than seven Medflies per trap per week, measures were taken to control the Medfly population in the production area. The NPPO kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors upon request. The records were maintained for at least 1 year.

(i) If the average Jackson trap catch exceeds 14 Medflies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer Medflies per trap per week.

(j) In the State of Espirito Santo, Brazil, if the average McPhail trap catch was greater than seven South American fruit flies (*Anastrepha fraterculus*) per trap per week, measures were taken to control the South American fruit fly population in the production area. If the average McPhail trap catch exceeds 14 South American fruit flies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer South American fruit flies per trap per week.

(k) All consignments must be accompanied by a phytosanitary certificate issued by the national Ministry of Agriculture stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

(Approved by the Office of Management and Budget under control number 0579-0128)

**§ 319.56-26 Melon and watermelon from certain countries in South America.**

(a) *Cantaloupe and watermelon from Ecuador*. Cantaloupe (*Cucumis melo*) and watermelon (fruit) (*Citrullus lanatus*) may be imported into the United States from Ecuador only in accordance with this paragraph and all other applicable provisions of this subpart:

(1) The cantaloupe or watermelon may be imported in commercial consignments only.

(2) The cantaloupe or watermelon must have been grown in an area where trapping for the South American cucurbit fly (*Anastrepha grandis*) has been conducted for at least the previous 12 months by the national plant protection organization (NPPO) of Ecuador, under the direction of APHIS, with no findings of the pest.<sup>4</sup>

(3) The following area meets the requirements of paragraph (a)(2) of this section: The area within 5 kilometers of either side of the following roads:

(i) Beginning in Guayaquil, the road north through Nobol, Palestina, and Balzar to Velasco-Ibarra (Empalme);

(ii) Beginning in Guayaquil, the road south through E1 26, Puerto Inca, Naranjal, and Camilo Ponce to Enriquez;

(iii) Beginning in Guayaquil, the road east through Palestina to Vinces;

(iv) Beginning in Guayaquil, the road west through Piedrahita (Novol) to Pedro Carbo; or

(v) Beginning in Guayaquil, the road west through Progreso, Engunga, Tugaduaaja, and Zapotal to El Azucar.

<sup>4</sup> Information on the trapping program may be obtained by writing to the Animal and Plant Health Inspection Service, International Services, Stop 3432, 1400 Independence Avenue, SW., Washington, DC 20250-3432.

(4) The cantaloupe or watermelon may not be moved into Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands. The boxes in which the cantaloupe or watermelon is packed must be stamped with the name of the commodity followed by the words "Not to be distributed in the following States or territories: AL, AS, AZ, CA, FL, GA, GU, HI, LA, MS, NM, PR, SC, TX, VI".

(b) *Cantaloupe, netted melon, vegetable melon, winter melon, and watermelon from Peru*. Cantaloupe, netted melon, vegetable melon, and winter melon (*Cucumis melo* L. subsp. *melo*) and watermelon may be imported into the United States from Peru only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The fruit may be imported in commercial consignments only.

(2) The fruit must have been grown in an area of Peru considered by APHIS to be free of the South American cucurbit fly, must be accompanied by a phytosanitary certificate declaring its origin in such an area, and must be safeguarded and labeled, each in accordance with § 319.56-5 of this subpart.

(3) The phytosanitary certificate required under § 319.56-5 must also include a declaration by the NPPO of Peru indicating that, upon inspection, the fruit was found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*).

(4) All consignments of fruit must be labeled in accordance with § 319.56(5)(e) of this subpart, and the boxes in which the fruit is packed must be labeled "Not for distribution in HI, PR, VI, or Guam."

(Approved by the Office of Management and Budget under control number 0579-0236)

**§ 319.56-27 Fuji variety apples from Japan and the Republic of Korea.**

Fuji variety apples may be imported into the United States from Japan and the Republic of Korea only in accordance with this section and all other applicable provisions of this subpart.

(a) *Treatment and fumigation*. The apples must be cold treated and then fumigated, under the supervision of an APHIS inspector, either in Japan or the Republic of Korea, for the peach fruit moth (*Carposina niponensis*), the yellow peach moth (*Conogethes punctiferalis*), and the fruit tree spider mite (*Tetranychus viennensis*), in accordance with part 305 of this chapter.

(b) *APHIS inspection.* The apples must be inspected upon completion of the treatments required by paragraph (a) of this section, prior to export from Japan or the Republic of Korea, by an APHIS inspector and an inspector from the national plant protection agency of Japan or the Republic of Korea. The apples shall be subject to further disinfection in the exporting country if plant pests are found prior to export. Imported Fuji variety apples inspected in Japan or the Republic of Korea are also subject to inspection and disinfection at the port of first arrival, as provided in § 319.56–3.

(c) *Trust fund agreements.* The national plant protection agency of the exporting country must enter into a trust fund agreement with APHIS in accordance with § 319.56–6 before APHIS will provide the services necessary for Fuji variety apples to be imported into the United States from Japan or the Republic of Korea.

**§ 319.56–28 Tomatoes from certain countries.**

(a) *Tomatoes (fruit) (*Lycopersicon esculentum*) from Spain.* Pink or red tomatoes may be imported into the United States from Spain only in accordance with this section and all other applicable provisions of this subpart.<sup>5</sup>

(1) The tomatoes must be grown in the Almeria Province, the Murcia Province, or the municipalities of Albuñol and Carchuna in the Granada Province of Spain in greenhouses registered with, and inspected by, the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF);

(2) The tomatoes may be shipped only from December 1 through April 30, inclusive;

(3) Two months prior to shipping, and continuing through April 30, MAFF must set and maintain Mediterranean fruit fly (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all areas outside the greenhouses and within 8 kilometers, including urban and residential areas, MAFF must place Medfly traps at a rate of four traps per square kilometer. All traps must be checked every 7 days;

(4) Capture of a single Medfly in a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of

infestation is determined, the Medfly infestation is eradicated, and measures are taken to preclude any future infestation. Capture of a single Medfly within 2 kilometers of a registered greenhouse will necessitate increasing trap density in order to determine whether there is a reproducing population in the area. Capture of two Medflies within 2 kilometers of a registered greenhouse and within a 1-month time period will result in cancellation of exports from all registered greenhouses within 2 kilometers of the find until the source of infestation is determined and the Medfly infestation is eradicated;

(5) MAFF must maintain records of trap placement, checking of traps, and any Medfly captures, and must make the records available to APHIS upon request;

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded from harvest to export by insect-proof mesh screens or plastic tarpaulins, including while in transit to the packinghouse and while awaiting packaging. They must be packed in insect-proof cartons or containers, or covered by insect-proof mesh or plastic tarpaulins for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States; and

(7) MAFF is responsible for export certification inspection and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by MAFF and bearing the declaration, “These tomatoes were grown in registered greenhouses in Almeria Province, the Murcia Province, or the municipalities of Albuñol and Carchuna in the Granada Province in Spain.”

(b) *Tomatoes (fruit) (*Lycopersicon esculentum*) from France.* Pink or red tomatoes may be imported into the United States from France only in accordance with this section and other applicable provisions of this subpart.<sup>6</sup>

(1) The tomatoes must be grown in the Brittany Region of France in greenhouses registered with, and inspected by, the Service de la Protection Végétaux (SRPV);

(2) From June 1 through September 30, SRPV must set and maintain one Medfly trap baited with trimedlure inside and one outside each greenhouse and must check the traps every 7 days;

(3) Capture of a single Medfly inside or outside a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the

source of the infestation is determined, the Medfly infestation is eradicated, and measures are taken to preclude any future infestation;

(4) SRPV must maintain records of trap placement, checking of traps, and any Medfly captures, and must make them available to APHIS upon request;

(5) From June 1 through September 30, the tomatoes must be packed within 24 hours of harvest. They must be safeguarded by insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. They must be packed in insect-proof cartons or containers, or covered by insect-proof mesh screen or plastic tarpaulin. These safeguards must be intact upon arrival in the United States; and

(6) SRPV is responsible for export certification inspection and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by SRPV and bearing the declaration, “These tomatoes were grown in registered greenhouses in the Brittany Region of France.”

(c) *Tomatoes (fruit) (*Lycopersicon esculentum*) from Morocco and Western Sahara.* Pink tomatoes may be imported into the United States from Morocco and Western Sahara only in accordance with this section and other applicable provisions of this subpart.<sup>7</sup>

(1) The tomatoes must be grown in the provinces of El Jadida or Safi in Morocco or in the province of Dahkla in Western Sahara in insect-proof greenhouses registered with, and inspected by, the Moroccan Ministry of Agriculture, Division of Plant Protection, Inspection, and Enforcement (DPVCTRF);

(2) The tomatoes may be shipped from Morocco and Western Sahara only between December 1 and April 30, inclusive;

(3) Beginning 2 months prior to the start of the shipping season and continuing through the end of the shipping season, DPVCTRF must set and maintain Mediterranean fruit fly (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In Morocco, traps must also be placed outside registered greenhouses within a 2-kilometer radius at a rate of four traps per square kilometer. In Western Sahara, a single trap must be placed outside in the immediate proximity of each registered greenhouse. All traps in Morocco and Western Sahara must be checked every 7 days;

<sup>5</sup> The surface area of a pink tomato is more than 30 percent but not more than 60 percent pink and/or red. The surface area of a red tomato is more than 60 percent pink and/or red. Green tomatoes from Spain, France, Morocco, and Western Sahara may be imported in accordance with §§ 319.56–3 and 319.56–4.

<sup>6</sup> See footnote 5 to paragraph (a) of this section.

<sup>7</sup> See footnote 5 to paragraph (a) of this section.



(4) DPVCTRF must maintain records of trap placement, checking of traps, and any Medfly captures, and make the records available to APHIS upon request;

(5) Capture of a single Medfly in a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of the infestation is determined, the Medfly infestation has been eradicated, and measures are taken to preclude any future infestation. Capture of a single Medfly within 200 meters of a registered greenhouse will necessitate increasing trap density in order to determine whether there is a reproducing population in the area. Six additional traps must be placed within a radius of 200 meters surrounding the trap where the Medfly was captured. Capture of two Medflies within 200 meters of a registered greenhouse and within a 1-month time period will necessitate Malathion bait sprays in the area every 7 to 10 days for 60 days to ensure eradication;

(6) The tomatoes must be packed within 24 hours of harvest and must be pink at the time of packing. They must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. They must be packed in insect-proof cartons or containers, or covered by insect-proof mesh or plastic tarpaulin for transit to the airport and export to the United States. These safeguards must be intact upon arrival in the United States; and

(7) The Moroccan Ministry of Agriculture, Fresh Product Export (EACCE) is responsible for export certification inspection and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by EACCE and bearing the declaration, "These tomatoes were grown in registered greenhouses in El Jadida or Safi Province, Morocco, and were pink at the time of packing" or "These tomatoes were grown in registered greenhouses in Dahkla Province, Western Sahara and were pink at the time of packing."

(d) *Tomatoes from Chile.* Tomatoes (fruit) (*Lycopersicon esculentum*) from Chile, whether green or at any stage of ripeness, may be imported into the United States with treatment in accordance with paragraph (d)(1) of this section or if produced in accordance with the systems approach described in paragraph (d)(2) of this section.

(1) *With treatment.* (i) The tomatoes must be treated in Chile with methyl bromide in accordance with part 305 of this chapter. The treatment must be

conducted in facilities registered with the Servicio Agrícola y Ganadero (SAG) and with APHIS personnel monitoring the treatments;

(ii) The tomatoes must be treated and packed within 24 hours of harvest. Once treated, the tomatoes must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and awaiting packing. They must be packed in insect-proof cartons or containers, or insect-proof mesh or plastic tarpaulin under APHIS monitoring for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States; and

(iii) Tomatoes may be imported into the United States from Chile with treatment in accordance with this paragraph (d)(1) only if SAG has entered into a trust fund agreement with APHIS for that shipping season in accordance with § 319.56–6. This agreement requires SAG to pay in advance all costs that APHIS estimates it will incur in providing the preclearance services prescribed in this section for that shipping season.

(2) *Systems approach.* The tomatoes may be imported without fumigation for *Tuta absoluta*, *Rhagoletis tomatis*, and Mediterranean fruit fly (Medfly, *Ceratitid capitata*) if they meet the following conditions:

(i) The tomatoes must be grown in approved production sites that are registered with SAG. Initial approval of the production sites will be completed jointly by SAG and APHIS. SAG will visit and inspect the production sites monthly, starting 2 months before harvest and continuing until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(ii) Tomato production sites must consist of pest-exclusionary greenhouses, which must have double self-closing doors and have all other openings and vents covered with 1.6 mm (or less) screening.

(iii) The tomatoes must originate from an area that has been determined by APHIS to be free of Medfly in accordance with the procedures described in § 319.56–5 or an area where Medfly trapping occurs. Production sites in areas where Medfly is known to occur must contain traps for both Medfly and *Rhagoletis tomatis* in accordance with paragraphs (d)(2)(iii) and (d)(2)(iv) of this section. Production sites in all other areas do not require trapping for Medfly. The trapping protocol for the detection of Medfly in infested areas is as follows:

(A) McPhail traps with an approved protein bait must be used within registered greenhouses. Traps must be placed inside greenhouses at a density of 4 traps/10 ha, with a minimum of at least two traps per greenhouse.

(B) Medfly traps with trimedlure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap/10 ha and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near a greenhouse. Traps must be set for at least 2 months before export and trapping and continue to the end of the harvest season.

(C) Medfly prevalence levels in the surrounding areas must be 0.7 Medflies per trap per week or lower. If levels exceed this before harvest, the production site will be prohibited from shipping under the systems approach. If the levels exceed this after the 2 months prior to harvest, the production site would be prohibited from shipping under the systems approach until APHIS and SAG agree that the pest risk has been mitigated.

(iv) Registered production sites must contain traps for *Rhagoletis tomatis* in accordance with the following provisions:

(A) McPhail traps with an approved protein bait must be used within registered greenhouses. Traps must be placed inside greenhouses at a density of 4 traps/10 ha, with a minimum of at least two traps per greenhouse. Traps inside greenhouses will use the same bait for Medfly and *Rhagoletis tomatis* because the bait used for *R. tomatis* is sufficient for attracting both types of fruit fly within the confines of a greenhouse; therefore, it is unnecessary to repeat this trapping protocol in production sites in areas where Medfly is known to occur.

(B) McPhail traps with an approved protein bait must be placed inside a 500 meter buffer zone at a density of 1 trap/10 ha surrounding the production site. At least one of the traps must be near a greenhouse. Traps must be set for at least 2 months before export until the end of the harvest season and must be checked at least every 7 days. In areas where Medfly trapping is required, traps located outside of greenhouses must contain different baits for Medfly and *Rhagoletis tomatis*. There is only one approved bait for *R. tomatis* and the bait is not strong enough to lure Medfly when used outside greenhouses; therefore, separate traps must be used for each type of fruit fly present in the area surrounding the greenhouses.

(C) If within 30 days of harvest a single *Rhagoletis tomatis* is captured

inside the greenhouse or in a consignment or if two *R. tomatis* are captured or detected in the buffer zone, shipments from the production site will be suspended until APHIS and SAG determine that risk mitigation is achieved.

(v) Registered production sites must conduct regular inspections for *Tuta absoluta* throughout the harvest season and find these areas free of *T. absoluta* evidence (e.g., eggs or larvae). If within 30 days of harvest, two *T. absoluta* are captured inside the greenhouse or a single *T. absoluta* is found inside the fruit or in a consignment, shipments from the production site will be suspended until APHIS and SAG determine that risk mitigation is achieved.

(vi) SAG will ensure that populations of *Liriomyza huidobrensis* inside greenhouses are well managed by doing inspections during the monthly visits specifically for *L. huidobrensis* mines in the leaves and for visible external pupae or adults. If *L. huidobrensis* is found to be generally infesting the production site, shipments from the production site will be suspended until APHIS and SAG agree that risk mitigation is achieved.

(vii) All traps must be placed at least 2 months prior to harvest and be maintained throughout the harvest season and be monitored and serviced weekly.

(viii) SAG must maintain records of trap placement, checking of traps, and of any *Rhagoletis tomatis* or *Tuta absoluta* captures for 1 year for APHIS review. SAG must maintain an APHIS approved quality control program to monitor or audit the trapping program. APHIS must be notified when a production site is removed from or added to the program.

(ix) The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The tomatoes must be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Tomatoes must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin for transit to the United States. These safeguards must remain intact until arrival in the United States.

(x) During the time the packinghouse is in use for exporting fruit to the United States, the packinghouse may only accept fruit from registered approved production sites.

(xi) SAG is responsible for export certification inspection and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary

certificate issued by SAG with an additional declaration, "These tomatoes were grown in an approved production site in Chile." The shipping box must be labeled with the identity of the production site.

(e) *Tomatoes (fruit) (Lycopersicon esculentum) from Australia*. Tomatoes may be imported into the United States from Australia only in accordance with this section and other applicable provisions of this subpart.

(1) The tomatoes must be grown in greenhouses registered with, and inspected by, the Australian Quarantine Inspection Service (AQIS);

(2) Two months prior to shipping, AQIS must inspect the greenhouse to establish its freedom from the following quarantine pests: *Bactrocera aquilonis*, *B. cucumis*, *B. jarvis*, *B. neohumeralis*, *B. tryoni*, *Ceratitidis capitata*, *Chrysodeixis argentifera*, *C. erisoma*, *Helicoverpa armigera*, *H. punctigera*, *Lamprolonchaea brouniana*, *Sceliodes cordalis*, and *Spodoptera litura*. AQIS must also set and maintain fruit fly traps inside the greenhouses and around the perimeter of the greenhouses. Inside the greenhouses, the traps must be APHIS-approved fruit fly traps, and they must be set at the rate of six per hectare. In all areas outside the greenhouse and within 8 kilometers of the greenhouse, fruit fly traps must be placed on a 1-kilometer grid. All traps must be checked at least every 7 days;

(3) Within a registered greenhouse, capture of a single fruit fly or other quarantine pest will result in immediate cancellation of exports from that greenhouse until the source of the infestation is determined, the infestation has been eradicated, and measures are taken to preclude any future infestation;

(4) Outside of a registered greenhouse, if one fruit fly of the species specified in paragraph (e)(2) of this section is captured, the trap density and frequency of trap inspection must be increased to detect a reproducing colony. Capture of two Medflies or three of the same species of *Bactrocera* within 2 kilometers of each other and within 30 days will result in the cancellation of exports from all registered greenhouses within 2 kilometers of the finds until the source of the infestation is determined and the fruit fly infestation is eradicated;

(5) AQIS must maintain records of trap placement, checking of traps, and any fruit fly captures, and must make the records available to APHIS upon request;

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in

transit to the packinghouse or while awaiting packing. They must be placed in insect-proof cartons or containers, or securely covered with insect-proof mesh or plastic tarpaulin for transport to the airport or other shipping point. These safeguards must be intact upon arrival in the United States; and

(7) Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by AQIS stating "These tomatoes were grown, packed, and shipped in accordance with the requirements of § 319.56–28(e) of 7 CFR."

(f) *Tomatoes (fruit) (Lycopersicon esculentum) from certain countries in Central America*. Pink or red tomatoes may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama only under the following conditions:

(1) From areas free of Mediterranean fruit fly:

(i) The tomatoes must be grown and packed in an area that has been determined by APHIS to be free of Mediterranean fruit fly (Medfly) in accordance with the procedures described in § 319.56–5.

(ii) A pre-harvest inspection of the production site must be conducted by the national plant protection organization (NPPO) of the exporting country for pea leafminer, tomato fruit borer, and potato spindle tuber viroid. If any of these pests are found to be generally infesting the production site, the NPPO may not allow exports from that production site until the NPPO and APHIS have determined that risk mitigation has been achieved.

(iii) The tomatoes must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin at the packinghouse for transit to the United States. These safeguards must remain intact until arrival in the United States.

(iv) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These tomatoes were grown in an area recognized to be free of Medfly and the consignment has been inspected and found free of the pests listed in the requirements."

(2) From areas where Medfly is considered to exist:

(i) The tomatoes must be grown in approved registered production sites. Initial approval of the production sites will be completed jointly by the

exporting country's NPPO and APHIS. The exporting country's NPPO must visit and inspect the production sites monthly starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(ii) Tomato production sites must consist of pest-exclusionary greenhouses, which must have double self-closing doors and have all other openings and vents covered with 1.6 mm (or less) screening.

(iii) Registered sites must contain traps for the detection of Medfly both within and around the production site as follows:

(A) Traps with an approved protein bait for Medfly must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(B) If a single Medfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to export tomatoes to the United States until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(C) Medfly traps with an approved lure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export and trapping must continue to the end of the harvest.

(D) Capture of 0.7 or more Medflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of tomatoes from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(E) The greenhouse must be inspected prior to harvest for pea leafminer, tomato fruit borer, and potato spindle tuber viroid. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, exports from that production site will be halted until the exporting country's NPPO and APHIS determine that the pest risk has been mitigated.

(iv) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Medfly captures in addition to production site and packinghouse inspection records. The exporting country's NPPO must maintain an APHIS-approved quality control

program to monitor or audit the trapping program. The trapping records must be maintained for APHIS's review.

(v) The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The tomatoes must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The tomatoes must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit into the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(vi) During the time the packinghouse is in use for exporting tomatoes to the United States, the packinghouse may only accept tomatoes from registered approved production sites.

(vii) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These tomatoes were grown in an approved production site and the consignment has been inspected and found free of the pests listed in the requirements." The shipping box must be labeled with the identity of the production site.

(Approved by the Office of Management and Budget under control numbers 0579-0049, 0579-0131, 0579-0316, and 0579-0286)

#### **§ 319.56-29 Ya variety pears from China.**

Ya variety pears may be imported into the United States from China only in accordance with this section and all other applicable provisions of this subpart.

(a) *Growing and harvest conditions.* (1) The pears must have been grown by growers registered with the national plant protection organization (NPPO) of China in an APHIS-approved export growing area in the Hebei or Shandong Provinces.

(2) Field inspections for signs of pest infestation must be conducted by the national plant protection organization (NPPO) of China during the growing season.

(3) The registered growers shall be responsible for following the phytosanitary measures agreed upon by APHIS and the NPPO of China, including applying pesticides to reduce the pest population and bagging the pears on the trees to reduce the opportunity for pests to attack the fruit during the growing season. The bags must remain on the pears through the

harvest and during their movement to the packinghouse.

(4) The packinghouses in which the pears are prepared for exportation shall not be used for any fruit other than Ya variety pears from registered growers during the pear export season. The packinghouses shall accept only those pears that are in intact bags as required by paragraph (a)(3) of this section. The pears must be loaded into containers at the packinghouse and the containers then sealed before movement to the port of export.

(b) *Treatment.* Pears from Shandong Province must be cold treated for *Bactrocera dorsalis* in accordance with part 305 of this chapter.

(c) Each consignment of pears must be accompanied by a phytosanitary certificate issued by the NPPO of China stating that the conditions of this section have been met.

#### **§ 319.56-30 Hass avocados from Michoacan, Mexico.**

Fresh Hass variety avocados (*Persea americana*) may be imported from Michoacan, Mexico, into the United States in accordance with the requirements of § 319.56-3 of this subpart, and only under the following conditions:

(a) *Shipping restrictions.* (1) The avocados may be imported in commercial consignments only;

(2) The avocados may be imported into and distributed in all States, but not Puerto Rico or any U.S. Territory.

(b) *Trust fund agreement.* The avocados may be imported only if the Mexican avocado industry association representing Mexican avocado growers, packers, and exporters has entered into a trust fund agreement with APHIS for that shipping season in accordance with § 319.56-6.

(c) *Safeguards in Mexico.* The avocados must have been grown in the Mexican State of Michoacan in an orchard located in a municipality that meets the requirements of paragraph (c)(1) of this section. The orchard in which the avocados are grown must meet the requirements of paragraph (c)(2) of this section. The avocados must be packed for export to the United States in a packinghouse that meets the requirements of paragraph (c)(3) of this section. The Mexican national plant protection organization (NPPO) must provide an annual work plan to APHIS that details the activities that the Mexican NPPO will, subject to APHIS' approval of the work plan, carry out to meet the requirements of this section; APHIS will be directly involved with the Mexican NPPO in the monitoring and supervision of those activities. The

personnel conducting the trapping and pest surveys must be hired, trained, and supervised by the Mexican NPPO or by the Michoacan State delegate of the Mexican NPPO.

(1) *Municipality requirements.* (i) The municipality must be listed as an approved municipality in the bilateral work plan provided to APHIS by the Mexican NPPO.

(ii) The municipality must be surveyed at least semiannually (once during the wet season and once during the dry season) and found to be free from the large avocado seed weevil *Heilipus lauri*, the avocado seed moth *Stenomoma catenifer*, and the small avocado seed weevils *Conotrachelus aguacatae* and *C. perseae*.

(iii) Trapping must be conducted in the municipality for Mediterranean fruit fly (Medfly) (*Ceratitidis capitata*) at the rate of 1 trap per 1 to 4 square miles. Any findings of Medfly must be reported to APHIS.

(2) *Orchard and grower requirements.* The orchard and the grower must be registered with the Mexican NPPO's avocado export program and must be listed as an approved orchard or an approved grower in the annual work plan provided to APHIS by the Mexican NPPO. The operations of the orchard must meet the following conditions:

(i) The orchard and all contiguous orchards and properties must be surveyed semiannually and found to be free from the avocado stem weevil *Copturus aguacatae*.

(ii) Trapping must be conducted in the orchard for the fruit flies *Anastrepha ludens*, *A. serpentina*, and *A. striata* at the rate of one trap per 10 hectares. If one of those fruit flies is trapped, at least 10 additional traps must be deployed in a 50-hectare area immediately surrounding the trap in which the fruit fly was found. If within 30 days of the first finding any additional fruit flies are trapped within the 260-hectare area surrounding the first finding, malathion bait treatments must be applied in the affected orchard in order for the orchard to remain eligible to export avocados.

(iii) Avocado fruit that has fallen from the trees must be removed from the orchard at least once every 7 days and may not be included in field boxes of fruit to be packed for export.

(iv) Dead branches on avocado trees in the orchard must be pruned and removed from the orchard.

(v) Harvested avocados must be placed in field boxes or containers of field boxes that are marked to show the official registration number of the orchard. The avocados must be moved from the orchard to the packinghouse

within 3 hours of harvest or they must be protected from fruit fly infestation until moved.

(vi) The avocados must be protected from fruit fly infestation during their movement from the orchard to the packinghouse and must be accompanied by a field record indicating that the avocados originated from a certified orchard.

(3) *Packinghouse requirements.* The packinghouse must be registered with the Mexican NPPO's avocado export program and must be listed as an approved packinghouse in the annual work plan provided to APHIS by the Mexican NPPO. The operations of the packinghouse must meet the following conditions:

(i) During the time the packinghouse is used to prepare avocados for export to the United States, the packinghouse may accept fruit only from orchards certified by the Mexican NPPO for participation in the avocado export program.

(ii) All openings to the outside must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents insects from entering the packinghouse.

(iii) The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(iv) Prior to the culling process, a biometric sample, at a rate determined by APHIS, of avocados per consignment must be selected, cut, and inspected by the Mexican NPPO and found free from pests.

(v) The identity of the avocados must be maintained from field boxes or containers to the shipping boxes so the avocados can be traced back to the orchard in which they were grown if pests are found at the packinghouse or the port of first arrival in the United States.

(vi) Prior to being packed in boxes, each avocado fruit must be cleaned of all stems, leaves, and other portions of plants and labeled with a sticker that bears the official registration number of the packinghouse.

(vii) The avocados must be packed in clean, new boxes, or clean plastic reusable crates. The boxes or crates must be clearly marked with the identity of the grower, packinghouse, and exporter. Between January 31, 2005, and January 31, 2007, the boxes or crates must be clearly marked with the statement "Not for importation or distribution in CA, FL, HI, Puerto Rico or U.S. Territories." After January 31, 2007, the boxes or crates must be clearly marked with the statement "Not for

importation or distribution in Puerto Rico or U.S. Territories."

(viii) The boxes must be placed in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through Mexico to the port of first arrival in the United States. Prior to leaving the packinghouse, the truck or container must be secured by the Mexican NPPO with a seal that will be broken when the truck or container is opened. Once sealed, the refrigerated truck or refrigerated container must remain unopened until it reaches the port of first arrival in the United States.

(ix) Any avocados that have not been packed or loaded into a refrigerated truck or refrigerated container by the end of the workday must be kept in the screened packing area.

(d) *Certification.* All consignments of avocados must be accompanied by a phytosanitary certificate issued by the Mexican NPPO with an additional declaration certifying that the conditions specified in this section have been met.

(e) *Pest detection.* (1) If any of the avocado seed pests *Heilipus lauri*, *Conotrachelus aguacatae*, *C. perseae*, or *Stenomoma catenifer* are discovered in a municipality during the semiannual pest surveys, orchard surveys, packinghouse inspections, or other monitoring or inspection activity in the municipality, the Mexican NPPO must immediately initiate an investigation and take measures to isolate and eradicate the pests. The Mexican NPPO must also provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The municipality in which the pests are discovered will lose its pest-free certification and avocado exports from that municipality will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that municipality has been eliminated.

(2) If the Mexican NPPO discovers the stem weevil *Copturus aguacatae* in an orchard during an orchard survey or other monitoring or inspection activity in the orchard, the Mexican NPPO must provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard in which the pest was found will lose its export certification immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been

effective and that the pest risk within that orchard has been eliminated.

(3) If the Mexican NPPO discovers the stem weevil *Copturus aguacatae* in fruit at a packinghouse, the Mexican NPPO must investigate the origin of the infested fruit and provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard where the infested fruit originated will lose its export certification immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that orchard has been eliminated.

(f) *Ports.* The avocados may enter the United States only through a port of entry located in a State where the distribution of the fruit is authorized pursuant to paragraph (a)(2) of this section.

(g) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival. At the port of first arrival, an inspector will sample and cut avocados from each consignment to detect pest infestation.

(h) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival, at any stops in the United States en route to an approved State, and upon arrival at the terminal market in the approved States. At the port of first arrival, an inspector will sample and cut avocados from each consignment to detect pest infestation.

(i) *Repackaging.* If any avocados are removed from their original shipping boxes and repackaged, the stickers required by paragraph (c)(3)(vi) of this section may not be removed or obscured and the new boxes must be clearly marked with all the information required by paragraph (c)(3)(vii) of this section.

#### **§ 319.56–31 Peppers from Spain.**

Peppers (fruit) (*Capsicum* spp.) may be imported into the United States from Spain only under permit, and only in accordance with this section and all other applicable requirements of this subpart:

(a) The peppers must be grown in the Alicante or Almeria Province of Spain in pest-proof greenhouses registered with, and inspected by, the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF);

(b) The peppers may be shipped only from December 1 through April 30, inclusive;

(c) Beginning October 1, and continuing through April 30, MAFF must set and maintain Mediterranean fruit fly (*Ceratitis capitata*) (Medfly)

traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all outside areas, including urban and residential areas, within 8 kilometers of the greenhouses, MAFF must set and maintain Medfly traps baited with trimedlure at a rate of four traps per square kilometer. All traps must be checked every 7 days;

(d) Capture of a single Medfly in a registered greenhouse will immediately halt exports from that greenhouse until the Administrator determines that the source of infestation has been identified, that all Medflies have been eradicated, and that measures have been taken to preclude any future infestation. Capture of a single Medfly within 2 kilometers of a registered greenhouse will necessitate increased trap density in order to determine whether there is a reproducing population in the area. Capture of two Medflies within 2 kilometers of a registered greenhouse during a 1-month period will halt exports from all registered greenhouses within 2 kilometers of the capture, until the source of infestation is determined and all Medflies are eradicated;

(e) The peppers must be safeguarded from harvest to export by insect-proof mesh or plastic tarpaulin, including while in transit to the packinghouse and while awaiting packing. They must be packed in insect-proof cartons or covered by insect-proof mesh or plastic tarpaulin for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States;

(f) The peppers must be packed for shipment within 24 hours of harvest;

(g) During shipment, the peppers may not transit other fruit fly-supporting areas unless shipping containers are sealed by MAFF with an official seal whose number is noted on the phytosanitary certificate; and

(h) A phytosanitary certificate issued by MAFF and bearing the declaration, "These peppers were grown in registered greenhouses in Alicante or Almeria Province in Spain," must accompany the consignment.

(Approved by the Office of Management and Budget under control number 0579–0210)

#### **§ 319.56–32 Peppers from New Zealand.**

Peppers (fruit) (*Capsicum* spp.) from New Zealand may be imported into the United States only in accordance with this section and all other applicable provisions of this subpart.

(a) The peppers must be grown in New Zealand in insect-proof greenhouses approved by the New Zealand Ministry of Agriculture and Forestry (MAF).

(b) The greenhouses must be equipped with double self-closing doors, and any vents or openings in the greenhouses (other than the double self-closing doors) must be covered with 0.6 mm screening in order to prevent the entry of pests into the greenhouse.

(c) The greenhouses must be examined periodically by MAF to ensure that the screens are intact.

(d) Each consignment of peppers must be accompanied by a phytosanitary certificate of inspection issued by MAF bearing the following declaration: "These peppers were grown in greenhouses in accordance with the conditions in § 319.56–32."

#### **§ 319.56–33 Mangoes from the Philippines.**

Mangoes (fruit) (*Mangifera indica*) may be imported into the United States from the Philippines only in accordance with this section and other applicable provisions of this subpart.

(a) *Limitation of origin.* The mangoes must have been grown on the island of Guimaras, which the Administrator has determined meets the criteria set forth in § 319.56–5 with regard to the mango seed weevil (*Sternonchetus mangiferae*). Mangoes from all other areas of the Philippines except Palawan are eligible for importation into Hawaii and Guam only. Mangoes from Palawan are not eligible for importation into the United States.

(b) *Treatment.* The mangoes must be treated for fruit flies of the genus *Bactrocera* with vapor heat under the supervision of an inspector in accordance with the regulations in part 305 of this chapter.

(c) *Inspection.* Mangoes from the Philippines are subject to inspection under the direction of an inspector, either in the Philippines or at the port of first arrival in the United States. Mangoes inspected in the Philippines are subject to reinspection at the port of first arrival in the United States as provided in § 319.56–3.

(d) *Labeling.* Each box of mangoes must be clearly labeled in accordance with § 319.56–5(e)(1). Consignments originating from approved areas other than Guimaras must be labeled "For distribution in Guam and Hawaii only."

(e) *Phytosanitary certificate.* Mangoes originating from all approved areas must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains an additional declaration stating that the mangoes have been treated for fruit flies of the genus *Bactrocera* in accordance with paragraph (b) of this section. Phytosanitary certificates accompanying consignments of mangoes originating

from the island of Guimaras must also contain an additional declaration stating that the mangoes were grown on the island of Guimaras.

(f) *Trust fund agreement.* Mangoes that are treated or inspected in the Philippines may be imported into the United States only if the Republic of the Philippines Department of Agriculture has entered into a trust fund agreement with APHIS in accordance with § 319.56–6.

(Approved by the Office of Management and Budget under control numbers 0579–0172 and 0579–0316)

#### § 319.56–34 Clementines from Spain.

Clementines (*Citrus reticulata*) from Spain may only be imported into the United States in accordance with this section and all other applicable provisions of this subpart.

(a) *Trust fund agreement.* Clementines from Spain may be imported only if the Government of Spain or its designated representative enters into a trust fund agreement with APHIS before each shipping season in accordance with § 319.56–6.

(b) *Grower registration and agreement.* Persons who produce clementines in Spain for export to the United States must:

(1) Be registered with the Government of Spain; and

(2) Enter into an agreement with the Government of Spain whereby the producer agrees to participate in and follow the Mediterranean fruit fly management program established by the Government of Spain.

(c) *Management program for Mediterranean fruit fly; monitoring.* The Government of Spain's Mediterranean fruit fly (*Ceratitis capitata*) management program must be approved by APHIS, and must contain the fruit fly trapping and recordkeeping requirements specified in this paragraph. The program must also provide that clementine producers must allow APHIS inspectors access to clementine production areas in order to monitor compliance with the Mediterranean fruit fly management program.

(1) *Trapping and control.* In areas where clementines are produced for export to the United States, traps must be placed in Mediterranean fruit fly host plants at least 6 weeks prior to harvest. Bait treatments using malathion, spinosad, or another pesticide that is approved by APHIS and the Government of Spain must be applied in the production areas at the rate specified by Spain's Medfly management program.

(2) *Records.* The Government of Spain or its designated representative must

keep records that document the fruit fly trapping and control activities in areas that produce clementines for export to the United States. All trapping and control records kept by the Government of Spain or its designated representative must be made available to APHIS upon request.

(3) *Compliance.* If APHIS determines that an orchard is not operating in compliance with the regulations in this section, it may suspend exports of clementines from that orchard.

(d) *Phytosanitary certificate.* Clementines from Spain must be accompanied by a phytosanitary certificate stating that the fruit meets the conditions of the Government of Spain's Mediterranean fruit fly management program and applicable APHIS regulations.

(e) *Labeling.* Boxes in which clementines are packed must be labeled with a lot number that provides information to identify the orchard where the fruit was grown and the packinghouse where the fruit was packed. The lot number must end with the letters "US." All labeling must be large enough to clearly display the required information and must be located on the outside of the boxes to facilitate inspection.

(f) *Pre-treatment sampling; rates of inspection.* For each consignment of clementines intended for export to the United States, prior to cold treatment, inspectors will cut and inspect 200 fruit that are randomly selected from throughout the consignment. If inspectors find a single live Mediterranean fruit fly in any stage of development during an inspection, the entire consignment of clementines will be rejected. If a live Mediterranean fruit fly in any stage of development is found in any two lots of fruit from the same orchard during the same shipping season, that orchard will be removed from the export program for the remainder of that shipping season.

(g) *Cold treatment.* Clementines must be cold treated in accordance with part 305 of this chapter. Upon arrival of clementines at a port of entry into the United States, inspectors will examine the cold treatment data for each consignment to ensure that the cold treatment was successfully completed. If the cold treatment has not been successfully completed, the consignment will be held until appropriate remedial actions have been implemented.

(h) *Port of entry sampling.* Clementines imported from Spain are subject to inspection by an inspector at the port of entry into the United States. At the port of first arrival, an inspector

will sample and cut clementines from each consignment to detect pest infestation according to sampling rates determined by the Administrator. If a single live Mediterranean fruit fly in any stage of development is found, the consignment will be held until an investigation is completed and appropriate remedial actions have been implemented.

(i) *Suspension of program.* If APHIS determines at any time that the safeguards contained in this section are not protecting against the introduction of Medflies into the United States, APHIS may suspend the importation of clementines and conduct an investigation into the cause of the deficiency.

(j) *Definitions.* The following are definitions for terms used in this section:

*Consignment.* (1) *Untreated fruit.* For untreated fruit, the term means one or more lots (containing no more than a combined total of 200,000 boxes of clementines) that are presented to an inspector for pre-treatment inspection.

(2) *Treated fruit.* For treated fruit, the term means one or more lots of clementines that are imported into the United States on the same conveyance.

*Lot.* For the purposes of this section, a number of units of clementines that are from a common origin (i.e., a single producer or a homogenous production unit).<sup>8</sup>

*Orchard.* A plot on which clementines are grown that is separately registered in the Spanish Medfly management program.

*Shipping season.* For the purposes of this section, a shipping season is considered to include the period beginning approximately in mid-September and ending approximately in late February of the next calendar year.

(Approved by the Office of Management and Budget under control number 0579–0203)

#### § 319.56–35 Persimmons from the Republic of Korea.

Persimmons (fruit) (*Disopyros khaki*) may be imported into the United States from the Republic of Korea only in accordance with this section and all other applicable provisions of this subpart.

(a) The production site, which is an orchard, where the persimmons are grown must have been inspected at least once during the growing season and before harvest for the following pests: *Conogethes punctiferalis*, *Planococcus*

<sup>8</sup> A homogeneous production unit is a group of adjacent orchards in Spain that are owned by one or more growers who follow a homogenous production system under the same technical guidance.

*kraunhia*, *Stathmopoda masinissa*, and *Tenuipalpus zhizhilashiviliae*.

(b) After harvest, the persimmons must be inspected by the Republic of Korea's national plant protection organization (NPPO) and found free of the pests listed in paragraph (a) of this section before the persimmons may be shipped to the United States;

(c) Each consignment of persimmons must be accompanied by a phytosanitary certificate issued by the Republic of Korea's NPPO stating that the fruit is free of *Conogethes punctiferalis*, *Planococcus kraunhia*, *Stathmopoda masinissa*, and *Tenuipalpus zhizhilashiviliae*.

(d) If any of the pests listed in paragraph (a) of this section are detected in an orchard, exports from that orchard will be canceled until the source of infestation is determined and the infestation is eradicated.

(Approved by the Office of Management and Budget under control number 0579-0210)

**§ 319.56-36 Watermelon, squash, cucumber, and oriental melon from the Republic of Korea.**

Watermelon (*Citrullus lanatus*), squash (*Cucurbita maxima*), cucumber (*Cucumis sativus*), and oriental melon (*Cucumis melo*) may be imported into the United States from the Republic of Korea only in accordance with this paragraph and all other applicable provisions of this subpart:

(a) The fruit must be grown in pest-proof greenhouses registered with the Republic of Korea's national plant protection organization (NPPO).

(b) The NPPO must inspect and regularly monitor greenhouses for plant pests. The NPPO must inspect greenhouses and plants, including fruit, at intervals of no more than 2 weeks, from the time of fruit set until the end of harvest.

(c) The NPPO must set and maintain McPhail traps (or a similar type with a protein bait that has been approved for the pests of concern) in greenhouses from October 1 to April 30. The number of traps must be set as follows: Two traps for greenhouses smaller than 0.2 hectare in size; three traps for greenhouses 0.2 to 0.5 hectare; four traps for greenhouses over 0.5 hectare and up to 1.0 hectare; and for greenhouses greater than 1 hectare, traps must be placed at a rate of four traps per hectare.

(d) The NPPO must check all traps once every 2 weeks. If a single pumpkin fruit fly is captured, that greenhouse will lose its registration until trapping shows that the infestation has been eradicated.

(e) The fruit may be shipped only from December 1 through April 30.

(f) Each consignment must be accompanied by a phytosanitary certificate issued by NPPO, with the following additional declaration: "The regulated articles in this consignment were grown in registered greenhouses as specified by 7 CFR 319.56-36."

(g) Each consignment must be protected from pest infestation from harvest until export. Newly harvested fruit must be covered with insect-proof mesh or a plastic tarpaulin while moving to the packinghouse and awaiting packing. Fruit must be packed within 24 hours of harvesting in an enclosed container or vehicle or in insect-proof cartons or cartons covered with insect-proof mesh or plastic tarpaulin, and then placed in containers for shipment. These safeguards must be intact when the consignment arrives at the port in the United States.

(Approved by the Office of Management and Budget under control number 0579-0236)

**§ 319.56-37 Grapes from the Republic of Korea.**

Grapes (*Vitis* spp.) may be imported into the United States from the Republic of Korea only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) The fields where the grapes are grown must be inspected during the growing season by the Republic of Korea's national plant protection organization (NPPO). The NPPO will inspect 250 grapevines per hectare, inspecting leaves, stems, and fruit of the vines.

(b) If evidence of *Conogethes punctiferalis*, *Eupoecilia ambiguella*, *Sparganothis pilleriana*, *Stathmopoda auriferella*, or *Monilinia fructigena* is detected during inspection, the field will immediately be rejected, and exports from that field will be canceled until visual inspection of the vines shows that the infestation has been eradicated.

(c) Fruit must be bagged from the time the fruit sets until harvest.

(d) Each consignment must be inspected by the NPPO before export. For each consignment, the NPPO must issue a phytosanitary certificate with an additional declaration stating that the fruit in the consignment was found free of *C. punctiferalis*, *E. ambiguella*, *S. pilleriana*, *S. auriferella*, *M. fructigena*, and *Nippoptilia vitis*.

(Approved by the Office of Management and Budget under control number 0579-0236)

**§ 319.56-38 Clementines, mandarins, and tangerines from Chile.**

Clementines (*Citrus reticulata* Blanco var. Clementine), mandarins (*Citrus reticulata* Blanco), and tangerines (*Citrus reticulata* Blanco) may be imported into the United States from Chile only under the following conditions:

(a) The fruit must be accompanied by a permit issued in accordance with § 319.56-3(b).

(b) If the fruit is produced in an area of Chile where Mediterranean fruit fly (*Ceratitidis capitata*) is known to occur, the fruit must be cold treated in accordance with part 305 of this chapter. Fruit for which cold treatment is required must be accompanied by documentation indicating that the cold treatment was initiated in Chile (a PPQ Form 203 or its equivalent may be used for this purpose).

(c) The fruit must either be produced and shipped under the systems approach described in paragraph (d) of this section or fumigated in accordance with paragraph (e) of this section.

(d) *Systems approach.* The fruit may be imported without fumigation for *Brevipalpus chilensis* if it meets the following conditions:

(1) *Production site registration.* The production site where the fruit is grown must be registered with the national plant protection organization (NPPO) of Chile. To register, the production site must provide Chile's NPPO with the following information: Production site name, grower, municipality, province, region, area planted to each species, number of plants/hectares/species, and approximate date of harvest. Registration must be renewed annually.

(2) *Low prevalence production site certification.* Between 1 and 30 days prior to harvest, random samples of fruit must be collected from each registered production site under the direction of Chile's NPPO. These samples must undergo a pest detection and evaluation method as follows: The fruit and pedicels must be washed using a flushing method, placed in a 20 mesh sieve on top of a 200 mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The process must then be repeated. The contents of the sieves must then be placed on a petri dish and analyzed for the presence of live *B. chilensis* mites. If a single live *B. chilensis* mite is found, the production site will not qualify for certification as a low prevalence production site and will be eligible to export fruit to the United States only if the fruit is fumigated in accordance with paragraph



(e) of this section. Each production site may have only one opportunity per harvest season to qualify as a low prevalence production site, and certification of low prevalence will be valid for one harvest season only. The NPPO of Chile will present a list of certified production sites to APHIS.

(3) *Post-harvest processing.* After harvest and before packing, the fruit must be washed, rinsed in a chlorine bath, washed with detergent with brushing using bristle rollers, rinsed with a hot water shower with brushing using bristle rollers, predried at room temperature, waxed, and dried with hot air.

(4) *Phytosanitary inspection.* The fruit must be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile after the post-harvest processing. A biometric sample will be drawn and examined from each consignment of fruit, which may represent multiple grower lots from different packing sheds. Clementines, mandarins, or tangerines in any consignment may be shipped to the United States only if the consignment passes inspection as follows:

(i) Fruit presented for inspection must be identified in the shipping documents accompanying each lot of fruit that identify the production site(s) where the fruit was produced and the packing shed(s) where the fruit was processed. This identity must be maintained until the fruit is released for entry into the United States.

(ii) A biometric sample of boxes from each consignment will be selected and the fruit from these boxes will be visually inspected for quarantine pests, and a portion of the fruit will be washed and the collected filtrate will be microscopically examined for *B. chilensis*.

(A) If a single live *B. chilensis* mite is found, the fruit will be eligible for importation into the United States only if it is fumigated in Chile in accordance with paragraph (e) of this section. The production site will be suspended from the low prevalence certification program and all subsequent lots of fruit from the production site of origin will be required to be fumigated as a condition of entry to the United States for the remainder of the shipping season.

(B) If inspectors find evidence of any other quarantine pest, the fruit in the consignment will remain eligible for importation into the United States only if an authorized treatment for the pest is available in part 305 of this chapter and the entire consignment is treated for

the pest in Chile under APHIS supervision.

(iii) Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment meets the conditions of § 319.56–38(d).

(e) *Approved fumigation.* Clementines, mandarins, or tangerines that do not meet the conditions of paragraph (d) of this section may be imported into the United States if the fruit is fumigated either in Chile or at the port of first arrival in the United States with methyl bromide for *B. chilensis* in accordance with part 305 of this chapter. An APHIS inspector will monitor the fumigation of the fruit and will prescribe such safeguards as may be necessary for unloading, handling, and transportation preparatory to fumigation. The final release of the fruit for entry into the United States will be conditioned upon compliance with prescribed safeguards and required treatment.

(f) *Trust fund agreement.* Clementines, mandarins, and tangerines may be imported into the United States under this section only if the NPPO of Chile or a private export group has entered into a trust fund agreement with APHIS in accordance with § 319.56–6.

(Approved by the Office of Management and Budget under control number 0579–0242)

#### § 319.56–39 Fragrant pears from China.

Fragrant pears may be imported into the United States from China only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) *Origin, growing, and harvest conditions.* (1) The pears must have been grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization (NPPO) of China.

(2) All propagative material introduced into a registered production site must be certified free of the pests listed in this section by the NPPO of China.

(3) Within 30 days prior to harvest, the NPPO of China or officials authorized by the NPPO of China must inspect the registered production site for signs of pest infestation and allow APHIS to monitor the inspections. The NPPO of China must provide APHIS with information on pest detections and pest detection practices, and APHIS must approve the pest detection practices.

(4) If any of the quarantine pests listed in this section are found during the pre-harvest inspection or at any other time,

the NPPO of China must notify APHIS immediately.

(i) Upon detection of Oriental fruit fly (*Bactrocera dorsalis*), APHIS may reject the lot or consignment and may prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the NPPO of China agree that appropriate remedial action has been taken.

(ii) Upon detection of peach fruit borer (*Carposina sasaki*), yellow peach moth (*Conogethes punctiferalis*), apple fruit moth (*Cydia inopinata*), Hawthorn spider mite (*Tetranychus viennensis*), red plum maggot (*Cydia funebrana*), brown rot (*Monilinia fructigena*), Asian pear scab (*Venturia nashicola*), pear trellis rust (*Gymnosporangium fuscum*), Asian pear black spot (*Alternaria* spp.), or phylloxera (*Aphanostigma* sp. poss. *jackusiensis*), APHIS may reject the lot or consignment and may prohibit the importation into the United States of fragrant pears from the production site for the season. The exportation to the United States of fragrant pears from the production site may resume in the next growing season if an investigation is conducted and APHIS and the NPPO of China agree that appropriate remedial action has been taken. If any of these pests is detected in more than one registered production site, APHIS may prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the NPPO of China agree that appropriate remedial action has been taken.

(5) After harvest, the NPPO of China or officials authorized by the NPPO of China must inspect the pears for signs of pest infestation and allow APHIS to monitor the inspections.

(6) Upon detection of large pear borer (*Numonia piovorella*), pear curculio (*Rhynchites fovepessin*), or Japanese apple curculio (*R. heros*), APHIS may reject the lot or consignment.

(b) *Packing requirements.* (1) The fragrant pears must be packed in cartons that are labeled in accordance with § 319.56–5(e).

(2) The fragrant pears must be held in a cold storage facility while awaiting export. If fruit from unregistered production sites are stored in the same facility, the fragrant pears must be isolated from that other fruit.

(c) *Shipping requirements.* (1) The fragrant pears must be shipped in insect-proof containers and all pears must be safeguarded during transport to the United States in a manner that will prevent pest infestation.

(2) The fragrant pears may be imported only under a permit issued by

APHIS in accordance with § 319.56–3(b).

(3) Each consignment of pears must be accompanied by a phytosanitary certificate issued by the NPPO of China stating that the conditions of this section have been met and that the consignment has been inspected and found free of the pests listed in this section.

(Approved by the Office of Management and Budget under control number 0579–0227)

**§ 319.56–40 Peppers from certain Central American countries.**

Fresh peppers (*Capsicum* spp.) may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) For peppers of the species *Capsicum annuum*, *Capsicum frutescens*, *Capsicum baccatum*, and *Capsicum chinense* from areas free of Mediterranean fruit fly (Medfly), terms of entry are as follows:

(1) The peppers must be grown and packed in an area that has been determined by APHIS to be free of Medfly in accordance with the procedures described in § 319.56–5 of this subpart.

(2) A pre-harvest inspection of the growing site must be conducted by the national plant protection organization (NPPO) of the exporting country for the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato yellow mosaic virus, and if these pests are found to be generally infesting the growing site, the NPPO may not allow export from that production site until the NPPO has determined that risk mitigation has been achieved.

(3) The peppers must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin at the packinghouse for transit to the United States. These safeguards must remain intact until arrival in the United States.

(4) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each consignment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These peppers were grown in an area recognized to be free of Medfly and the consignment has been inspected and found free of the pests listed in the requirements."

(b) For peppers of the species *Capsicum annuum*, *Capsicum frutescens*, *Capsicum baccatum*, *Capsicum chinense*, and *Capsicum pubescens* from areas in which Medfly is considered to exist:

(1) The peppers must be grown in approved production sites registered with the NPPO of the exporting country. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO will visit and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(2) Pepper production sites must consist of pest-exclusionary greenhouses, which must have double self-closing doors and have all other openings and vents covered with 1.6 mm (or less) screening.

(3) Registered sites must contain traps for the detection of Medfly both within and around the production site.

(i) Traps with an approved protein bait must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(ii) If a single Medfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to export peppers to the United States until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(iii) Medfly traps with an approved lure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export and trapping must continue to the end of the harvest.

(iv) Capture of 0.7 or more Medflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of peppers from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato yellow mosaic virus. If any of these

pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

(4) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Medfly captures. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS' review.

(5) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(6) During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse may accept peppers only from registered approved production sites.

(7) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each consignment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These peppers were grown in an approved production site and the consignment has been inspected and found free of the pests listed in the requirements." The shipping box must be labeled with the identity of the production site.

(c) For peppers of the species *Capsicum pubescens* from areas in which Mexican fruit fly (Mexfly) is considered to exist:

(1) The peppers must be grown in approved production sites registered with the NPPO of the exporting country. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO must visit and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(2) Pepper production sites must consist of pest-exclusionary greenhouses, which must have double

self-closing doors and have all other openings and vents covered with 1.6 mm (or less) screening.

(3) Registered sites must contain traps for the detection of Mexfly both within and around the production site.

(i) Traps with an approved protein bait must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(ii) If a single Mexfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to ship under the systems approach until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(iii) Mexfly traps with an approved protein bait must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export, and trapping must continue to the end of the harvest.

(iv) Capture of 0.7 or more Mexflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of peppers from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato yellow mosaic virus. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

(4) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Mexfly captures. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS' review.

(5) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting

packing. Peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(6) During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse may accept peppers only from registered approved production sites.

(7) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each consignment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These peppers were grown in an approved production site and the consignment has been inspected and found free of the pests listed in the requirements." The shipping box must be labeled with the identity of the production site.

(Approved by the Office of Management and Budget under control number 0579-0274)

#### § 319.56-41 Citrus from Peru.

Grapefruit (*Citrus paradisi*), limes (*C. aurantiifolia*), mandarins or tangerines (*C. reticulata*), sweet oranges (*C. sinensis*), and tangelos (*Citrus tangelo*) may be imported into the United States from Peru under the following conditions:

(a) The fruit must be accompanied by a permit issued in accordance with § 319.56-3(b).

(b) The fruit may be imported in commercial consignments only.

(c) *Approved growing areas.* The fruit must be grown in one of the following approved citrus-producing zones: Zone I, Piura; Zone II, Lambayeque; Zone III, Lima; Zone IV, Ica; and Zone V, Junin.

(d) *Grower registration and agreement.* The production site where the fruit is grown must be registered for export with the national plant protection organization (NPPO) of Peru, and the producer must have signed an agreement with the NPPO of Peru whereby the producer agrees to participate in and follow the fruit fly management program established by the NPPO of Peru.

(e) *Management program for fruit flies; monitoring.* The NPPO of Peru(s) fruit fly management program must be approved by APHIS, and must require that participating citrus producers allow APHIS inspectors access to production areas in order to monitor compliance with the fruit fly management program. The fruit fly management program must also provide for the following:

(1) *Trapping and control.* In areas where citrus is produced for export to the United States, traps must be placed in fruit fly host plants at least 6 weeks prior to harvest at a rate mutually agreed upon by APHIS and the NPPO of Peru. If fruit fly trapping levels at a production site exceed the thresholds established by APHIS and the NPPO of Peru, exports from that production site will be suspended until APHIS and the NPPO of Peru conclude that fruit fly population levels have been reduced to an acceptable limit. Fruit fly traps are monitored weekly; therefore, reinstatements of production sites will be evaluated on a weekly basis.

(2) *Records.* The NPPO of Peru or its designated representative must keep records that document the fruit fly trapping and control activities in areas that produce citrus for export to the United States. All trapping and control records kept by the NPPO of Peru or its designated representative must be made available to APHIS upon request.

(f) *Cold treatment.* The fruit, except for limes (*C. aurantiifolia*), must be cold treated for *Anastrepha fraterculus*, *A. obliqua*, *A. serpentina*, and *Ceratitidis capitata* (Mediterranean fruit fly) in accordance with part 305 of this chapter.

(g) *Phytosanitary inspection.* Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Peru stating that the fruit has been inspected and found free of *Ecdytolopha aurantiana*.

(h) *Port of first arrival sampling.* Citrus fruits imported from Peru are subject to inspection by an inspector at the port of first arrival into the United States in accordance with § 319.56-3(d). At the port of first arrival, an inspector will sample and cut citrus fruits from each consignment to detect pest infestation. If a single live fruit fly in any stage of development or a single *E. aurantiana* is found, the consignment will be held until an investigation is completed and appropriate remedial actions have been implemented.

#### § 319.56-42 Peppers from the Republic of Korea.

Peppers (*Capsicum annuum* L. var. *annuum*) from the Republic of Korea may be imported into the continental United States only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) The peppers must be grown in the Republic of Korea in insect-proof greenhouses approved by and registered with the National Plant Quarantine Service (NPQS).

(b) The greenhouses must be equipped with double self-closing doors, and any vents or openings in the greenhouses (other than the double self-closing doors) must be covered with 0.6 mm screening in order to prevent the entry of pests into the greenhouse.

(c) The greenhouses must be inspected monthly throughout the growing season by NPQS to ensure phytosanitary procedures are employed to exclude plant pests and diseases, and that the screens are intact.

(d) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. During the time the packinghouse is in use for exporting peppers to the continental United States, the packinghouse can accept peppers only from registered approved production sites. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing. The peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the continental United States. These safeguards must remain intact until the arrival of the peppers in the United States or the consignment will not be allowed to enter the United States.

(e) Each consignment of peppers must be accompanied by a phytosanitary certificate of inspection issued by NPQS bearing the following additional declaration: "These peppers were grown in greenhouses in accordance with the conditions in 7 CFR 319.56-42 and were inspected and found free from *Agrotis segetum*, *Helicoverpa armigera*, *Helicoverpa assulta*, *Mamestra brassicae*, *Monilinia fructigena*, *Ostrinia furnacalis*, *Scirtothrips dorsalis*, *Spodoptera litura*, and *Thrips palmi*."

(f) The peppers must be imported in commercial consignments only.

(Approved by the Office of Management and Budget under control number 0579-0282)

**§ 319.56-43 Baby corn and baby carrots from Zambia.**

(a) Immature, dehusked "baby" sweet corn (*Zea mays* L.) measuring 10 to 25 millimeters (0.39 to 0.98 inches) in diameter and 60 to 105 millimeters (2.36 to 4.13 inches) in length may be imported into the continental United States from Zambia only under the following conditions and in accordance with all other applicable provisions of this subpart:

(1) The production site, which is a field, where the corn has been grown must have been inspected at least once during the growing season and before

harvest for the following pest: *Phomopsis jazzewskii*.

(2) After harvest, the corn must be inspected by Zambia's national plant protection organization (NPPO) and found free of the pests listed in paragraph (a)(1) of this section before the corn may be shipped to the continental United States.

(3) The corn must be inspected at the port of first arrival as provided in § 319.56-3(d).

(4) Each consignment must be accompanied by a phytosanitary certificate issued by the NPPO of Zambia that includes an additional declaration stating that the corn has been inspected and found free of *Phomopsis jazzewskii* based on field and packinghouse inspections.

(5) The corn may be imported in commercial consignments only.

(b) Immature "baby" carrots (*Daucus carota* L. ssp. *sativus*) for consumption measuring 10 to 18 millimeters (0.39 to 0.71 inches) in diameter and 50 to 105 millimeters (1.97 to 4.13 inches) in length may be imported into the continental United States from Zambia only under the following conditions:

(1) The production site, which is a field, where the carrots have been grown must have been inspected at least once during the growing season and before harvest for the following pest:

*Meloidogyne ethiopica*.

(2) After harvest, the carrots must be inspected by the NPPO of Zambia and found free of the pests listed in paragraph (b)(1) of this section before the carrots may be shipped to the continental United States.

(3) The carrots must be inspected at the port of first arrival as provided in § 319.56-3(d).

(4) Each consignment must be accompanied by a phytosanitary certificate issued by the NPPO of Zambia that includes an additional declaration stating that the carrots have been inspected and found free of *Meloidogyne ethiopica* based on field and packinghouse inspections.

(5) The carrots must be free from leaves and soil.

(6) The carrots may be imported in commercial consignments only.

(Approved by the Office of Management and Budget under control number 0579-0284)

**§ 319.56-44 Untreated grapefruit, sweet oranges, and tangerines from Mexico for processing.**

Untreated grapefruit (*Citrus paradisi*), sweet oranges (*Citrus sinensis*), and tangerines (*Citrus reticulata*) may be imported into the United States from Mexico for extracting juice if they originate from production sites in

Mexico that are approved by APHIS because they meet the following conditions and any other conditions determined by the Administrator to be necessary to mitigate the pest risk that such fruits pose and in accordance with all other applicable provisions of this subpart:

(a) *Application of sterile insect technique.* Production sites, and a surrounding 1.5 mile buffer area, must be administered under an APHIS-approved preventative release program using sterile insect technique for the Mexican fruit fly (*Anastrepha ludens*).

(b) *Fruit fly trapping protocol.* (1) *Trapping densities.* In areas where grapefruit, sweet oranges, and tangerines are produced for export to the United States, APHIS approved traps and lures must be placed in production sites and a surrounding 1.5 mile buffer areas as follows:

(i) For Mexican fruit fly (*Anastrepha ludens*) and sapote fruit fly (*A. serpentina*): One trap per 50 hectares.

(ii) For Mediterranean fruit fly (*Ceratitis capitata*): One to four traps per 250 hectares.

(2) *Fruit fly catches.* Upon trapping of a Mexican fruit fly, sapote fruit fly, or Mediterranean fruit fly in a production site or buffer area, exports from that production site are prohibited until the Administrator determines that the phytosanitary measures taken have been effective to allow the resumption of export from that production site.

(3) *Monitoring.* The trapping program must be monitored under an APHIS-approved quality control program.

(c) *Safeguarding.* Fruit must be safeguarded against fruit fly infestation using methods approved by APHIS from the time of harvest until processing in the United States.

(d) *Phytosanitary certificate.* Each consignment must be accompanied by a phytosanitary certificate issued by Mexico's national plant protection organization that contains additional declarations stating that the requirements of paragraphs (a), (b), and (c) of this section have been met.

(e) *Ports.* The harvested fruit may enter the United States only through a port of entry located in one of the Texas counties listed in § 301.64-3(c) of this chapter.

(f) *Route of transit.* Harvested fruit must travel on the most direct route to the processing plant from its point of entry into the United States as specified in the import permit. Such fruit may not enter or transit areas other than the Texas counties listed in § 301.64-3(c) of this chapter.

(g) *Approved destinations.* Processing plants within the United States must be

located within an area in Texas that is under an APHIS-approved preventative release program using sterile insect technique for Mexican fruit fly.

(h) *Compliance agreements.*

Processing plants within the United States must enter into a compliance agreement with APHIS in order to handle grapefruit, sweet oranges, and tangerines imported from Mexico in accordance with this section. APHIS will only enter into compliance agreements with facilities that handle and process grapefruit, sweet oranges, and tangerines from Mexico in such a way as to eliminate any risk that exotic fruit flies could be disseminated into the United States, as determined by APHIS.

(Approved by the Office of Management and Budget under control number 0579-0264)

**§ 319.56-45 Shelled garden peas from Kenya.**

Garden peas (*Pisum sativum*) may be imported into the continental United States from Kenya only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) The peas must be shelled from the pod.

(b) The peas must be washed in disinfectant water at 3 to 5 °C containing 50 ppm chlorine.

(c) Each shipment of peas must be accompanied by a phytosanitary certificate of inspection issued by the national plant protection organization of Kenya bearing the following additional declaration: "These peas have been shelled and washed in accordance with 7 CFR 319.56-45 and have been inspected and found free of pests."

(Approved by the Office of Management and Budget under control number 0579-0302)

**§ 319.56-46 Mangoes from India.**

Mangoes (*Mangifera indica*) may be imported into the continental United States from India only under the following conditions:

(a) The mangoes must be treated in India with irradiation by receiving a minimum absorbed dose of 400 Gy in

accordance with § 305.31 of this chapter.

(b) The risks presented by *Cytosphaera mangiferae* and *Macrophoma mangiferae* must be addressed in one of the following ways:

(1) The mangoes are treated with a broad-spectrum post-harvest fungicidal dip; or

(2) The orchard of origin is inspected prior to the beginning of harvest as determined by the mutual agreement between APHIS and the national plant protection organization (NPPO) of India and the orchard is found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae*; or

(3) The orchard of origin is treated with a broad-spectrum fungicide during the growing season and is inspected prior to the beginning of harvest as determined by the mutual agreement between APHIS and the NPPO of India and the fruit found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae*.

(c) Each consignment of mangoes must be inspected jointly by APHIS and the NPPO of India as part of the required preclearance inspection activities at a time and in a manner determined by mutual agreement between APHIS and the NPPO of India.

(d) The risks presented by *Cytosphaera mangiferae*, *Macrophoma mangiferae*, and *Xanthomonas campestris* pv. *mangiferaeindicae* must be addressed by inspection during preclearance activities.

(e) Each consignment of fruit must be inspected jointly by APHIS and the NPPO of India and accompanied by a phytosanitary certificate issued by the NPPO of India certifying that the fruit received the required irradiation treatment. The phytosanitary certificate must also bear two additional declarations confirming that:

(1) The mangoes were subjected to one of the pre- or post-harvest mitigation options described in § 319.56-46(b) and

(2) The mangoes were inspected during preclearance activities and found free of *Cytosphaera mangiferae*,

*Macrophoma mangiferae*, and *Xanthomonas campestris* pv. *mangiferaeindicae*.

(f) The mangoes may be imported in commercial consignments only.

(Approved by the Office of Management and Budget under control number 0579-0312)

**§ 319.75-2 [Amended]**

■ 14. In § 319.75-2, footnote 1 is amended by removing the citation "7 CFR 319.56 *et seq.*" and adding the words "Subpart—Fruits and Vegetables of this part." in its place.

**PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS**

■ 15. The authority citation for part 352 continues to read as follows:

**Authority:** 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

■ 16. In § 352.30, paragraphs (e) and (f) are revised to read as follows:

**§ 352.30 Untreated oranges, tangerines, and grapefruit from Mexico.**

\* \* \* \* \*

(e) *Untreated fruit from certain municipalities in Mexico.* Oranges, tangerines, and grapefruit in transit to foreign countries may be imported from certain municipalities in Mexico that meet the criteria of § 319.56-5 for freedom from fruit flies in accordance with the applicable conditions in part 319 of this chapter.

(f) *Treated fruit.* Oranges, tangerines, and grapefruit from Mexico that have been treated in Mexico in accordance with part 305 of this chapter may be moved through the United States ports for exportation in accordance with the regulations in part 319 of this chapter.

\* \* \* \* \*

Done in Washington, DC, this 10th day of July 2007.

**Bruce Knight,**

*Under Secretary for Marketing and Regulatory Programs.*

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