

Chinese Ministry of Agriculture during the growing season.

(3) The registered growers shall be responsible for following the phytosanitary measures agreed upon by APHIS and the Chinese Ministry of Agriculture, 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 packing house.

(4) The packing houses 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 packing houses 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 packing house and the containers then sealed before movement to the port of export.

(b) *Treatment.* The pears must be cold treated for *Bactrocera dorsalis* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at §300.1 of this chapter.

(c) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions of paragraphs (a) and (b) of this section have been met.

[60 FR 50386, Sept. 29, 1995]

§ 319.56-2ff Administrative instructions governing movement of Hass avocados from Mexico to the Northeastern United States.

Fresh Hass variety avocados (*Persea americana*) may be imported from Mexico into the United States for distribution in the northeastern United States only under a permit issued in accordance with §319.56-4, and only under the following conditions:

(a) *Shipping restrictions.* (1) The avocados may be imported in commercial shipments only;

(2) The avocados may be imported only during the months of November, December, January, and February; and

(3) The avocados may be distributed only in the following northeastern

States: Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin.

(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 the Animal and Plant Health Inspection Service (APHIS) for that shipping season. That agreement requires the Mexican avocado industry association to pay in advance all estimated costs that APHIS expects to incur through its involvement in the trapping, survey, harvest, and packinghouse operations prescribed in paragraph (c) of this section. 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 these services. The agreement requires the Mexican avocado industry association to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the Mexican avocado industry association to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the Mexican avocado industry association or held on account until needed.

(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. Sanidad Vegetal must provide an annual work plan to APHIS that details the activities that Sanidad Vegetal will, subject to APHIS' approval of the work plan, carry out to meet the requirements of this section; APHIS will be directly involved with Sanidad Vegetal in the monitoring and supervision of those activities. The personnel conducting the trapping and pest surveys must be hired, trained, and supervised by Sanidad Vegetal or by the Michoacan State delegate of the Secretaria de Agricultura, Ganaderia y Desarrollo Rural (SAGDR).

(1) *Municipality requirements.* (i) The municipality must be listed as an approved municipality in the annual work plan provided to APHIS by Sanidad Vegetal.

(ii) The municipality must be surveyed at least annually 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*. The survey must cover at least 300 hectares in the municipality and include randomly selected portions of each registered orchard and areas with wild or backyard avocado trees. The survey must be conducted during the growing season and completed prior to the harvest of the avocados.

(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 Sanidad Vegetal'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 Sanidad Vegetal. The operations of the orchard must meet the following conditions:

(i) The orchard and all contiguous orchards and properties must be surveyed annually and found to be free from the avocado stem weevil *Copturus aguacatae*. The survey must be conducted during the growing season and

completed prior to the harvest of the avocados.

(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 Sanidad Vegetal 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 Sanidad Vegetal's avocado export program and must be listed as an approved packinghouse in the annual work plan provided to APHIS by Sanidad Vegetal. 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 Sanidad Vegetal 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 sample of 300 avocados per shipment must be selected, cut, and inspected by Sanidad Vegetal 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 Sanidad Vegetal registration number of the packinghouse.

(vii) The avocados must be packed in clean, new boxes. The boxes must be clearly marked with the identity of the grower, packinghouse, and exporter, and the statement “Distribution limited to the following States: CT, DC, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and WI.”

(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 Sanidad Vegetal 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 work day must be kept in the screened packing area.

(d) *Certification.* All shipments of avocados must be accompanied by a phytosanitary certificate issued by Sanidad Vegetal 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 an annual pest survey, orchard survey, packinghouse inspection, or other monitoring or inspection activity in the municipality, Sanidad Vegetal must immediately initiate an investigation and take measures to isolate and eradicate the pests. Sanidad Vegetal 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 Sanidad Vegetal agree that the pest eradication measures taken have been effective and that the pest risk within that municipality has been eliminated.

(2) If Sanidad Vegetal discovers the stem weevil *Copturus aguacatae* in an orchard during an orchard survey or other monitoring or inspection activity in the orchard, Sanidad Vegetal 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 will be denied export certification for the entire shipping season of November through February.

(3) If Sanidad Vegetal discovers the stem weevil *Copturus aguacatae* in fruit at a packinghouse, Sanidad Vegetal 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 will be denied export certification for the entire shipping season of November through February.

(f) *Ports.* The avocados may enter the United States at:

(1) Any port located in the northeastern States specified in paragraph (a)(3) of this section;

(2) The ports of Galveston or Houston, TX, or the border ports of Nogales, AZ, or Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, TX; or

(3) Other ports within that area of the United States specified in paragraph (g) of this section.

(g) *Shipping areas.* Except as explained below in this paragraph for avocados that enter the United States at Nogales, AZ, avocados moved by truck or rail car may transit only that area of the United States bounded on the west by a line extending from El Paso, TX, to Denver, CO, and due north from Denver; and on the east and south by a line extending from Brownsville, TX, to Galveston, TX, to Kinder, LA, to Memphis, TN, to Knoxville, TN, following Interstate 40 to Raleigh, NC, and due east from Raleigh. All cities on these boundary lines are included in this area. If the avocados are moved by air, the aircraft may not land outside this area. Avocados that enter the United States at Nogales, AZ, must be moved to El Paso, TX, by the route specified on the permit, and then must remain within the shipping area described above in this paragraph.

(h) *Shipping requirements.* The avocados must be moved through the United States either by air or in a refrigerated truck or refrigerated rail car or in a refrigerated container on a truck or rail car. If the avocados are moved in a refrigerated container on a truck or rail car, an inspector must seal the container with a serially numbered seal at the port of first arrival in the United States. If the avocados are moved in a refrigerated truck or a refrigerated rail car, an inspector must seal the truck or rail car with a serially numbered seal at the port of first arrival in the United States. If the avocados are transferred to another vehicle or container in the United States, an inspector must be present to supervise the transfer and must apply a new serially numbered seal. The avocados must be moved through the United States under Customs bond.

(i) *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 the northeastern States, and upon arrival at the terminal market in the north-

eastern States. At the port of first arrival, an inspector will sample and cut avocados from each shipment to detect pest infestation.

(j) *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.

(k) *Compliance agreements.* (1) Any person, other than the permittee, who moves or distributes the avocados following their importation into the United States (i.e., a second-party or subsequent handler) must enter into a compliance agreement with APHIS. In the compliance agreement, the person must acknowledge, and agree to observe, the requirements of paragraph (a) and paragraphs (f) through (k) of this section. Compliance agreement forms are available, free of charge, from local offices of Plant Protection and Quarantine, which are listed in local telephone directories. A compliance agreement will not be required for an individual place of business that only offers the avocados for sale directly to consumers.

(2) Before transferring the avocados to any person (i.e., a second-party handler) for movement or distribution, the permittee must confirm that the second-party handler has entered into a compliance agreement with APHIS as required by paragraph (k)(1) of this section. If the permittee transfers the avocados to a second-party handler who has not entered into a compliance agreement, APHIS may revoke the permittee's import permit for the remainder of the current shipping season.

(3) Any second-party or subsequent handler who transfers the avocados to another person for movement or distribution must confirm that the person receiving the avocados has entered into a compliance agreement with APHIS as required by paragraph (k)(1) of this section. If the second-party or subsequent handler transfers the avocados to a person who has not entered into a compliance agreement, APHIS may revoke the handler's compliance agreement

for the remainder of the current shipping season.

(4) *Action on repeat violators.* APHIS may deny an application for an import permit from, or refuse to enter into a compliance agreement with, any person who has had his or her import permit or compliance agreement revoked under paragraph (k)(2) or (k)(3) of this section twice within any 5-year period.

(Approved by the Office of Management and Budget under control number 0579-0129.)

[62 FR 5313, Feb. 5, 1997, as amended at 64 FR 68005, Dec. 6, 1999]

§ 319.56-2gg Administrative instructions; conditions governing the entry of 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 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 (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 Deputy 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 against fruit fly infestation from harvest to export. Such safeguarding includes covering newly harvested peppers with fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packing the peppers in fruit fly-proof cartons, or cartons covered with fruit-fly proof mesh or plastic tarpaulin, and placing those cartons in enclosed shipping containers for transit to the airport and subsequent shipment to 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 Almeria Province in Spain," must accompany the shipment.

[63 FR 65656, Nov. 30, 1998]

§ 319.56-3 Applications for permits for importation of fruits and vegetables.

(a) Persons contemplating the importation of fruits or vegetables the entry of which is authorized in the regulations in this subpart shall first make application to the Plant Protection and Quarantine Programs for a permit, stating in the application the country or locality of origin of the fruits or vegetables, the port of first arrival, and the name and address of the importer in the United States to whom the permit should be sent.

(b) Applications for permits should be made in advance of the proposed shipments; but if, through no fault of the importer, a shipment should arrive before a permit is received, the importation will be held in customs custody at