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(2) Upon arrival, the shipment shall be detained by, or redispatched to, the postmaster at Washington, DC, Brownsville, Tex., Hoboken, N.J., Honolulu, Hawaii, Jamaica, L.I., N.Y., Laredo, Tex., Miami, Fla., New Orleans, La., San Francisco, Calif., San Juan, P.R., San Pedro, Calif., or Seattle, Wash., as may be appropriate, according to the address on the yellow and green tag, and there submitted to the customs officer and the Federal quarantine inspector. The merchandise shall under no circumstances be permitted to enter the commerce of the United States.

(3) After inspection by the customs and quarantine officers, and with their approval, the addressee, or his authorized agent, shall repack and readdress the mail parcel under customs supervision; affix to the parcel the necessary postage, and comply with other mailing requirements, after which the parcel shall be delivered to the postmaster for exportation by mail pursuant to 19 CFR 9.11(a). The contents of the original parcel may be subdivided and exported in separate parcels in like manner.

(4) It will not be necessary to issue a customs mail entry nor to require formal entry of the shipments.

(5) The mail shipments referred to shall be accorded special handling only at the points specified in paragraph (a)(2) of this section.

(6) The foregoing procedure shall not affect the movement of plant material in the international mails in transit through the United States.

[24 FR 9923, Dec. 9, 1959, as amended at 28 FR 5204, May 24, 1963]

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

Sec.

352.1 Definitions.
352.2 Purpose; relation to other regulations; applicability; preemption of State and local laws.
352.3 Enforcement and administration.
352.4 Documentation.
352.5 Permit; requirement, form and conditions.
352.6 Application for permit and approval or denial thereof.
352.7 Notice of arrival.
352.8 Marking requirements.
352.9 Ports.
352.10 Inspection; safeguards; disposal.
352.11 Mail.
352.12 Baggage.
352.13 Certain conditions under which change of Customs entry or diversion is permitted.
352.14 Costs.
352.15 Caution.
352.16–352.28 [Reserved]
352.29 Administrative instructions: Avocados from Mexico.
352.30 Untreated oranges, tangerines, and grapefruit from Mexico.

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.

SOURCE: 25 FR 1929, Mar. 5, 1960, unless otherwise noted.

§ 352.1 Definitions.

(a) This part may be cited by the short title: "Safeguard Regulations." This title shall be understood to include both the regulations and administrative instructions in this part.

(b) Words used in the singular form in this part shall be deemed to import the plural and vice versa as the case may demand. For purposes of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Administrative instructions. Published documents set forth in this part relating to the enforcement of this part, and issued under authority thereof by the Deputy Administrator.

Brought in for temporary stay where unloading or landing is not intended. Brought in by carrier but not intended to be unloaded or landed from such carrier. This phrase includes movement (i) departing from the United States on the same carrier directly from the point of arrival therein; and (ii) transiting a part of the United States before departure therefrom, and applies whether movement under Customs procedure is as residue cargo or follows some form of Customs entry.

Carrier; means of conveyance. Automobile, truck, animal-drawn vehicle, railway car, aircraft, ship, or other means of transportation.

Customs. The U.S. Customs Service, Department of the Treasury, or, with reference to Guam, the Customs Office of the Government of Guam.

Deputy Administrator. The Deputy Administrator of the Plant Protection and Quarantine Programs, or any officer or employee of the Plant Protection and Quarantine Programs to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

Foreign trade zone. A formally prescribed area containing various physical facilities located in or adjacent to ports of entry under the jurisdiction of the United States and established, operated, and maintained as a foreign trade zone pursuant to the Foreign-Trade Zones Act of June 18, 1934 (48 Stat. 998–1003; 19 U.S.C. 81a–81u), as amended, wherein foreign merchandise, as well as domestic merchandise, may be deposited for approved purposes. Movement into and from such area is subject to applicable customs, plant quarantine, and other Federal requirements.

Immediate (export, trans-shipment, or transportation and exportation). The period which, in the opinion of the inspector, is the shortest practicable interval of time between the arrival of an incoming carrier and the departure of the outgoing carrier transporting a consignment of prohibited or restricted products or articles.

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

Intended for unloading and entry at a port other than the port of first arrival. Brought in by carrier at a port for movement to the port of entry under residue cargo procedure of Customs.

Other product or article. Any product or article of any character whatsoever (other than plants, plant products, soil, plant pests, and means of conveyance), which an inspector considers may be infested or infected by or contain a plant pest.

Owner. The owner, or his agent (including the operator of a carrier), having responsible custody of a plant, plant product, plant pest, soil, or other product or article subject to this part.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Plant pest. "Plant pest" means any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

Plant Protection Act. Title IV of Public Law 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772, which was enacted June 20, 2000.

Plant Protection and Quarantine Programs. The Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, of the U.S. Department of Agriculture.

Plants and plant products. Nursery stock, other plants, plant parts, roots, bulbs, seeds, fruits, nuts, vegetables, and other plant products, and any product constituted, in whole or in part, of plant material which has not been so manufactured or processed as to eliminate pest risk.

Port. Any place designated by the President, Secretary of the Treasury, or Congress at which a Customs officer is assigned with authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the Customs and Navigation laws in force at that place.

Port of arrival. Any port in the United States at which a prohibited or restricted product or article arrives.

Port of entry. A port at which a specified shipment or means of conveyance is accepted for entry or admitted without entry into the United States.

Residue cargo. Shipments authorized by Customs to be transported under the Customs bond of the carrier on which the shipments arrive, without entry being filed, for direct export from the first port of arrival, or to another port for entry or for direct export at that port without entry being required.

Safeguard. A procedure for handling, maintaining, or disposing of prohibited or restricted products and articles subject to this part so as to eliminate the risk of plant pest dissemination which

the prohibited or restricted products and articles may present.

Ship. Any means of transportation by water.

Soil. The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

Stores and furnishings. Plants and plant products for use on board a carrier; e.g. as food or decorative material.

United States. The States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States, and the territorial waters of the United States adjacent to those land areas.

Unloaded or landed for transportation and exportation. Brought in by carrier and transferred to another carrier for transportation to another port for exportation, whether or not some form of Customs entry is made.

Unloaded or landed for transshipment and exportation. Brought in by carrier and transferred to another carrier for exportation from the same port, whether or not some form of Customs entry is made.

[25 FR 1929, Mar. 5, 1960, as amended at 36 FR 24917, Dec. 24, 1971; 37 FR 10554, May 25, 1972; 62 FR 65009, Dec. 10, 1997; 66 FR 21059, Apr. 27, 2001; 71 FR 49325, Aug. 23, 2006]

§ 352.2 Purpose; relation to other regulations; applicability; preemption of State and local laws.

(a) Importations of plants, plant products, plant pests, noxious weeds, soil, and other products and articles that may be infested or infected by or contain plant pests or noxious weeds are exempt from the prohibitions or restrictions contained in parts 319, 330, and 360 of this chapter if they meet one of the conditions in paragraphs (a)(1) through (a)(4) of this section and are moved into the United States and handled in compliance with this part. *Provided:* That these exemptions do not apply to cotton and covers imported into the United States from any country for exportation or transshipment and exportation or transportation and exportation as provided in §§ 319.8 through 319.8–26 of this chapter. Moreover, the applicable provisions of §§ 330.100 through 330.109 and 330.400 of this chapter also apply to products and articles subject to this part.

(1) They are brought in temporarily where loading and landing is not intended;

(2) They are unloaded or landed for transshipment and exportation;

(3) They are unloaded or landed for transportation and exportation; or

(4) They are intended for unloading and entry at a port other than the port of arrival.

(b) Prohibited or restricted products and articles offered for and refused entry into the United States under parts 319, 330, or 360 of this chapter are subject to the applicable provisions in this part regarding their subsequent handling in this country.

(c)(1) The provisions in this part apply whether the controls over arrival, temporary stay, unloading, landing, transshipment and exportation, or transportation and exportation, or other movement or possession in the United States and Guam are maintained by entry or other procedures of the U.S. Customs Service, Department of the Treasury, or the Customs Office of the Government of Guam, respectively. Such provisions will apply to arrivals in the United States, including arrivals in a foreign trade zone in the United States to which admission is sought in accordance with the Customs regulations in 19 CFR chapter I. Prohibited or restricted products and articles that have entered the United States, been exported pursuant to this part, and returned to the United States are subject to the applicable requirements of this part upon reentry.

(2) Any restrictions and requirements under this part with respect to the arrival, temporary stay, unloading, landing, transshipment, exportation, transportation and exportation, or other movement or possession in the United States of any product or article shall apply to any person who, respectively, brings into, maintains, unloads, lands, transships, exports, transports and exports, or otherwise moves or possesses in the United States such product or article, whether he is the person who was required to have a permit for the product or article or a subsequent custodian of such product or article, and failure to comply with all applicable

restrictions and requirements under this part by any such person shall be deemed to be a violation of this part.

(d) Under section 436 of the Plant Protection Act (7 U.S.C. 7756), a State or political subdivision of a State may not 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.

[25 FR 1929, Mar. 5, 1960, as amended at 62 FR 65009, Dec. 10, 1997; 66 FR 21059, Apr. 27, 2001; 75 FR 68952, Nov. 10, 2010]

§ 352.3 Enforcement and administration.

(a) Plants, plant products, plant pests, noxious weeds, soil, and other products and articles subject to the regulations in this part that are unloaded, landed, or otherwise brought or moved into or through the United States in violation of this part may be seized, destroyed, or otherwise disposed of in accordance with section 414 of the Plant Protection Act (7 U.S.C. 7714). Any person who unloads, lands, or otherwise brings or moves into or through the United States any regulated plants, plant products, plant pests, noxious weeds, soil, or other products or articles in violation of this part will be subject to prosecution under the applicable provisions of law.

(b) Whenever the Deputy Administrator of the Plant Protection and Quarantine Programs shall find that existing conditions of danger of plant pest escape or dissemination involved in the arrival, unloading, landing, or other movement, or possession in the United States of plants, plant products, plant pests, noxious weeds, soil, or other products or articles subject to the regulations in this part, make it safe to modify by making less stringent the restrictions contained in any such regulation, he shall publish such findings in administrative instructions, specifying the manner in which the regulations shall be made less stringent with respect thereto, whereupon such modification shall become effective; or he may, upon request in specific cases, when the public interests will permit, authorize arrival, unloading, landing, or other movement, or possession in the United States under conditions that are less stringent than those contained in the regulations in this part.

(c) The Deputy Administrator also may set forth and publish, in administrative instructions, requirements and conditions for any class of products or articles supplemental to the regulations in this part, and may promulgate interpretations of this part.

(d) The Deputy Administrator shall employ procedures to carry out the purposes of this part which will impose a minimum of impediment to foreign commerce, consistent with proper precaution against plant pest or noxious weed dissemination.

[25 FR 1929, Mar. 5, 1960, as amended at 66 FR 21059, Apr. 27, 2001; 75 FR 68952, Nov. 10, 2010]

§ 352.4 Documentation.

(a) *Manifest.* Immediately upon the arrival of a carrier in the United States the owner shall make available to the inspector for examination a complete manifest or other documentation from which the inspector may determine whether there are on board any prohibited or restricted products or articles subject to this part, other than accompanied baggage and mail.

(b) *Other documentation.* Any notifications, reports, and similar documentation not specified in the regulations in this part, but necessary to carry out the purpose of the regulations, will be prescribed in administrative instructions.

(c) *Procedure after examination of documents.* After examination of the carrier cargo manifest or other documentation the inspector may notify the owner and the Customs officer that certain products or articles on board the carrier are subject to this part and may not be unloaded or landed for any purpose pending plant quarantine inspection. In such case the owner shall not unload or land such products or articles without authorization by an inspector.

§ 352.5 Permit; requirement, form and conditions.

(a) *General.* (1) Permits are required for the arrival, unloading or landing, or other movement into or through the United States of plants, plant products, plant pests, noxious weeds, and soil subject to this part. The permit may consist of a general authorization as set out in paragraph (b), (c), or (d) of this section or § 352.11, or it may be a specific permit. A specific permit may be formal or oral except as a formal permit is required by paragraph (c) or (e) of this section. The Deputy Administrator may in administrative instructions require specific or formal permits for any class of products or articles subject to this part.

(2) A formal permit may be issued in prescribed form, in letter form, or a combination thereof. A rubber stamp impression or other endorsement made by the inspector on pertinent Customs documents covering the products or articles involved may constitute the formal permit in appropriate cases.

(b) *Permit for prohibited or restricted products or articles brought in for temporary stay where unloading or landing in the United States is not intended.* No permit other than the authorization contained in this paragraph shall be required for bringing into the United States any plants, plant products, plant pests, noxious weeds, or soil subject to this part for temporary stay where unloading or landing in the United States is not intended, e.g., in connection with residue cargo movement under Customs procedure, or in connection with Customs entry for exportation or for transportation and exportation. This authorization also includes transshipment of products and articles under this paragraph from a carrier directly to another carrier of the same company when necessitated by an emergency or operating requirement and effected in accordance with safeguards prescribed in writing or orally by the inspector under § 352.10.

(c) *Permit for prohibited or restricted products or articles unloaded or landed for immediate transshipment and exportation, or immediate transportation and exportation.* When in the opinion of the inspector it is unnecessary to specify in a formal permit the safeguards required to prevent plant pest dissemination, plants, plant products, plant pests, noxious weeds, or soil subject to this part may be unloaded or landed for immediate transshipment and exportation or for immediate transportation and exportation, as provided in § 352.10, with the approval of the inspector and no further permit than the authorization contained in this paragraph; otherwise a formal permit shall be required for such unloading or landing.

(d) *Permit for restricted products or articles moving as residue cargo from port of first arrival to port of entry.* Restricted plants, plant products, plant pests, noxious weeds, or soil subject to this part arriving in the United States for movement under residue cargo procedures of Customs from a port of first arrival to another port for Customs entry into the United States may be allowed to so move without permit other than the authorization contained in this paragraph, if the inspector finds that apparently they can meet the applicable requirements of parts 319, 330, and 360 of this chapter at the port where entry is to be made; otherwise a formal permit shall be required for such movement. Such restricted products and articles shall become subject to the applicable permit and other requirements of parts 319, 330, and 360 of this chapter upon arrival at the port where Customs entry is to be made and shall not be unloaded or landed unless they comply with the applicable requirements.

(e) *Formal permits required for certain prohibited or restricted products or articles brought into a foreign trade zone.* A formal permit must be obtained to bring any prohibited or restricted plants, plant products, plant pests, noxious weeds, or soil subject to the provisions in this part, into a foreign trade zone for storage, manipulation, or other handling, except for immediate transshipment and exportation or for immediate transportation and exportation. Special conditions to safeguard such storage, manipulation, or other possession or handling may be specified in the permit, and when so specified shall be in addition to any other applicable requirements of this part or the safeguards prescribed by

the inspector or otherwise under this part.

[25 FR 1929, Mar. 5, 1960, as amended at 62 FR 65009, Dec. 10, 1997; 66 FR 21059, Apr. 27, 2001; 75 FR 68952, Nov. 10, 2010]

§ 352.6 Application for permit and approval or denial thereof.

(a) *Plants and plant products (including noxious weeds).* Except as otherwise provided in this paragraph, any person desiring to unload or land, or otherwise move into or through the United States, any plants or plant products for which a specific permit is required by § 352.5, shall in the case of prohibited plants or plant products, and should in the case of restricted plants or plant products, in advance of arrival in the United States of the plants or plant products, submit an application for a permit to the Plant Protection and Quarantine Programs,[1] stating such of the following information as is relevant: The name and address of the importer, the approximate quantity and kind of plants and plant products it is desired to import under this part, the country where grown, the United States port of arrival, the United States port of export, the proposed routing from the port of arrival to the port of exportation, means of transportation to be employed (*i.e.*, mail, air mail, express, air express, freight, air freight, baggage), and the name and address of the agent representing the importer. Applications may be made on forms provided for the purpose by the Plant Protection and Quarantine Programs, or orally, or by letter, telegram, or other means of communication furnishing all the information required by this paragraph. Applications need not be made for shipments handled under general authorizations set forth in § 352.5 (b), (c), or (d), or in § 352.11.

(b) *Plant pests.* Any person desiring to unload or land, or otherwise move into or through the United States, any plant pest for which a specific permit is required by § 352.5 shall, in advance of the arrival of the plant pests in the United States, submit an application to the Plant Protection and Quarantine Programs[2] for a permit as specified by § 330.201 of this chapter.

(c) *Soil.* Any person desiring to bring into or unload or land, or otherwise move into or through the United States, any soil for which a specific permit is required by § 352.5 shall, in advance of the arrival of the soil in the United States, submit an application for permit to the Plant Protection and Quarantine Programs[2] as specified by § 330.300(b) of this chapter.

(d) *Constructive oral application.* If a permit has not been issued in advance of arrival, application for any required permit (other than a formal permit) shall be considered to have been made orally to the inspector at the port of arrival by presentation of the shipment for entry or its listing on the manifest or other documentation, but this shall not excuse failure to make timely application as required by this section. Express application is required for a formal permit.

(e) *Approval or denial of permits.* Upon approval of the application, the permit will be issued. Any conditions necessary to eliminate danger of plant pest or noxious weed dissemination may be specified in the permit, or otherwise as provided in § 352.10. Permits will be denied if, in the opinion of the Deputy Administrator, it is not possible to prescribe conditions adequate to prevent danger of plant pest or noxious weed dissemination by the plants, plant products, plant pests, or soil involved.

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

[25 FR 1929, Mar. 5, 1960, as amended at 36 FR 24917, Dec. 24, 1971; 37 FR 10554, May 25, 1972; 48 FR 57466, Dec. 30, 1983; 59 FR 67611, Dec. 30, 1994; 75 FR 68952, Nov. 10, 2010]

§ 352.7 Notice of arrival.

Immediately upon arrival of any shipment of plants or plant products

[1] Application for such permits should be addressed to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations, Permit Unit, 4700 River Road, Unit 136, Riverdale, Maryland 20737–1236.

[2] Application for permits should be made to the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

(including noxious weeds) subject to this part and covered by a specific permit, the importer shall submit in duplicate through the U.S. Collector of Customs for the U.S. Department of Agriculture a notice of such arrival on a form provided for that purpose (PQ–368) and shall give such information as is called for by that form and, in addition, where relevant, the proposed routing to the proposed U.S. port of exit. Notice of arrival shall not be required for other products or articles subject to this part since other available documentation meets the requirement for this notice.

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

[25 FR 1929, Mar. 5, 1960, as amended at 48 FR 57466, Dec. 30, 1983; 75 FR 68952, Nov. 10, 2010]

§ 352.8 Marking requirements.

Prohibited and restricted products and articles subject to this part shall be adequately marked or otherwise identified by documentation to indicate their nature.

§ 352.9 Ports.

The arrival, unloading, landing, or possession of plants, plant products, plant pests, noxious weeds, soil, or other products or articles subject to this part shall not be allowed at points within the United States other than at the ports specified in the Customs Regulations in 19 CFR 1.1 and 19 CFR 6.13, and Agana, Guam, or such other ports as may be named in permits or administrative instructions. Restrictions on the ports which may be used for particular types of handling of any products or articles subject to this part may be specified generally in administrative instructions or in permits in specific cases. When ports are specified in permits or otherwise, the arrival, unloading, landing, or possession of the products or articles involved at other ports will not be allowed except as the inspector may authorize changes in the ports specified.

[25 FR 1929, Mar. 5, 1960, as amended at 75 FR 68952, Nov. 10, 2010]

§ 352.10 Inspection; safeguards; disposal.

(a) *Inspection and release.* Prohibited and restricted products and articles subject to this part shall be subject to inspection at the port of first arrival in accordance with § 330.105(a) of this chapter and shall not be released by Customs officers for unloading, landing, or other onward movement or entry until released by an inspector or a Customs officer on behalf of an inspector in accordance with the procedure prescribed in § 330.105(a) of this chapter. If diversion or change of Customs entry is not permitted for any movements authorized under this part, the inspector at the original port of Customs entry shall appropriately endorse Customs documents to show that fact. However, the inspector at the U.S. port of export may approve diversion or change of Customs entry to permit movement to a different foreign country, or entry into the United States, subject to all other applicable requirements under this part or parts 319, 330, or 360 of this chapter. If diversion or change of Customs entry is desired at a Customs port in the United States where there is no inspector, the owner may apply to the Plant Protection and Quarantine Programs[3] for information as to applicable conditions. If diversion or change of Customs entry is desired at port, confirmation will be given by the Plant Protection and Quarantine Programs to the appropriate Customs officers and Plant Protection and Quarantine Programs inspectors.

(b) *Safeguards.* (1) The unloading, landing, retention on board as stores and furnishings or cargo, transshipment and exportation, transportation and exportation, onward movment to the port of entry as residue cargo or under a Customs entry for immediate transportation, and other movement or possession within the United States of prohibited or restricted products and articles under

[3] The Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

this part shall be subject to such safeguards as may be prescribed in the permits and this part and any others which, in the opinion of the inspector, are necessary and are specified by him to prevent plant pest or noxious weed dissemination. In the case of prohibited or restricted products or articles subject to this part which are unloaded or landed for transshipment and exportation or transportation and exportation, or for onward movement to the port of entry as residue cargo or under a Customs entry for immediate transportation, this shall include necessary safeguards with respect to any movement within the port area between the point of arrival and the point of temporary storage, other handling, or point of departure, including a foreign trade zone. Prohibited and restricted products and articles subject to this part which are unloaded or landed for transshipment and exportation or transportation and exportation, or for onward movement as residue cargo or under a Customs entry for immediate transportation, shall be transshipped, or transported and exported from the United States, or moved onward immediately. This shall mean the shortest practicable interval of time commensurate with the risk of plant pest or noxious weed dissemination required to transfer the products or articles from one carrier to another and to move them onward or from the United States. If, in the opinion of the inspector, considerations of risk of plant pest or noxious weed dissemination require, such movement shall be made without regard to the noncompetitive or competitive relations of the carriers concerned, and the inspector shall promptly report to the Plant Protection and Quarantine Programs the circumstances when the emergency is so acute that subsequent movement is required on a carrier of a company other than the one bringing the products or articles to the United States or on which onward movement was contemplated by the shipper or forwarding carrier. Prohibited or restricted plants, plant products, plant pests, and soil which were intended for entry into the United States under parts 319, 330, or 360 of this chapter, or for movement into or through the United States under this part, and which were refused such entry or movement before unloading or landing, or which were refused such entry or movement after unloading or landing and are immediately reloaded on the same carrier, may be retained on board pending removal from the United States or other disposal, but shall be subject to the safeguards specified under this section. Prohibited or restricted products and articles which were refused entry or movement under said parts after unloading or landing and which are not immediately reloaded in accordance with this section shall be subject to such safeguard action as the inspector deems necessary to carry out the purposes of this part.

(2) Safeguards prescribed by an inspector under this section shall be prescribed to the owner by the inspector in writing except that the inspector may prescribe the safeguards orally when, in his opinion, the circumstances and related Customs procedures do not require written notice to the owner of the safeguards to be followed by the owner. In prescribing safeguards, the relevant requirements of parts 319, 330, or 360 of this chapter and this part shall be considered. The safeguards prescribed shall be the minimum required to prevent plant pest or noxious weed dissemination. Destruction or exportation shall be required only when no less drastic measures are deemed by the inspector to be adequate to prevent plant pest or noxious weed dissemination. The inspector may follow administrative instructions promulgated for certain situations, or he may follow a procedure selected by him from administratively approved methods known to be effective in similar situations. In the case of aircraft that are contaminated with insect pests, only an insecticidal formulation, approved for use in aircraft, may be so applied as an emergency measure. If the application is not effective against the insect pests or if other pests must be safeguarded against, the inspector shall report the circumstances promptly to the Plant Protection and Quarantine Programs and receive instructions as to safeguards that will not have a deleterious effect on the structure of the aircraft

or its operating equipment. In prescribing safeguards consideration will be given to such factors as:

(i) The nature and habits of the plant pests known to be, or likely to be, present with the plants, plant products, soil, or other products or articles.

(ii) Nature of the plants, plant products, plant pests, soil, or other products or articles.

(iii) Nature of containers or other packaging and adequacy thereof to prevent plant pest or noxious weed dissemination.

(iv) Climatic conditions as they may have a bearing on plant pest dispersal, and refrigeration if provided.

(v) Routing pending exportation.

(vi) Presence of soil.

(vii) Construction or physical condition and type of carrier.

(viii) Facilities for treatment in accordance with part 305 of this chapter, or for incineration or other destruction.

(ix) Availability of transportation facilities for immediate exportation.

(x) Any other related factor which should be considered, such as intent to export to an adjacent or nearby country.

(c) *Disposal.* (1) If prohibited or restricted products or articles subject to this part are not safeguarded in accordance with measures prescribed under this part, or cannot be adequately safeguarded to prevent plant pest or noxious weed dissemination, they shall be seized, destroyed, or otherwise disposed of according to law. Whenever disposal action is to be taken by the inspector he shall notify the local Customs officer in advance.

(2) When a shipment of any products or articles subject to this part has been handled in accordance with all conditions and safeguards prescribed in this part and in the permit and by the inspector, the inspector shall inform the local Customs officer concerned of the release of such products or articles, in appropriate manner.

[25 FR 1929, Mar. 5, 1960, as amended at 36 FR 24917, Dec. 24, 1971; 37 FR 10554, May 25, 1972; 62 FR 65009, Dec. 10, 1997; 66 FR 21059, Apr. 27, 2001; 75 FR 4253, Jan. 26, 2010; 75 FR 68952, Nov. 10, 2010]

§ 352.11 Mail.

(a) *Transit mail.* (1) Plants, plant products, plant pests, noxious weeds, and soil which arrive in the United States in closed dispatches by international mail or international parcel post and which are in transit through the United States to another country shall be allowed to move through the United States without further permit than the authorization contained in this section. Notice of arrival shall not be required as other documentation meets the requirement for this notice.

(2) Inspectors ordinarily will not inspect transit mail or parcel post, whether transmitted in open mail or in closed dispatches. They may do so if it comes to their attention that any such mail or parcel post contains prohibited or restricted products or articles which require safeguard action. Inspection and disposal in such cases will be made in accordance with this part and part 330 of this chapter, and in conformity with regulations and procedures of the Post Office Department for handling transit mail and parcel post.

(b) *Importation for exportation.* Plants and plant products to be imported for exportation, by mail, will be handled under permit in accordance with Part 351 of this chapter.

[25 FR 1929, Mar. 5, 1960, as amended at 75 FR 68952, Nov. 10, 2010]

§ 352.12 Baggage.

Products or articles subject to this part which are contained in baggage shall be subject to the requirements of this part in the same manner as cargo.

§ 352.13 Certain conditions under which change of Customs entry or diversion is permitted.

When plants, plant products, plant pests, noxious weeds, and soil released for exportation, transshipment and exportation, or transportation and exportation, under this part, have met all applicable permit and other requirements for importation, including inspection and treatment, as provided in parts 319, 330, or 360 of this chapter, the form of Customs entry may be changed and the shipment may be diverted at any time to permit delivery of the products and articles to a destination

in the United States, so far as the requirements in this part are involved. The Customs officer concerned at the original port of Customs entry shall be informed by the inspector that such release has been made and that such change of entry or diversion is approved under this part by appropriate endorsement of Customs documents.

[25 FR 1929, Mar. 5, 1960, as amended at 62 FR 65009, Dec. 10, 1997; 66 FR 21059, Apr. 27, 2001; 75 FR 68952, Nov. 10, 2010]

§ 352.14 Costs.

All costs incident to the inspection, handling, safeguarding, or other disposal of prohibited or restricted products or articles under the provisons in this part shall be borne by the owner. Services of the inspector during regularly assigned hours of duty at the usual places of duty shall be furnished without cost to the person requesting the services, unless a user fee is payable under § 354.3 of this chapter.

[56 FR 14844, Apr. 12, 1991]

§ 352.15 Caution.

In applying safeguards or taking other measures prescribed under the provisions in this part, it should be understood that inexactness or carelessness may result in injury or damage. It should also be understood by the owners that emergency measures prescribed by the inspector to safeguard against plant pest or noxious weed dissemination may have adverse effects on certain products and articles and that they will take the calculated risk of such adverse effects of authorized measures.

[25 FR 1929, Mar. 5, 1960, as amended at 75 FR 68952, Nov. 10, 2010]

§§ 352.16–352.28 [Reserved]

§ 352.29 Administrative instructions: Avocados from Mexico.

Avocados from Mexico may be moved through the United States to destinations outside the United States only in accordance with this section.

(a) *Permits.* Before moving the avocados through the United States, the owner must obtain a formal permit in accordance with § 352.6 of this part.

(b) *Ports.* The avocados may enter the United States only at the following ports: Galveston or Houston, Texas; the border ports of Nogales, Arizona, or Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, Texas; or at other ports within that area of the United States specified in paragraph (f) of this section.

(c) *Notice of arrival.* At the port of arrival, the owner must provide notification of the arrival of the avocados in accordance with § 352.7 of this part.

(d) *Inspection.* The owner must make the avocados available for examination by an inspector. The avocados may not be moved from the port of arrival until released by an inspector.

(e) *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 refrigerated containers on a truck or rail car. If the avocados are moved in refrigerated containers on a truck or rail car, an inspector must seal the containers with a serially numbered seal at the port of arrival. If the avocados are removed in a refrigerated truck or refrigerated rail car, an inspector must seal the truck or rail car with a serially numbered seal at the port of arrival. 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.

(f) *Shipping areas.* Avocados moved by truck or rail car may transit only that area of the United States bounded on the west and south by a line extending from El Paso, Texas, to Salt Lake City, Utah, to Portland, Oregon, and due west from Portland; and on the east and south by a line extending from Brownsville, Texas, to Galveston, Texas, to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville. 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, Arizona, must be moved to El Paso,

Texas, by the route specified on the formal permit.

[52 FR 27671, July 23, 1987, as amended at 54 FR 43167, Oct. 23, 1989]

§ 352.30 Untreated oranges, tangerines, and grapefruit from Mexico.

The following provisions shall apply to the movement into or through the United States under this part of untreated oranges, tangerines, and grapefruit from Mexico in transit to foreign countries via United States ports on the Mexican border.

(a) *Untreated fruit; general*—(1) *Permit and notice of arrival required.* The owner shall, in advance of shipment of untreated oranges, tangerines, or grapefruit from Mexico via United States ports to any foreign country, procure a formal permit as provided in § 352.6, or application for permit may be submitted to the inspector at the port in the United States through which the shipment will move. Notice of arrival of such fruit shall be submitted as required by § 352.7.

(2) *Origin: period of entry.* Such fruit may enter from any State in Mexico throughout the year, in accordance with requirements of this section and other applicable provisions in this part.

(3) *Cleaning refrigerated containers prior to return to the United States from Canada.* Refrigerated containers that have been used to transport untreated oranges, tangerines, or grapefruit from Mexico through the United States to Canada shall be carefully swept and freed from all fruit, as well as boxes and rubbish, by the carrier involved prior to reentry into the United States.

(4) *Inspection; safeguards.* (i) Each shipment under paragraph (a) of this section shall be subject to such inspections and safeguards as are required by this section and such others as may be prescribed by the inspector pursuant to § 352.10.

(ii) Untreated oranges, tangerines, and grapefruit arriving from Mexico at authorized ports in the United States for movement to a foreign country shall be loaded into refrigerated containers and preinspected by an inspector for freedom of citrus leaves before entry into the United States or be accompanied by an acceptable certificate from an inspector as to such freedom. Refrigerated containers loaded with untreated oranges, tangerines, and grapefruit that are not free of such leaves will be denied entry into the United States.

(iii) All refrigerated containers used to transport untreated fruit from Mexico through the United States to a foreign country under this paragraph (a) shall be subject to any treatment in accordance with part 305 of this chapter at the port of first arrival and elsewhere as may be required by the inspector, pursuant to this part, in order to prevent plant pest dissemination.

(b) *Additional conditions for overland movement of certain untreated fruit.* Untreated oranges, tangerines, and grapefruit from Mexico may move overland through the United States to a foreign country only in accordance with the following additional conditions:

(1) *Ports of entry.* Such fruit may enter only at Nogales, AZ, or Eagle Pass, El Paso, or Laredo, TX.

(2) *General transit conditions.* The following conditions apply to all shipments of untreated oranges, tangerines, and grapefruit from Mexico transiting the United States for movement to a foreign country:

(i) The fruit must be packed in insect-proof boxes or crates that prevent the escape or entry of adult, larval, or pupal fruit flies.[4]

(ii) Boxes or cartons of fruit must be enclosed in sealed, refrigerated containers of the type commonly used by the maritime or commercial trucking industry. An official seal must be applied to the container at the port of entry. The seal must not be removed except by an inspector, or after the shipment has left the United States.

(iii) The temperature in the refrigerated containers in which the fruit is transported must be maintained at 60 °F or lower.

(iv) If the seal on the containers in which such fruit is shipped is found to

[4] If there is a question as to whether packaging is adequate, send a request for approval of the packaging, together with a sample of the packaging, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Science and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606.

have been broken, for any reason, before the container leaves the United States, or if the cooling system in the containers fails at any point during transit, an inspector at the port of entry must be contacted immediately.

(v) A transportation and exportation permit must be issued by an inspector for each shipment. This permit can be obtained from APHIS headquarters.[5]

(vi) If untreated fruit is transloaded to another container while in the United States, the transloading must be supervised by an inspector and a replacement official seal must be applied to the container to which the fruit is moved.

(vii) Shipments of such fruit must move by direct route, in Customs bond and under official seal, without diversion or change of entry en route, from the port of entry to the port of exit or to an approved port in the United States for export to another foreign country.

(viii) Shipments of such fruit may not traverse the counties of Cameron, Hidalgo, Starr, or Willacy, TX. Shipments of such fruit may only traverse areas listed under each type of carrier listed below.

(3) *Truck movement.* Trucks may haul refrigerated containers of such fruit from Mexico to shipside, or to approved refrigerated storage pending lading aboard ship, in Corpus Christi, Galveston, or Houston, TX, or alongside railway carriers or aircraft at the ports named in paragraph (b)(2) of this section for movement to a foreign country. Shipments of such fruit via truck may traverse only the territory within the United States bounded on the west by a line starting at Laredo, TX, on to El Paso, TX, to Salt Lake City, UT, and then to Portland, OR, and on the east by a line drawn from Laredo, TX to Hebbronville, TX, to Corpus Christi, TX, to Galveston, TX, to Kinder, LA, to Memphis, TN, and then to Louisville, KY, and routes directly northward.

(4) *Rail movement.* Shipments must move by direct route from the port of entry to the port of exit or to an approved North Atlantic port in the United States for export to another foreign country, as follows: The fruit may be entered at Nogales, AZ, only for direct rail routing to El Paso, TX, after which it shall traverse only the territory bounded on the west by a line drawn from Laredo, TX, to El Paso, TX, to Salt Lake City, UT, and then to Portland, OR, and on the east by a line drawn from Laredo, TX, to Hebbronville, TX, to Corpus Christi, TX, to Galveston, TX, to Kinder, LA, to Memphis, TN, and then to Louisville, KY, and routes directly northward. Such fruit may also enter the United States from Mexico at any port listed in paragraph (b)(1) of this section, for direct eastward rail movement, without diversion en route, for reentry into Mexico.

(5) *Air cargo movement.* Shipments of such fruit may move by direct route as air cargo, without change of entry while in the United States en route from the port of entry, to Canada. If an emergency occurs en route to the port of export that will require transshipment to another carrier, an inspector at the port of entry must be contacted immediately.

(c) *Additional conditions for movement of certain untreated fruit by water route.* Untreated oranges, tangerines, and grapefruit from Mexico may move from Mexico to a foreign country by water route through the United States under this section only in accordance with the following additional conditions:

(1) *Ports of entry.* Such oranges, tangerines, and grapefruit may enter only at New York, Boston, or such other North Atlantic ports in the United States as may be named in permits, for exportation, or at Galveston, Texas, for exportation by water route.

(2) *Routing through North Atlantic ports.* Such fruit entering via North Atlantic ports in the United States shall move by direct water route to New York or Boston, or to such other North Atlantic ports as may be named in the permit only for immediate direct export by water route to any foreign country, or for immediate transportation and exportation in Customs bond by direct rail route to Canada.

[5] To obtain this permit, contact the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permit Unit, 4700 River Road Unit 133, Riverdale, MD 20737.

(d) *Restriction on diversion or change of Customs entry.* Diversion or change of Customs entry shall not be permitted with movements authorized under paragraph (b) (4) or (5) or paragraph (c) of this section and the inspector at the original port of Customs entry shall appropriately endorse the Customs documents to show that fact: *Provided,* That the inspector at such port of entry may, when consistent with the purposes of this part, approve diversion or change of Customs entry to permit movement to a different foreign country or entry into the United States subject to all other applicable requirements under this part or part 319 of this chapter. If diversion or change of Customs entry is desired at a Customs port in the United States where there is no inspector, the owner may apply to the Plant Protection and Quarantine Programs for information as to applicable conditions. If diversion or change of entry is approved at such a port, confirmation will be given by the Plant Protection and Quarantine Programs to appropriate Customs officers and Plant Protection and Quarantine Programs inspectors.

(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.

(g) *Costs.* Costs shall be borne by the owner of the fruit as provided in §352.14. This includes all costs for preinspection and convoying of loaded trucks and supervision of transloading from trucks to approved carriers or storage in United States ports when augmented inspection service has to be provided for such preinspection, convoying, and supervision.

(Approved by the Office of Management and Budget under control number 0579–0303)

[25 FR 1929, Mar. 5, 1960, as amended at 36 FR 24917, Dec. 24, 1971; 37 FR 10554, May 25, 1972; 55 FR 23066, June 6, 1990; 56 FR 13066, Mar. 29, 1991; 67 FR 46578, July 16, 2002; 71 FR 49325, Aug. 23, 2006; 72 FR 39528, July 18, 2007; 75 FR 4253, Jan. 26, 2010]

PART 353—EXPORT CERTIFICATION

Sec.

353.1 Definitions.
353.2 Purpose and administration.
353.3 Where service is offered.
353.4 Products covered.
353.5 Application for certification.
353.6 Inspection.
353.7 Certificates.
353.8 Accreditation of non-government facilities.
353.9 Standards for accreditation of non-government facilities to perform laboratory seed health testing and seed crop phytosanitary inspection.

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.

SOURCE: 61 FR 15368, Apr. 8, 1996, unless otherwise noted.

§ 353.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Agent. An individual who meets the eligibility requirements set forth in §353.6, and who is designated by the Animal and Plant Health Inspection Service to conduct phytosanitary field inspections of seed crops to serve as a basis for the issuance of phytosanitary certificates.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Consignment. One shipment of plants or plant products, from one exporter, to one consignee, in one country, on one means of conveyance; or any mail shipment to one consignee.

Export certificate for processed plant products. A certificate (PPQ Form 578) issued by an inspector, describing the plant health condition of processed or manufactured plant products based on