

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 27 to 52

#### Republication

##### CFR Correction

Title 7, parts 27 to 52, revised as of January 1, 2004, is being republished in its entirety. The earlier issuance inadvertently omitted Table III contained in § 52.1853 and subsequent sections 52.1854 through 52.1858, 52.3181 through 52.3188, and 52.3751 through 52.3764. The omitted table and text should immediately follow § 52.1853(c) on page 576.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 02-106-2]

#### Importation of Fruits and Vegetables

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables will be required to meet other special conditions. We are also recognizing areas in Peru as free from

the South American cucurbit fly. These actions will provide the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

**EFFECTIVE DATE:** December 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Bedigian, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1228; (301) 734-4382.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 319.56-8, referred to below as the regulations) prohibit or restrict the importation of 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.

On December 18, 2003, we published in the **Federal Register** (68 FR 70448-70463, Docket No. 02-106-1) a proposal to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. We also proposed to recognize areas in Peru as free from the South American cucurbit fly.

We solicited comments concerning our proposal for 60 days ending February 17, 2004. We received five comments by that date. They were from representatives of State governments, an industry organization, and individuals. They are discussed below by topic.

##### Grapes From South Korea

One commenter stated that it is impossible to determine the efficacy of the proposed risk mitigation method for grapes from South Korea until a peer review of the supporting data is conducted. The commenter further stated that data on risk mitigation for Korean grapes should be published prior to rulemaking in order to increase the transparency of the regulation.

We do not agree that a peer review of the supporting data is necessary in order for the efficacy of the phytosanitary measures for grapes from South Korea to be determined. In the proposed rule, we

cited the pests of concern identified in our risk assessment and described the phytosanitary measures that would be required to guard against the entry of those pests, but we did not explicitly link the role of each measure in addressing the risk presented by each identified pest of concern. We are providing those connections below.

The quarantine pests of concern for grapes grown in South Korea are yellow peach moth (*Conogethes punctiferalis*), grapevine moth (*Eupoecilia ambiguella*), leaf-rolling tortix (*Sparganothis pilleriana*), apple heliodinid (*Stathmopoda auriferella*), the plant pathogenic fungus *Monilinia fructigena* and the moth *Nippoptilia vitis*.

Each of these pests exhibits symptoms that are macroscopic and detectable upon visual inspection. Specifically:

- Yellow peach moth larvae bore into and tunnel the stems and fruits of host plants. Larvae on the fruit burrow into the green berries, causing them to split, shrivel, or fall off when damaged.
- Grapevine moth larvae feed on flowers and later on developing fruit. Larvae cause surface damage to leaves and fruit. Additionally, larvae may produce webbing on the flower buds and newly set fruit, which often causes affected parts to drop from the vine.
- Leaf-rolling tortix and *Nippoptilia vitis* larvae cause damage to the leaves, fruit, and stem.
- Apple heliodinid larvae cause webbing of the flower buds and newly set fruit, often causing affected plant parts to drop from the vine and burrow into the green berries, which may split, shrivel, or fall off when damaged.
- *Monilinia fructigena* causes raised light brown pustules on the fruit that often expand enclosing the fruit to form a dark, wrinkled, hard mummified fruit

There are three measures in our regulatory approach that individually and collectively mitigate the risk posed by each of the six pests. First, field inspections have proven effective since, as detailed above, the damage these pests cause makes their presence obvious. Second, fruit is bagged from the time the fruit sets until harvest. Since bagging is done when the fruit is very young, the risk of exposure to arthropods and diseases is reduced.

Third, fruit is inspected and certified to be free of the pests of concern by South Korea's national plant protection organization (NPPO). In addition, an

additional inspection of a sample of fruit from each consignment will be conducted upon its arrival in the United States.

These measures have proven to be effective in guarding against similar pests of concern on sandpears from South Korea and Japan (yellow peach moth and *Monilinia fructigena*, as well as two other moths and a leafroller). We have been importing Japanese and Korean sandpears under a similar systems approach for over 10 years with no significant phytosanitary problems.

Finally, we disagree with the commenter's statement that we should have published data on risk mitigation prior to publication of the proposed rule. On June 19, 2001, we published in the **Federal Register** (66 FR 32923–3928, Docket No. 00–082–1) a notice entitled “Procedures and Standards Governing the Consideration of Import Requests” wherein we established policies for the publication of risk documents, among other things. In that document we set out “routine” and “nonroutine” as the two categories of risk assessments. The terms “routine” and “nonroutine” do not necessarily connote different types of risk assessments, but nonroutine assessments are associated with issues that may require greater resources. In determining the type of risk assessment, we consider the following factors: Economic value of the affected crop(s), public interest, environmental and public health importance, level of uncertainty, local importance, and precedence (*i.e.*, whether the commodity/origin combination in question, or a similar combination, has ever been addressed in previous risk assessments and/or whether the assessment will require the use of new or different methodologies). Only for nonroutine assessments do we make the risk assessments available for public review and comment in advance of rulemaking. Since the issues addressed in our proposed rule were determined to be routine, we did not make the risk documents prepared for this proposal available in advance of the proposed rule's publication.

A second commenter said that the term *field* needs to be defined. The commenter also objected to the fact that grapes from a field found to contain evidence of infestation may be reapproved for export following one negative inspection.

A definition for the term *field* can be found in the definitions portion of the regulations at § 319.56–1. *Field* is defined as a plot of land with defined boundaries within a place of production on which a commodity is grown.

We believe one negative inspection is enough to reapprove a field for export. Under the systems approach laid out in this document and in the proposed rule, if evidence of any of the pests of concern is detected during field 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. There are a variety of measures growers may utilize to eliminate infestation on the leaves, stems, and fruits on the vine. These measures include contact pesticides in the case of insect infestation, fungicides in the case of fungal infestation, sanitation measures, weed removal, pruning, trapping, and/or bait stations. One or more of these measures would serve to eradicate the pests of concern. As expressed previously, evidence of the presence of all of the pests of concern is readily visible; thus we believe that a single inspection would be all that is necessary to determine whether a field could be reapproved for participation in the program.

#### Commodity-Specific Pest Pathways

One commenter stated that beets (*Beta vulgaris*) from Mexico and turnips (*Brassica* spp.) from Peru should be removed from the list of commodities enterable subject to inspection in § 319.56–2t since they are both hosts of the potato pathotype of the false root-knot nematode (*Nacobbus aberrans*).

Of the two commodities cited by the commenter, only beets from Mexico are being added to the list in § 319.56–2t in this rulemaking. Turnips from Peru have been eligible for importation under the regulations for 11 years and were listed in the proposed rule only because we set out § 319.56–2t in its entirety due to our revision of that section's format. By International Plant Protection Convention (IPPC) standards, a quarantine pest is considered to be “a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.” Since the potato pathotype of the false root-knot nematode is already present in the United States and not subject to an official control program, we do not consider it to be a quarantine pest, therefore we do not regulate imports to protect against entry of this pest.

Another commenter stated that snow peas (*Pisum sativum* subsp. *sativum*) from Columbia; cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties (*Brassica* spp.) from Ecuador, Costa Rica, El Salvador, Peru, and Jamaica;

*Allium* spp. from Israel, Mexico, Belgium, and the Netherlands; Swiss chard (*Beta vulgaris*) from Peru; beets (*Beta vulgaris*) from Mexico; and cucurbits (*Cucurbitaceae*) from Mexico should be removed from the list of commodities enterable subject to inspection found at § 319.56–2t since they are hosts of the pea leaf miner (*Liriomyza huidobrensis* Blanchard), which does not occur in the United States. Another commenter stated that the regulations should specify which types of cucurbits are allowed entry into the United States from Mexico.

The only commodities listed by the commenter that are added in this rulemaking are *Allium* spp. from Mexico and beets from Mexico. The other commodities have been eligible for importation prior to this rulemaking and were listed in the proposed rule only because we set out § 319.56–2t in its entirety due to our revision of that section's format. Specifically, cucurbits from Mexico have been eligible for importation under the regulations for 30 years. With regard to *Allium* spp. and beets from Mexico, as above, our records indicate that the pea leaf miner is already present in the United States and not subject to an official control program, therefore, we do not consider it to be a quarantine pest.

The commenter additionally stated that the importation of watermelon from Korea is of concern because of the presence of the pumpkin fruit fly (*Bactrocera depressa*). The commenter asked APHIS to clarify the type of fruit fly trap required, as well as to provide evidence of its efficacy in trapping the pumpkin fruit fly.

We have considered the commenter's point and have modified the trapping procedure outlined in the proposed rule to specify that the fruit fly traps used must be McPhail traps or a similar type with a protein bait that has been shown to be efficacious in trapping the pumpkin fruit fly. APHIS has employed the McPhail trap for decades. It is a generalist trap with a food bait that catches all fruit feeding tephritids. We use these traps to catch a variety of fruit flies around the world such as various *Bactrocera* spp. that are not known to be attracted by a specific parapheromone lure.

One commenter stated that since the domestic Mexican fruit fly (Mexfly) regulations at 7 CFR 301.64–2 and the melon fruit fly regulations at 7 CFR 301.97–2 list *Annona* spp. as hosts to those flies, we should have included an analysis of the risk associated with importation of *Annona* spp. from Grenada based on the possible presence

of Mexfly and melon fruit fly in that country.

Our research indicates that neither Mexfly nor melon fruit fly occur in Grenada. Since there is no scientific evidence of the existence of these pests in the area in question, there is no need for further analysis of the risks posed by those pests in this case.

Another commenter claimed that the mitigation methods described in the proposal with regard to cucurbits (*Cucurbitaceae*) from South Korea do not provide adequate protection against cucumber green mottle mosaic virus (*tobamovirus*).

Cucumber green mottle mosaic virus is seedborne with no known biological vectors; it can also be mechanically transmitted. Symptoms of infection are yellowed leaves and shriveled fruit. These are macroscopic and detectable upon inspection. Further, the commodities in question must meet the following conditions:

- The commodities in question must be grown within pest-proof greenhouses registered with Korea's NPPO.
- The NPPO must also inspect and regularly monitor those greenhouses and plants, including fruit, at intervals of no more than 2 weeks from the time of fruit set until the end of harvest.
- Each shipment must be accompanied by a phytosanitary certificate issued by the NPPO, with an additional declaration stating that the commodities were grown in a registered greenhouse.

Growing plants in registered greenhouses will result in additional scrutiny for symptoms and infected plants will most likely be discovered and removed. The risk of seed transmission is negligible since the cucurbits will be imported only for consumption. APHIS is confident that the inspection and certification measures will serve as sufficient mitigation against cucumber green mottle mosaic virus.

Another commenter stated that the recent discovery in certain parts of Mexico of a new phytoplasma related to but distinct from lethal yellowing disease, which affects coconuts, should be taken into consideration. The commenter claimed that this new phytoplasma on coconuts was not included in our risk assessment.

The Malayan dwarf and Maypan varieties of coconut resistant to the lethal yellowing phytoplasma are also resistant to the new phytoplasma of concern. Under the requirements set out in the rule portion of this document, coconut fruit with milk and husk must be accompanied by a phytosanitary certificate issued by Mexico that

includes an additional declaration stating that the fruit is of the Malayan dwarf variety or Maypan variety based on verification of the parent stock. This requirement provides sufficient protection against the spread of mycoplasma-like organisms.

#### Shipping and Importation Procedures

One commenter questioned whether roots and soil were included in our consideration of a whole plant imported specifically from Mexico.

The commodities that were listed in the proposed rule as enterable from Mexico as whole plants were *Allium* spp., asparagus, beets, carrots, eggplants, jicama, parsley, radishes, and tomatoes. All of these commodities have been previously allowed entry under permit. Their addition to the regulations is solely in order to improve transparency.

Currently, the only whole plants allowed importation from Mexico are *Allium* spp., beets, carrots, parsley, and radishes. These commodities are root crops and, as such, are enterable as whole plants intended for consumption. The other commodities listed enterable as whole plants in the proposed rule (asparagus, eggplants, jicama, and tomatoes) were listed as such in error. We have amended the listings in this final rule in order to correctly list the plant parts that, historically, have come in under permit. Soil is prohibited entry with any commodity listed at § 319.56–2t.

Another commenter claimed that the risk of pest contamination is greater in the case of commercial shipments since the amount of commodities is greater than that associated with non-commercial shipments.

Risk of pest dissemination associated with commercial shipments is generally lower since commercial growers are more likely to utilize proper phytosanitary practices, are aware of pest problems and the methods used to control them, and are generally more experienced in dealing with the importation of various commodities. By contrast, noncommercial shipments are principally comprised of commodities hand-carried into the United States by private citizens. There are far fewer safeguards and assurances associated with such commodities. By contrast, commercial shipments provide a far higher level of phytosanitary security.

One commenter stated that lack of funding at the ports of first arrival in the United States means that many shipments cannot be or are not inspected.

While the Department of Homeland Security (DHS) conducts a majority of

inspections of agricultural commodities at the ports of first arrival, inspectors follow established and effective APHIS protocols regarding inspection rates and procedures. APHIS continues to work with DHS to ensure that the United States is protected against pests of concern from agricultural imports. Currently, DHS is sufficiently staffed at all ports and fully capable of providing the necessary inspection services.

#### Pest Risk Assessments

One commenter observed that no statistics on the pest free status of commercial shipments were included in our risk assessments. The commenter stated that such information should be available prior to any approval granted for the importation of new commodities.

Pest risk assessments are prepared for those commodities that have not been imported previously into the United States. For that reason there are no pest interception data available to include in our risk assessments.

Another commenter cited the court decision on APHIS's rule authorizing the importation of citrus from Argentina (*Harlan Land Company, et al. vs. United States Department of Agriculture*) (referred to below as *Harlan Land Co.*), and claimed that according to the decision in that case, APHIS must define what it considers to be a "negligible level of risk" in the context of a rule authorizing the importation of fruit from a disease and pest infested area. The commenter stated that APHIS must thus define what it considers to be an acceptable level of risk, and it must adequately explain that determination, and claimed that the proposed rule does not do so.

We disagree with this comment. In the court decision on APHIS's rule authorizing the importation of clementines from Spain (*Cactus Corner, LLC, et al. vs. United States Department of Agriculture*), the court concluded that, "[n]either law nor logic requires an agency to quantify a numeric threshold of 'acceptable risk' every time risk prevention is sought to be achieved by an agency rule."

The commenter went on to advise that we should consider all types of pests, not just those pests that are known to be dangerous. He argued that pests that pose no danger in their countries of origin may prove harmful to domestic plants if they become established in the differing environment in the United States.

We do not regulate imports based on unknown or speculative risks. We regulate based on sound scientific evidence, consistent with our authority under the Plant Protection Act. We are

confident that the mitigation measures detailed in the rule are sufficient to protect against the scientifically determined pests of concern.

The commenter cited our failure to consider appropriate monitoring as a mitigation against infestation and stated that the environmental assessment does not examine the necessity of monitoring at each stage of the importation process.

Monitoring, as described by the commenter, is not required in all cases. Program monitoring is required only when it is found to be necessary according to pest risk analysis. There is no need to examine the need for monitoring in the absence of an identified risk. In the case of this rule, we have determined that all risks are mitigated sufficiently by the measures described. Our risk assessments found the probability of artificial spread of pests via these commodities to be low. Therefore, monitoring at each stage of the import process as suggested by the commenter becomes unnecessary. We are confident that the mitigation measures, including port of entry inspection, described in the rule and considered in the environmental assessment are sufficient to protect against the quarantine pests of concern.

The commenter stated that a monitoring program must provide a system by which the public may review and respond to the findings of that monitoring.

Our Cooperative Agricultural Pest Survey (CAPS) reports finds and movements of damaging foreign organisms from all 50 States and U.S. territories. CAPS tracks more than 4,000 pests nationwide. The CAPS survey data collected each year are entered into the National Agricultural Pest Information System (NAPIS) database which is available on the Internet at <http://www.aphis.usda.gov/ppq/>.

Providing constant formal reports on the results of our monitoring efforts beyond what is available through CAPS/NAPIS would be costly and time-consuming. Our current rulemaking mechanism allows us to make or propose changes to the regulations that are based on our consideration of a variety of complex and changeable factors, including the findings of monitoring programs.

The commenter suggested that we alter our approach to importation by phasing in the approved fruit and vegetable imports from each country over successive years in order to ensure that any pests imported with the newly allowed commodities will not prove to be injurious once introduced into the United States.

As a signatory to the IPPC, the United States has agreed not to prescribe or adopt phytosanitary measures concerning the importation of plants, plant products, and other regulated articles unless such measures are made necessary by phytosanitary considerations and are technically justified. Based on the conclusions of our risk analyses, we do not believe that there is a technical justification for the phasing in of imports as suggested by the commenter.

#### **Environmental Assessment**

One commenter raised issues regarding the environmental assessment that we prepared to document our review and analysis of the potential environmental impacts associated with the proposed rule. A detailed analysis of the issues raised by the commenter can be found later in this document under the heading "National Environmental Policy Act."

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 not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

We are amending the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables will be required to meet other special conditions. We are also recognizing areas in Peru as free from the South American cucurbit fly. These actions will provide the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

We have used all available data to estimate the potential economic effects of allowing the fruits and vegetables specified in this rule to be imported into

the United States. However, some of the data we believe would be helpful in making this determination have not been available. Specifically, data are not available on: (1) The quantity of certain fruits and vegetables produced domestically; (2) the quantity of potential imports; and (3) the degree to which imported fruits and vegetables will displace existing imported or domestic products. In our proposed rule, we asked the public to provide such data for specific commodities. In addition, we invited the public to comment on the potential effects of the proposed rule on small entities, in particular the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. However, we did not receive any additional information or data in response to those requests.

#### **Effects on Small Entities**

Data on the number and size of U.S. producers of the various commodities that will be eligible for importation into the United States under this rule are not available. However, since most fruit and vegetable farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities discussed below are small entities. The potential economic effects of this final rule are discussed below by commodity and country of origin.

*African horned cucumber from Chile.* We are amending the regulations to allow the entry of African horned cucumber from Chile. African horned cucumber is a specialty crop that is grown in small quantities. Less than 20 acres of the fruit are cultivated in California, and less than 10 acres in Region V (Olmue) and Region X (Osorno) of Chile have been cultivated since 1996. Approximately 32,000 pounds of fruit are expected to be shipped to the United States annually from March to May. There is no reason to believe that allowing imports of African horned cucumber from Chile will have any significant economic impact on U.S. entities. In addition, we believe that U.S. consumers of African horned cucumber will benefit from the increase in its supply and availability.

*Annona spp. from Grenada.* We are amending the regulations to allow the entry of commercial shipments of cherimoya, soursop, custard apple, sugar apple, and atemoya, which are species of *Annona*, into the United States from Grenada. In the United States, *Annona* spp. are apparently a specialty crop produced on a small scale mainly in southern California; thus no data on the U.S. production of *Annona*

spp. are available. Although no separate data are available on the production and trade of *Annona* spp. from Grenada, data may have been included with the production of all apples. From 2001 to 2003, Grenada produced an average of 533 metric tons of apples. In addition, *Annona* spp. exports may be included under the category of "apples, not elsewhere specified," which includes wild apples. The 3-year average for exports of apples, not elsewhere specified, from Grenada is 5 metric tons. We believe that any exports to the United States will be minimal and will not have any significant economic effect on U.S. producers, whether small or

large, or consumers. In addition, we believe that U.S. consumers of *Annona* spp. will benefit from the increase in their supply and availability.

*Fruit and vegetables from Mexico.* We are specifically listing *Allium* spp., asparagus, banana, beets, carrots, coconut fruit without husk, cucurbits, eggplant, grape, jicama, lemon, sour lime, parsley, pineapple, prickly pear pads, radish, tomato, and tuna as admissible fruits and vegetables from Mexico. Because these fruits and vegetables have been admissible into the United States from Mexico under permit, specifically listing these commodities in the regulations will not have any economic effect on U.S.

producers, whether small or large, or consumers. While production and trade data are not available for jicama, prickly pear, and tuna from Mexico or the United States, data are shown for the other commodities, as available, in table 1. The data provided in table 1 are based on either a 2- or 3-year average. The averages presented for most U.S. and Mexican production and trade, as well as for tomato exports from Mexico, are for the 3-year period of 2000, 2001, and 2002. A 2-year average for 2000 and 2001 is given for exports from Mexico (except tomatoes), U.S. production of parsley and beets, and U.S. imports of parsley and cucurbits.

TABLE 1.—U.S. AND MEXICAN PRODUCTION AND TRADE DATA (IN METRIC TONS) OF FRUITS AND VEGETABLES

| Commodity                                 | U.S. production  | U.S. imports from all countries | U.S. imports from Mexico | Mexican production | Mexican exports  |
|---|------------------|---------------------------------|--------------------------|--------------------|------------------|
| <i>Allium</i> spp.:                       |                  |                                 |                          |                    |                  |
| Shallot and green onion .....             | 444,429          | 257,784                         | 159,953                  | 1,021,605          | 599,491          |
| Garlic .....                              | 258,680          | 37,806                          | 14,776                   | 50,894             | 27,544           |
| Leek and other alliaceus vegetables ..... | ( <sup>1</sup> ) | 3,040                           | 2,752                    | ( <sup>1</sup> )   | 87,455           |
| Asparagus .....                           | 103,060          | 75,086                          | 38,231                   | 57,545             | 44,378           |
| Banana .....                              | 12,850           | 4,232,383                       | 74,560                   | 1,961,201          | 126,368          |
| Beets .....                               | 101,738          | 20,341                          | 15,254                   | ( <sup>1</sup> )   | 775,100          |
| Carrot .....                              | 1,913,700        | 85,037                          | 23,508                   | 358,054            | 201,944          |
| Coconut .....                             | 0                | 63,075                          | 4,854                    | 1,058,667          | 87,584           |
| Cucurbits:                                |                  |                                 |                          |                    |                  |
| Melon and watermelons .....               | 2,969,250        | 882,350                         | 363,902                  | 1,469,700          | 572,529          |
| Cucumbers and gherkins .....              | 1,078,800        | 15,035                          | 1,924                    | 416,667            | 7,880            |
| Pumpkins, squash, and gourds .....        | 761,253          | 223,697                         | 148,343                  | 550,000            | 372,294          |
| Eggplant .....                            | 77,290           | 40,233                          | 36,863                   | 59,000             | 135,697          |
| Grape .....                               | 6,495,380        | 987,124                         | 191,477                  | 427,497            | 117,510          |
| Lemon and lime .....                      | 572,250          | 218,816                         | 184,814                  | 1,658,420          | 733,184          |
| Parsley .....                             | 14,210           | 5,897                           | ( <sup>1</sup> )         | ( <sup>1</sup> )   | ( <sup>1</sup> ) |
| Pineapple .....                           | 302,500          | 348,617                         | 19,923                   | 598,629            | 117,510          |
| Radish .....                              | 53,781           | 15,338                          | 14,654                   | ( <sup>1</sup> )   | ( <sup>1</sup> ) |
| Tomato .....                              | 10,590,000       | 804,548                         | 664,362                  | 2,085,831          | 1,551,685        |

<sup>1</sup> Not available.

*Coconut fruit with milk and husk from Mexico.* Coconut fruit without husk have been admissible into the United States from Mexico under permit. In this final rule, we are amending the regulations to allow coconut fruit with milk and husk from Mexico to be imported into the United States. While the data on coconut production and trade do not differentiate between coconut fruit with or without husk and milk, it is possible that an increase in imports of coconuts into the United States from Mexico will occur, since coconut fruit with milk and husk have previously been inadmissible from Mexico. Because the U.S. production of coconut fruit with milk and husk is supplemented with imports in order to satisfy the domestic demand, we do not believe that allowing the importation of coconut fruit with milk and husk from Mexico will have a

significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers will benefit from the increase in the supply and availability of coconut fruit with milk and husk from Mexico.

*Pitaya from Mexico.* In the United States, pitaya are a specialty crop produced on a small scale; thus no data on the U.S. production of pitaya are available. Mexican production and trade data are also not available.

*Melon and watermelon from Peru.* We are amending the regulations to allow the entry of commercial shipments of watermelon and several varieties of melon (*Cucumis melo* L. subsp. *melo*) into the United States from Peru. The specific varieties of melons that will be considered for importation include cantaloupe, netted melon (muskmelon, nutmeg melon, and Persian melon), vegetable melon (snake melon and

oriental pickling melon), and winter melon (honeydew and casaba melon). The melon and watermelon from Peru will be admissible from the Departments of Lima, Ica, Arequipa, Moquegua, and Tacna, which we recognize as free of the South American cucurbit fly.

From 2001 to 2003, the United States produced an average of almost 3 million metric tons of melon and watermelon and imported an average of 882,350 metric tons. For that same 3-year period, Peru produced an average of 72,337 metric tons of melon and watermelon. For the 2-year period of 2000 and 2001, Peru exported an average of 1,393 metric tons of melon and watermelon. Because the U.S. production of melon and watermelon is supplemented with imports in order to satisfy the domestic demand, we do not believe that allowing the importation of melon and watermelon from certain areas of Peru

will have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of melon and watermelon will benefit from the increase in its supply and availability.

*Watermelon, squash, cucumber, and oriental melon from the Republic of Korea.* We are amending the regulations

to allow watermelon, squash, cucumber, and oriental melon to be imported into the United States from the Republic of Korea (South Korea) under certain conditions. Table 2 shows the average U.S. and South Korean production and trade data available for the 3-year period of 2000, 2001, and 2002, with a 2-year

average for 2000 and 2001 for exports from South Korea. Note that the data include a broader category than what is actually eligible to be imported; e.g., we are allowing for the importation of cucumber, but the data are available under the broader category of cucumber and gherkins.

TABLE 2.—PRODUCTION AND TRADE DATA (IN METRIC TONS) FOR U.S. AND SOUTH KOREAN FRUITS AND VEGETABLES

| Commodity                          | U.S. production | U.S. imports from all countries | U.S. imports from South Korea | South Korean production | South Korean exports |
|------------------------------------|-----------------|---------------------------------|-------------------------------|-------------------------|----------------------|
| Melon and watermelons .....        | 2,969,250       | 882,350                         | 0                             | 324,260                 | 428                  |
| Cucumbers and gherkins .....       | 1,078,800       | 15,035                          | 0                             | 451,175                 | 7,030                |
| Pumpkins, squash, and gourds ..... | 761,253         | 223,697                         | 0                             | 240,161                 | 515                  |

*Grapes from South Korea.* We are amending the regulations to allow the importation of grapes into the United States from South Korea under certain conditions. From 2001 to 2003, the United States produced an average of almost 6.5 million metric tons of grapes and imported an average of 987,124 metric tons. For that same 3-year period, South Korea produced an average of 461,198 metric tons of grapes (approximately 7 percent of the total U.S. production) with an average export of 101 metric tons. Because the U.S. production of grapes is supplemented with imports in order to satisfy the domestic demand, we do not believe that allowing the importation of grapes from South Korea will have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of grapes will benefit from the increase in its supply and availability.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget (see “Paperwork Reduction Act” below).

**Executive Order 12988**

This final rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the importation of fruits and vegetables under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. No retroactive effect will be given to this rule, and this rule will not require administrative

proceedings before parties may file suit in court challenging this rule.

**National Environmental Policy Act**

We have prepared an environmental assessment for this rule. The environmental assessment, entitled “Rule for the 12th Periodic Amendment of the Fruits and Vegetables Regulations” (September 2004), analyzes alternatives to amending the regulations to allow the importation into the United States of a number of fruits and vegetables from various areas of the world under certain conditions. The environmental assessment may be accessed on the Internet at [http://www.aphis.usda.gov/ppq/enviro\\_docs/](http://www.aphis.usda.gov/ppq/enviro_docs/). Copies of the environmental assessment are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The environmental assessment for this rule analyzes two alternatives, no action and amending the fruits and vegetables regulations. The no action alternative would be to leave the fruits and vegetables regulations unchanged. Under the no action alternative, (1) certain fruits and vegetables from Mexico (i.e., *Allium* spp., asparagus, banana, beets, carrots, coconuts, cucurbits, eggplant, grape, jicama, lemon, sour lime, parsley, pineapple, prickly pear pads, radish, tomato, tuna, coconut [fruit without husk], and pitaya) would continue to be eligible for importation under permit, and (2) cucurbits and grapes from South Korea,

melon from Peru, pitaya and coconut with milk and husk from Mexico, *Annona* spp. from Grenada, and African horned cucumber from Chile would not be approved for importation into the United States. Under the second alternative—amending the fruits and vegetables regulations—the previously named fruits and vegetables from Mexico that have been enterable under permit would be listed as enterable in the regulations, and the listed fruits and vegetables from South Korea, Peru, Mexico, Grenada, and Chile would become eligible for importation into the United States under certain phytosanitary conditions.

The environmental assessment describes the potential environmental effects associated with each alternative. The environmental assessment also describes the phytosanitary measures required for the importation of each commodity, including treatment, specified growing conditions, limits on dates of shipping, inspection and monitoring of growing areas by the plant protection organization of the country where grown, trapping in the growing areas, fruit cutting, safeguarding during transport, and/or permits and phytosanitary certificates. These measures have been designed to safeguard all potentially affected aspects of the human environment, including human health and safety, non-target species, and protected species and habitat.

We omitted one commodity, coconut with milk and husk of the Malayan Dwarf and Maypan hybrid varieties from Mexico, from the environmental assessment that was prepared for the proposed rule and made available to the public for comment. An analysis of this commodity has been added to the environmental assessment prepared for this final rule. Two quarantine pests of

concern were identified in the proposed rule as being associated with this commodity, the red ring nematode and lethal yellowing disease. We have determined that the risk associated with red ring nematode is low since nuts on infected trees fall prematurely and would not be harvested. The risk of introduction of lethal yellowing disease would also be low since coconuts with husk and milk of the Malayan Dwarf and Maypan hybrids do not harbor lethal yellowing disease, including the new phytoplasma mentioned by one of the commenters and discussed earlier in this final rule.

As stated in the background section of this final rule, one commenter raised objections to the review and analysis of potential environmental impacts contained in the environmental assessment prepared for the proposed rule. The commenter raised several issues, which are discussed below.

The commenter stated that, under the Endangered Species Act, Federal agencies are required to consult with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to ensure that their actions will not prove harmful to any listed species. He further stated that APHIS had not performed such consultations and asked that we do so.

Section 7(a)(2) of the Endangered Species Act of 1973 requires that Federal agencies ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. Consultation with FWS and/or NMFS is required only if the proposed action "may affect" listed species or critical habitat.

Prior to the publication of the proposed rule, APHIS prepared a biological assessment to consider the potential risks to federally listed threatened and endangered species and species proposed for listing that could be posed by the proposed importation of certain fruits and vegetables from Mexico, Chile, Grenada, South Korea, and Peru. Based upon the ability of the phytosanitary measures described in the proposed rule to eliminate risks from shipments of these fruits and vegetables, we determined that the importation of those commodities would not affect any endangered and threatened species or their habitats. This "no effect" determination is the appropriate conclusion when an agency determines

that its proposed action will not affect listed species or designated critical habitats. Consultation with FWS and/or NMFS is not required if the agency has considered the effects of the proposed action on threatened, endangered, and proposed species and determined that it will have no effect on those species or their critical habitats.

The commenter asked that APHIS, in its environmental assessment, address the cumulative impacts of pesticides and pests on the commodities in question, the environment, and on humans. He additionally stated that it is necessary to investigate the infestation potential of pests when introduced into a new environment, to identify those undesirable qualities in pests that may be triggered by environmental factors, and to consider the possibility of destructive hybridization occurring between native and non-native pests.

Our environmental assessments are uniformly prepared subsequent to our consideration of the best and most up-to-date scientific data. No scientific evidence exists to support the commenter's requests. As stated previously, in the unlikely event of a non-native pest being introduced into the United States via an imported fruit or vegetable, we have the authority to immediately prohibit or further restrict the importation of that commodity. Such action would almost certainly be taken if a pest were to display new and destructive characteristics following its introduction into the United States.

APHIS has considered the potential effects of this final rule on the quality of the human environment. The exclusionary nature of the phytosanitary measures required by this rule will prevent entry of invasive species of concern that are associated with the fruits and vegetables, and this exclusion precludes any effects on native species or their habitats. Based on the analysis provided in the environmental assessment and our assessment of the comments submitted on the proposed rule and its accompanying environmental assessment, implementation of the rule will not significantly impact the quality of the human environment and an environmental impact statement does not need to be prepared.

**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 0579-0236.

**Government Paperwork Elimination Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

**List of Subjects in 7 CFR Part 319**

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

■ Accordingly, we are amending 7 CFR part 319 to read as follows:

**PART 319—FOREIGN QUARANTINE NOTICES**

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

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

■ 2. Section 319.56-1 is amended by adding, in alphabetical order, a new definition for *country of origin* to read as follows:

**§ 319.56-1 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

■ 3. Section 319.56-2t is revised to read as follows:

**§ 319.56-2t Administrative instructions: Conditions governing the entry of certain fruits and vegetables.**

(a) The following commodities may be imported into all parts of the United States, unless otherwise indicated, from the places specified, in accordance with § 319.56-6 and all other applicable requirements of this subpart:

| Country/locality | Common name   | Botanical name   | Plant part(s)                                       | Additional restrictions (see paragraph (b) of this section) |            |
|------------------|---|--|---|---|------------|
| Argentina        | Artichoke, globe  | <i>Cynara scolymus</i>                                 | Immature flower head.                               |   |            |
|                  | Basil   | <i>Ocimum</i> spp                                      | Above ground parts.                                 |   |            |
|                  | Currant   | <i>Ribes</i> spp                                       | Fruit.  |   |            |
|                  | Endive  | <i>Cichorium endivia</i>                               | Leaf and stem.                                      |   |            |
|                  | Gooseberry  | <i>Ribes</i> spp                                       | Fruit.  |   |            |
|                  | Marjoram  | <i>Origanum</i> spp                                    | Above ground parts.                                 |   |            |
| Australia        | Oregano   | <i>Origanum</i> spp                                    | Above ground parts.                                 |   |            |
|                  | Currant   | <i>Ribes</i> spp                                       | Fruit.  |   |            |
| Austria          | Gooseberry  | <i>Ribes</i> spp                                       | Fruit.  |   |            |
|                  | Asparagus, white  | <i>Asparagus officinalis</i>                           | Shoot (no green may be visible on the shoot).       |   |            |
| Barbados         | Banana  | <i>Musa</i> spp  | Flower.   |   |            |
| Belgium          | Leek  | <i>Allium</i> spp                                      | Whole plant   | (b)(5)(i)   |            |
|                  | Pepper  | <i>Capsicum</i> spp                                    | Fruit.  |   |            |
| Belize           | Banana  | <i>Musa</i> spp  | Flower in bracts with stems.                        |   |            |
|                  | Bay leaf  | <i>Laurus nobilis</i>                                  | Leaf and stem.                                      |   |            |
|                  | Mint  | <i>Mentha</i> spp                                      | Above ground parts.                                 |   |            |
|                  | Papaya  | <i>Carica papaya</i>                                   | Fruit   | (b)(1)(i),<br>(b)(2)(iii).                                  |            |
| Bermuda          | Rambutan  | <i>Nephelium lappaceum</i>                             | Fruit   | (b)(2)(i),<br>(b)(5)(iii).                                  |            |
|                  | Sage  | <i>Salvia officinalis</i>                              | Leaf and stem.                                      |   |            |
|                  | Tarragon  | <i>Artemisia dracunculus</i>                           | Above ground parts.                                 |   |            |
|                  | Avocado   | <i>Persea americana</i>                                | Fruit.  |   |            |
|                  | Carambola   | <i>Averrhoa carambola</i>                              | Fruit.  |   |            |
|                  | Grapefruit  | <i>Citrus paradisi</i>                                 | Fruit.  |   |            |
|                  | Guava   | <i>Psidium guajava</i>                                 | Fruit.  |   |            |
|                  | Lemon   | <i>Citrus limon</i>                                    | Fruit.  |   |            |
|                  | Longan  | <i>Dimocarpus longan</i>                               | Fruit.  |   |            |
|                  | Loquat  | <i>Eriobotrya japonica</i>                             | Fruit.  |   |            |
| Bolivia          | Mandarin orange   | <i>Citrus reticulata</i>                               | Fruit.  |   |            |
|                  | Natal plum  | <i>Carissa macrocarpa</i>                              | Fruit.  |   |            |
|                  | Orange, sour  | <i>Citrus aurantium</i>                                | Fruit.  |   |            |
|                  | Orange, sweet   | <i>Citrus sinensis</i>                                 | Fruit.  |   |            |
|                  | Papaya  | <i>Carica papaya</i>                                   | Fruit.  |   |            |
|                  | Passion fruit   | <i>Passiflora</i> spp                                  | Fruit.  |   |            |
|                  | Peach   | <i>Prunus persica</i>                                  | Fruit.  |   |            |
|                  | Pineapple guava   | <i>Feijoa</i> spp                                      | Fruit.  |   |            |
|                  | Suriname cherry   | <i>Eugenia uniflora</i>                                | Fruit.  |   |            |
|                  | Chile   | Belgian endive   | <i>Cichorium intybus</i>                            | Leaf.   |            |
|                  |   | African horned cucumber                                | <i>Cucumis metuliferus</i>                          | Fruit   | (b)(2)(i). |
|                  | China   | Babaco   | <i>Carica x heilborni</i> var. <i>pentagona</i> .   | Fruit   | (b)(1)(i). |
|                  |   | Basil  | <i>Ocimum</i> spp                                   | Above ground parts.   |            |
|                  |   | Lucuma   | <i>Manilkara sapota</i> (= <i>Lucuma mammosa</i> ). | Fruit   | (b)(1)(i). |
| Mountain papaya  |   | <i>Carica pubescens</i> (= <i>C. candamarcensis</i> ). | Fruit   | (b)(1)(ii).   |            |
| Oregano          |   | <i>Origanum</i> spp                                    | Leaf and stem.                                      |   |            |
| Pepper           |   | <i>Capsicum annuum</i>                                 | Fruit   | (b)(1)(i).  |            |
| Sandpear         |   | <i>Pyrus pyrifolia</i>                                 | Fruit   | (b)(1)(ii).   |            |
| Tarragon         |   | <i>Artemisia dracunculus</i>                           | Above ground parts.                                 |   |            |
| Bamboo           |   | <i>Bambuseae</i> spp                                   | Edible shoot, free of leaves and roots.             |   |            |
| Colombia         |   | Rhubarb  | <i>Rheum rhabarbarum</i>                            | Stalk.  |            |
|                  | Snow pea  | <i>Pisum sativum</i> subsp. <i>sativum</i> .           | Flat, immature pod.                                 |   |            |
| Cook Islands     | Tarragon  | <i>Artemisia dracunculus</i>                           | Above ground parts.                                 |   |            |
|                  | Banana  | <i>Musa</i> spp  | Green fruit   | (b)(4)(i).  |            |
|                  | Cucumber  | <i>Cucumis sativus</i>                                 | Fruit.  |   |            |
|                  | Drumstick   | <i>Moringa pterygosperma</i>                           | Leaf.   |   |            |
|                  | Ginger  | <i>Zingiber officinale</i>                             | Root  | (b)(2)(ii).   |            |
|                  | Indian mulberry   | <i>Morinda citrifolia</i>                              | Leaf.   |   |            |
| Costa Rica       | Lemongrass  | <i>Cymbopogon</i> spp                                  | Leaf.   |   |            |
|                  | Tossa jute  | <i>Corchorus olitorius</i>                             | Leaf.   |   |            |
|                  | Basil   | <i>Ocimum</i> spp                                      | Whole plant.  |   |            |
|                  | Chinese kale  | <i>Brassica alboglabra</i>                             | Leaf and stem.                                      |   |            |
|                  | Chinese turnip  | <i>Raphanus sativus</i>                                | Root.   |   |            |
|                  | Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties. | <i>Brassica</i> spp                                    | Whole plant of edible varieties only.               |   |            |

| Country/locality         | Common name   | Botanical name  | Plant part(s)                           | Additional restrictions (see paragraph (b) of this section) |
|--------------------------|---|---|---|---|
|                          | Jicama .....  | <i>Pachyrhizus tuberosus</i> or <i>P. erosus</i> .            | Root.                                   |   |
|                          | Rambutan .....  | <i>Nephelium lappaceum</i> .....                              | Fruit .....                             | (b)(2)(i),<br>(b)(5)(iii).                                  |
| Dominican Republic ..... | Bamboo .....  | <i>Bambuseae</i> spp .....                                    | Edible shoot, free of leaves and roots. |   |
| Ecuador .....            | Durian .....  | <i>Durio zibethinus</i> .....                                 | Fruit.                                  |   |
|                          | Banana .....  | <i>Musa</i> spp .....   | Flower.                                 |   |
|                          | Basil .....   | <i>Ocimum</i> spp .....                                       | Above ground parts.                     |   |
|                          | Chervil .....   | <i>Anthriscus</i> spp .....                                   | Leaf and stem.                          |   |
|                          | Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties. | <i>Brassica</i> spp .....                                     | Whole plant of edible varieties only.   |   |
| El Salvador .....        | Radicchio .....   | <i>Cichorium</i> spp .....                                    | Above ground parts.                     |   |
|                          | Basil .....   | <i>Ocimum</i> spp .....                                       | Above ground parts.                     |   |
|                          | Cilantro .....  | <i>Coriandrum sativum</i> .....                               | Above ground parts.                     |   |
|                          | Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties. | <i>Brassica</i> spp .....                                     | Whole plant of edible varieties only.   |   |
|                          | Dill .....  | <i>Anethum graveolens</i> .....                               | Above ground parts.                     |   |
|                          | Eggplant .....  | <i>Solanum melongena</i> .....                                | Fruit with stem .....                   | (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).  |
|                          | Loroco .....  | <i>Fernaldia</i> spp .....                                    | Flower, leaf, and stem.                 |   |
|                          | 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).  |
|                          | Rambutan .....  | <i>Nephelium lappaceum</i> .....                              | Fruit .....                             | (b)(2)(i),<br>(b)(5)(iii).                                  |
|                          | 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).  |
| France .....             | Tomato .....  | <i>Lycopersicon esculentum</i> .....                          | Fruit, stem, and leaf .....             | (b)(4)(ii).   |
| Great Britain .....      | Basil .....   | <i>Ocimum</i> spp .....                                       | Leaf and stem.                          |   |
| Grenada .....            | Abiu .....  | <i>Pouteria caimito</i> .....                                 | Fruit.                                  |   |
|                          | Atemoya .....   | <i>Annona squamosa</i> x <i>A. cherimola</i> .                | Fruit .....                             | (b)(3).   |
|                          | Bilimbi .....   | <i>Averrhoa bilimbi</i> .....                                 | Fruit.                                  |   |
|                          | Breadnut .....  | <i>Brosimum alicastrum</i> .....                              | Fruit.                                  |   |
|                          | Cherimoya .....   | <i>Annona cherimola</i> Fruit .....                           | (b)(3).                                 |   |
|                          | Cocoplum .....  | <i>Chrysobalanus icaco</i> .....                              | Fruit.                                  |   |
|                          | Cucurbits .....   | <i>Cucurbitaceae</i> .....                                    | Fruit.                                  |   |
|                          | Custard apple .....   | <i>Annona reticulata</i> Fruit .....                          | (b)(3).                                 |   |
|                          | Durian .....  | <i>Durio zibethinus</i> .....                                 | Fruit.                                  |   |
|                          | Jackfruit .....   | <i>Artocarpus heterophyllus</i> .....                         | Fruit.                                  |   |
|                          | Jambolan .....  | <i>Syzygium cumini</i> .....                                  | Fruit.                                  |   |
|                          | Jujube .....  | <i>Ziziphus</i> spp .....                                     | Fruit.                                  |   |
|                          | Langsat .....   | <i>Lansium domesticum</i> .....                               | Fruit.                                  |   |
|                          | Litchi .....  | <i>Litchi chinensis</i> .....                                 | Fruit.                                  |   |
|                          | Malay apple .....   | <i>Syzygium malaccense</i> .....                              | Fruit.                                  |   |
|                          | Mammea apple .....  | <i>Mammea americana</i> .....                                 | Fruit.                                  |   |
|                          | Peach palm .....  | <i>Bactris gasipaes</i> .....                                 | Fruit.                                  |   |
|                          | Piper .....   | <i>Piper</i> spp .....  | Fruit.                                  |   |
|                          | Pulasan .....   | <i>Nephelium ramboutan-ake</i> .....                          | Fruit.                                  |   |
|                          | Rambutan .....  | <i>Nephelium lappaceum</i> .....                              | Fruit.                                  |   |
|                          | Rose apple .....  | <i>Syzygium jambos</i> .....                                  | Fruit.                                  |   |
|                          | Santol .....  | <i>Sandoricum koetjape</i> .....                              | Fruit.                                  |   |
|                          | Sapote .....  | <i>Pouteria sapota</i> .....                                  | Fruit.                                  |   |
|                          | Soursop .....   | <i>Annona muricata</i> .....                                  | Fruit.                                  | (b)(3).   |
|                          | Supar apple .....   | <i>Annona squamosa</i> .....                                  | Fruit.                                  | (b)(3).   |
| Guatemala .....          | Artichoke, globe .....  | <i>Cynara scolymus</i> .....                                  | Immature flower head.                   |   |
|                          | Basil .....   | <i>Ocimum</i> spp .....                                       | Above ground parts.                     |   |
|                          | Dill .....  | <i>Anethum graveolens</i> .....                               | Above ground parts.                     |   |
|                          | Eggplant .....  | <i>Solanum melongena</i> .....                                | Fruit with stem.                        |   |
|                          | Fennel .....  | <i>Foeniculum vulgare</i> .....                               | Leaf and stem .....                     | (b)(2)(i).  |
|                          | German chamomile .....  | <i>Matricaria chamomilla</i> and <i>Matricaria recutita</i> . | Flower and leaf .....                   | (b)(2)(i).  |
|                          | Jicama .....  | <i>Pachyrhizus tuberosus</i> or <i>P. erosus</i> .            | Root.                                   |   |



| Country/locality                 | Common name   | Botanical name  | Plant part(s)                         | Additional restrictions (see paragraph (b) of this section) |
|----------------------------------|---|---|---------------------------------------|---|
|                                  | Grapefruit .....  | <i>Citrus paradisi</i> .....                          | Fruit .....                           | (b)(1)(iii).  |
|                                  | Jicama .....  | <i>Pachyrhizus tuberosus</i> .....                    | Root.                                 |   |
|                                  | Lambsquarters .....   | <i>Chenopodium</i> spp .....                          | Above ground parts.                   |   |
|                                  | Lemon .....   | <i>Citrus limon</i> .....                             | Fruit.                                |   |
|                                  | Lime, sour .....  | <i>Citrus aurantiifolia</i> .....                     | Fruit.                                |   |
|                                  | Mango .....   | <i>Mangifera indica</i> .....                         | Fruit .....                           | (b)(1)(iii).  |
|                                  | Orange .....  | <i>Citrus sinensis</i> .....                          | Fruit .....                           | (b)(1)(iii).  |
|                                  | Parsley .....   | <i>Petroselinum crispum</i> .....                     | Whole plant.                          |   |
|                                  | Peach .....   | <i>Prunus persica</i> .....                           | Fruit .....                           | (b)(1)(iii).  |
|                                  | Persimmon .....   | <i>Diospyros</i> spp .....                            | Fruit .....                           | (b)(1)(iii).  |
|                                  | Pineapple .....   | <i>Ananas comosus</i> .....                           | Fruit.                                |   |
|                                  | Pitaya .....  | <i>Hylocereus</i> spp .....                           | Fruit .....                           | (b)(1)(iv),<br>(b)(2)(i).                                   |
|                                  | Piper .....   | <i>Piper</i> spp .....                                | Leaf and stem.                        |   |
|                                  | Pomegranate .....   | <i>Punica granatum</i> .....                          | Fruit .....                           | (b)(1)(iii).  |
|                                  | Porophyllum .....   | <i>Porophyllum</i> spp .....                          | Above ground parts.                   |   |
|                                  | Prickly-pear pad .....  | <i>Opuntia</i> spp .....                              | Pad.                                  |   |
|                                  | Radish .....  | <i>Raphanus sativus</i> .....                         | Whole plant.                          |   |
|                                  | Rambutan .....  | <i>Nephelium lappaceum</i> .....                      | Fruit .....                           | (b)(2)(i),<br>(b)(5)(iii).                                  |
|                                  | Rosemary .....  | <i>Rosmarinus officinalis</i> .....                   | Above ground parts.                   |   |
|                                  | Salicornia .....  | <i>Salicornia</i> spp .....                           | Above ground parts.                   |   |
|                                  | Tangerine .....   | <i>Citrus reticulata</i> .....                        | Fruit .....                           | (b)(1)(iii).  |
|                                  | Tepeguaje .....   | <i>Leucaena</i> spp .....                             | Fruit.                                |   |
|                                  | Thyme .....   | <i>Thymus vulgaris</i> .....                          | Above ground parts.                   |   |
|                                  | Tomato .....  | <i>Lycopersicon lycopersicum</i> .....                | Fruit, stem, and leaf.                |   |
|                                  | Tuna .....  | <i>Opuntia</i> spp .....                              | Fruit.                                |   |
| Morocco .....                    | Strawberry .....  | <i>Fragaria</i> spp .....                             | Fruit.                                |   |
| Morocco and Western Sahara ..... | Tomato .....  | <i>Lycopersicon esculentum</i> .....                  | Fruit, stem, and leaf .....           | (b)(4)(ii)  |
| Netherlands .....                | Leek .....  | <i>Allium</i> spp .....                               | Whole plant .....                     | (b)(5)(i).  |
|                                  | Radish .....  | <i>Raphanus sativus</i> .....                         | Root.                                 |   |
| New Zealand .....                | Avocado .....   | <i>Persea americana</i> .....                         | Fruit.                                |   |
|                                  | Fig .....   | <i>Ficus carica</i> .....                             | Fruit.                                |   |
|                                  | Oca .....   | <i>Oxalis tuberosa</i> .....                          | Tuber.                                |   |
| Nicaragua .....                  | Cilantro .....  | <i>Coriandrum sativum</i> .....                       | Above ground parts.                   |   |
|                                  | Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties. | <i>Brassica</i> spp .....                             | Whole plant of edible varieties only. |   |
|                                  | Eggplant .....  | <i>Solanum melongena</i> .....                        | Fruit with stem .....                 | (b)(3).   |
|                                  | Fennel .....  | <i>Foeniculum vulgare</i> .....                       | Leaf and stem .....                   | (b)(2)(i).  |
|                                  | German chamomile .....  | <i>Matricaria recutita</i> and <i>M. chamomilla</i> . | Flower and leaf .....                 | (b)(2)(i).  |
|                                  | Loroco .....  | <i>Fernaldia</i> spp .....                            | Leaf and stem.                        |   |
|                                  | Mint .....  | <i>Mentha</i> spp .....                               | Above ground parts.                   |   |
|                                  | Parsley .....   | <i>Petroselinum crispum</i> .....                     | Above ground parts.                   |   |
|                                  | Radicchio .....   | <i>Cichorium</i> spp .....                            | Above ground parts.                   |   |
|                                  | Rambutan .....  | <i>Nephelium lappaceum</i> .....                      | Fruit .....                           | (b)(2)(i),<br>(b)(5)(iii).                                  |
|                                  | Rosemary .....  | <i>Rosmarinus officinalis</i> .....                   | Above ground parts.                   |   |
|                                  | 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).  |
| Panama .....                     | Basil .....   | <i>Ocimum</i> spp .....                               | Above ground parts.                   |   |
|                                  | Bean, green and lima .....  | <i>Phaseolus vulgaris</i> and <i>P. lunatus</i> .     | Seed.                                 |   |
|                                  | Belgian endive .....  | <i>Cichorium</i> spp .....                            | Above ground parts.                   |   |
|                                  | Chervil .....   | <i>Anthriscus cerefolium</i> .....                    | Above ground parts.                   |   |
|                                  | Chicory .....   | <i>Cichorium</i> spp .....                            | Above ground parts.                   |   |
|                                  | Eggplant .....  | <i>Solanum melongena</i> .....                        | Fruit with stem.                      |   |
|                                  | Endive .....  | <i>Cichorium</i> spp .....                            | Above ground parts.                   |   |
|                                  | Fenugreek .....   | <i>Tirgonella foenum-graceum</i> ..                   | Leaf and stem.                        |   |
|                                  | Lemon thyme .....   | <i>Thymus citriodorus</i> .....                       | Leaf and stem.                        |   |
|                                  | Mint .....  | <i>Mentha</i> spp .....                               | Above ground parts.                   |   |
|                                  | Oregano .....   | <i>Origanum</i> spp .....                             | Above ground parts.                   |   |
|                                  | Rambutan .....  | <i>Nephelium lappaceum</i> .....                      | Fruit.                                | (b)(2)(i),<br>(b)(5)(iii).                                  |
|                                  | Rosemary .....  | <i>Rosmarinus officinalis</i> .....                   | Above ground parts.                   |   |
|                                  | Tarragon .....  | <i>Artemisia dracunculus</i> .....                    | Above ground parts.                   |   |
| Peru .....                       | Arugula .....   | <i>Eruca sativa</i> .....                             | Leaf and stem.                        |   |
|                                  | Basil .....   | <i>Ocimum</i> spp .....                               | Leaf and stem.                        |   |
|                                  | Carrot .....  | <i>Daucus carota</i> .....                            | Root.                                 |   |

| Country/locality                | Common name   | Botanical name  | Plant part(s)                           | Additional restrictions (see paragraph (b) of this section) |
|---------------------------------|---|---|---|---|
| Philippines                     | Chervil   | <i>Anthriscus</i> spp   | Leaf and stem.                          |   |
|                                 | Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties. | <i>Brassica</i> spp   | Whole plant of edible varieties only.   |   |
|                                 | Cornsalad   | <i>Valerianella</i> spp   | Whole plant.                            |   |
|                                 | Dill  | <i>Anethum graveolens</i>   | Above ground parts.                     |   |
|                                 | Lambsquarters   | <i>Chenopodium album</i>  | Above ground parts.                     |   |
|                                 | Lemongrass  | <i>Cymbopogon</i> spp   | Leaf and stem.                          |   |
|                                 | Marjoram  | <i>Origanum</i> spp   | Above ground parts.                     |   |
|                                 | Mustard greens  | <i>Brassica juncea</i>  | Leaf.                                   |   |
|                                 | Oregano   | <i>Origanum</i> spp   | Leaf and stem.                          |   |
|                                 | Parsley   | <i>Petroselinum crispum</i>   | Leaf and stem.                          |   |
|                                 | Radicchio   | <i>Cichorium</i> spp  | Leaf.                                   |   |
|                                 | Swiss chard   | <i>Beta vulgaris</i>  | Leaf and stem.                          |   |
|                                 | Thyme   | <i>Thymus vulgaris</i>  | Above ground parts.                     |   |
|                                 | Jicama  | <i>Pachyrhizus tuberosus</i> or <i>P. erosus</i> .                      | Root.                                   |   |
| Poland                          | Pepper  | <i>Capsicum</i> spp   | Fruit.                                  |   |
| Republic of Korea               | Tomato  | <i>Lycopersicon esculentum</i>  | Fruit, stem, and leaf.                  |   |
|                                 | Angelica  | <i>Aralia elata</i>   | Edible shoot.                           |   |
|                                 | Aster greens  | <i>Aster scaber</i>   | Leaf and stem.                          |   |
|                                 | Bonnet bellflower   | <i>Codonopsis lanceolata</i>  | Root.                                   |   |
|                                 | Chard   | <i>Beta vulgaris</i> subsp. <i>cicla</i>                                | Leaf.                                   |   |
|                                 | Chinese bellflower  | <i>Platycodon grandiflorum</i>  | Root.                                   |   |
|                                 | Dasheen   | <i>Colocasia</i> spp., <i>Alocasia</i> spp., and <i>Xanthosoma</i> spp. | Root                                    | (b)(2)(iv).   |
|                                 | Eggplant  | <i>Solanum melongena</i>  | Fruit with stem.                        |   |
|                                 | Kiwi  | <i>Actinidia deliciosa</i>  | Fruit.                                  |   |
|                                 | Lettuce   | <i>Lactuca sativa</i>   | Leaf.                                   |   |
|                                 | Mugwort   | <i>Artemisia vulgaris</i>   | Leaf and stem.                          |   |
|                                 | Onion   | <i>Allium cepa</i>  | Bulb.                                   |   |
|                                 | Shepherd's purse  | <i>Capsella bursa-pastoris</i>  | Leaf and stem.                          |   |
|                                 | Strawberry  | <i>Fragaria</i> spp.  | Fruit                                   | (b)(5)(ii).   |
| Sierra Leone                    | Watercress  | <i>Nasturtium officinale</i>  | Leaf and stem.                          |   |
|                                 | Youngia greens  | <i>Youngia sonchifolia</i>  | Leaf, stem, and root.                   |   |
|                                 | Cassava   | <i>Manihot esculenta</i>  | Leaf.                                   |   |
|                                 | Jute  | <i>Corchorus capsularis</i>   | Leaf.                                   |   |
| St. Vincent and the Grenadines. | Potato  | <i>Solanum tuberosum</i>  | Leaf.                                   |   |
|                                 | Turmeric  | <i>Curcuma longa</i>  | Rhizome.                                |   |
| South Africa                    | Artichoke, globe  | <i>Cynara scolymus</i>  | Immature flower head.                   |   |
| Spain                           | Pineapple   | <i>Ananas</i> spp.  | Fruit.                                  |   |
|                                 | Eggplant  | <i>Solanum melongena</i>  | Fruit with stem                         | (b)(3).   |
|                                 | Tomato  | <i>Lycopersicon esculentum</i>  | Fruit, stem, and leaf                   | (b)(4)(ii).   |
| Suriname                        | Watermelon  | <i>Citrullus lanatus</i>  | Fruit                                   | (b)(3).   |
|                                 | Amaranth  | <i>Amaranthus</i> spp   | Leaf and stem.                          |   |
|                                 | Black palm nut  | <i>Astrocaryum</i> spp  | Fruit.                                  |   |
|                                 | Jessamine   | <i>Cestrum latifolium</i>   | Leaf and stem.                          |   |
|                                 | Malabar spinach   | <i>Bassella alba</i>  | Leaf and stem.                          |   |
|                                 | Mung bean   | <i>Vigna radiata</i>  | Seed sprout.                            |   |
|                                 | Pak choi  | <i>Brassica chinensis</i>   | Leaf and stem.                          |   |
| Sweden                          | Dill  | <i>Anethum graveolens</i>   | Above ground parts.                     |   |
| Taiwan                          | Bamboo  | <i>Bambuseae</i> spp  | Edible shoot, free of leaves and roots. |   |
|                                 | Burdock   | <i>Arctium lappa</i>  | Root.                                   |   |
| Thailand                        | Wasabi (Japanese horseradish).  | <i>Wasabia japonica</i>   | Root and stem.                          |   |
|                                 | Dasheen   | <i>Alocasia</i> spp., <i>Colocasia</i> spp., and <i>Xanthosoma</i> spp. | Leaf and stem.                          |   |
| Tonga                           | Tumeric   | <i>Curcuma domestica</i>  | Leaf and stem.                          |   |
|                                 | Burdock   | <i>Arctium lappa</i>  | Root, stem, and leaf.                   |   |
|                                 | Jicama tuberosus  | <i>Pachyrhizus tuberosus</i>  | Root.                                   |   |
| Trinidad and Tobago             | Pumpkin   | <i>Cucurbit maximaa</i>   | Fruit.                                  |   |
|                                 | Lemongrass  | <i>Cymbopogon citratus</i>  | Leaf and stem.                          |   |
|                                 | Leren   | <i>Calathea allouia</i>   | Tuber.                                  |   |
| Zambia                          | Shield leaf   | <i>Cecropia peltata</i>   | Leaf and stem.                          |   |
|                                 | Snow pea  | <i>Pisum sativum</i> spp. <i>sativum</i>                                | Flat, immature pod.                     |   |

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

(1) *Free areas.* (i) The commodity must be from a Medfly-free area listed in § 319.56–2(j) and must be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of the country of origin with an additional declaration stating that the commodity originated in a Medfly-free area.

(ii) The commodity must be from a Medfly-free area listed in § 319.56–2(j) and must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the commodity originated in a free area. Fruit from outside Medfly-free areas must be treated in accordance with § 319.56–2x of this subpart.

(iii) The commodity must be from a fruit-fly free area listed in § 319.56–2(h) and must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the commodity originated in a free area.

(iv) The commodity must be from a fruit-fly free area listed in § 319.56–2(h) and must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating: “These regulated articles originated in an area free from pests as designated in 7 CFR 319.56–2(h) and, upon inspection, were found free of *Dysmicoccus neobrevipes* and *Planococcus minor*.”

(2) *Restricted importation and distribution.* (i) Prohibited entry into Puerto Rico, 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, 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.”

(3) Commercial shipments only.

(4) *Stage of fruit.* (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 § 319.56–2dd of this subpart.

(5) *Other conditions.* (i) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the commodity is apparently free of *Acrolepiopsis assectella*.

(ii) 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*).

(iii) Must be accompanied by a phytosanitary certificate issued by the NPPO 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 shipment prior to export under the supervision of the NPPO.

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

(v) Must be accompanied by a phytosanitary certificate issued by the NPPO 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.

(Approved by the Office of Management and Budget under control numbers 0579–0049 and 0579–0236) ■ 4. Sections 319.56–2y and 319.56–2aa are revised and a new § 319.56–2ll is added to read as follows:

**§ 319.56–2y Conditions governing the entry of 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 requirements of this subpart:

(1) The cantaloupe or watermelon may be imported in commercial shipments 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>7</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, Tugaduaja, and Zapotal to El Azucar.

(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, honeydew melons, and watermelon from Brazil.*

Cantaloupe, honeydew melons, and watermelon may be imported into the United States from Brazil only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The cantaloupe, honeydew melons, or watermelon must have been grown in the area of Brazil considered by APHIS to be free of the South American cucurbit fly in accordance with § 319.56–2(e)(4) of this subpart.

(i) The following area in Brazil is considered free of the South American cucurbit fly: That portion of Brazil bounded on the north by the Atlantic Ocean; on the east by the River Assu (Acu) from the Atlantic Ocean to the city of Assu; on the south by Highway BR 304 from the city of Assu (Acu) to Mossoro, and by Farm Road RN–015

<sup>7</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.

from Mossoro to the Ceara State line; and on the west by the Ceara State line to the Atlantic Ocean.

(ii) All shipments of cantaloupe, honeydew melons, and watermelon must be accompanied by a phytosanitary certificate issued by the NPPO of Brazil that includes a declaration indicating that the fruit was grown in an area recognized to be free of the South American cucurbit fly.

(2) The cantaloupe, honeydew melons, and watermelon must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(3) All shipments of cantaloupe, honeydew melons, and watermelon must be labeled in accordance with § 319.56–2(g) of this subpart.

(c) *Cantaloupe, honeydew melons, and watermelon from Venezuela.*

Cantaloupe, honeydew melons, and watermelon may be imported into the United States from Venezuela only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The cantaloupe, honeydew melons, or watermelon must have been grown in the area of Venezuela considered by APHIS to be free of the South American cucurbit fly in accordance with § 319.56–2(e)(4) of this subpart.

(i) The following area in Venezuela is considered free of the South American cucurbit fly: The Paraguana Peninsula, located in the State of Falcon, bounded on the north and east by the Caribbean Ocean, on the south by the Gulf of Coro and an imaginary line dividing the autonomous districts of Falcon and Miranda, and on the west by the Gulf of Venezuela.

(ii) All shipments of cantaloupe, honeydew melons, and watermelon must be accompanied by a phytosanitary certificate issued by the NPPO of Venezuela that includes a declaration indicating that the fruit was grown in an area recognized to be free of the South American cucurbit fly.

(2) The cantaloupe, honeydew melons, and watermelon must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(3) All shipments of cantaloupe, honeydew melons, and watermelon must be labeled in accordance with § 319.56–2(g) of this subpart.

(d) *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 shipments only.

(2) The fruit must have been grown in the area of Peru considered by APHIS to be free of the South American cucurbit fly in accordance with § 319.56–2(e)(4) of this subpart.

(i) The Departments of Lima, Ica, Arequipa, Moquegua, and Tacna in Peru are considered free of the South American cucurbit fly.

(ii) All shipments must be accompanied by a phytosanitary certificate issued by the NPPO of Peru that includes a declaration indicating that the fruit was grown in an area recognized to be free of the South American cucurbit fly, and upon inspection, was found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*).

(3) The fruit must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(4) All shipments of fruit must be labeled in accordance with § 319.56–2(g) 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)

**§ 319.56–2aa Conditions governing the entry of watermelon, squash, cucumber, and oriental melon from the Republic of Korea.**

Watermelon (*Citrullus lanatus*), squash (*Curcubita 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 requirements 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 shipment must be accompanied by a phytosanitary certificate issued by NPPO, with the following additional declaration: “The regulated articles in this shipment were grown in registered greenhouses as specified by 7 CFR 319.56–2aa.”

(g) Each shipment 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 shipment arrives at the port in the United States.

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

**§ 319.56–2II Conditions governing the entry of grapes from the Republic of Korea.**

Grapes (*Vitis* spp.) may be imported into the United States from the Republic of Korea under the following conditions:

(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 shipment must be inspected by the NPPO before export. For each shipment, the NPPO must issue a phytosanitary certificate with an additional declaration stating that the fruit in the shipment was found free from *C. punctiferalis*, *E. ambiguella*, *S. pilleriana*, *S. auriferella*, or *M. fructigena*, and *Nippoptilia vitis*.

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

Done in Washington, DC, this 4th day of November 2004.

**W. Ron DeHaven,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04-25042 Filed 11-9-04; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 19

[Docket No. 04-24]

RIN 1557-AC82

#### Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustments

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure to adjust the maximum amount of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustment, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The OCC is also making a technical correction to resolve an error in the numbering of sections in part 19.

**DATES:** *Effective Date:* December 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jean Campbell, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090, or Carolyn Amundson, Counsel, Enforcement and Compliance Division, (202) 874-4800, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Inflation Adjustment Act (Act), 28 U.S.C. 2461 note, requires the OCC, as well as other Federal agencies with CMP authority, to publish regulations to adjust each CMP authorized by a law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Act requires adjustments to be made at least once every four years following the initial adjustment. The OCC's prior adjustment to each CMP was published in the **Federal Register** on December 11, 2000, 65 FR 77250, and became effective that same day.

The Act requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the year in which the adjustment will be made and June of the calendar year in which the amount was last set or adjusted. The Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers (CPI-U) published by the Department of Labor.<sup>1</sup> See 28 U.S.C. 2461 note. In addition, the Act provides rules for rounding off increases,<sup>2</sup> and requires that any increase in a CMP apply only to violations that occur after the date of the adjustment. Finally, section 2 of the Debt Collection Improvement Act, 28 U.S.C. 2461 note, limited the initial adjustment of a CMP pursuant to the Act to 10 percent of the amount set by statute.

#### Description of the Final Rule

##### *Inflation Adjustment*

This final rule adjusts the amount for each type of CMP that the OCC has jurisdiction to impose in accordance with the statutory requirements by revising the table contained in subpart

<sup>1</sup> The Department of Labor computes the CPI-U using two different base time periods, 1967 and 1982-1984, and the Act does not specify which of these base periods should be used to calculate the inflation adjustment. The OCC, consistent with the other Federal banking agencies, has used the CPI-U with 1982-84 as the base period.

<sup>2</sup> The Act's rounding rules require that an increase be rounded to the nearest multiple of: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000. See 28 U.S.C. 2461 note.

O of 12 CFR part 19. The table identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

The Act requires that we compute the inflation adjustment by comparing the CPI-U for June of the year in which the CMPs were last set or adjusted with the CPI-U for June of the calendar year preceding the adjustment. 28 U.S.C. 2461 note. For those CMPs that were adjusted in 2000, we compared the CPI-U for June 2003 (183.7) with the CPI-U for June 2000 (172.4). This resulted in an inflation adjustment of 6.6 percent. For those penalties that were last adjusted in 1997, we compared the CPI-U for June 1997 (160.3) to the CPI-U for June 2003 (183.7). This resulted in an inflation increase of 14.6 percent. The penalty for failure to require flood insurance or notify the borrower of lack of coverage, 42 U.S.C. 4012a(f)(5), has never been adjusted for inflation because of application of the rounding rules. For that penalty, we compared the CPI-U for June of the year of enactment, 1994<sup>3</sup> (148.0), with the CPI-U for June 2003 (183.7). This resulted in an inflation increase of 24.1 percent.

We multiplied the amount of each CMP by the appropriate percentage inflation adjustment and added that amount to the current penalty. We rounded the resulting dollar amount up or down according to the rounding requirements of the Act. In some cases, rounding resulted in no adjustment to the CMP. In the case of the flood insurance penalty, the increase was capped at 10 percent because this is the initial adjustment. The following table shows both the present CMPs and the inflation adjusted CMPs. The table published in § 19.240(a) is shorter and shows only the adjusted CMPs, not the calculations.

New § 19.240(b) states that the adjustments made in § 19.240(a) apply only to violations that occur after the effective date of this final rule.

The OCC will readjust these amounts in 2008 and every four years thereafter, assuming there are no further changes to the mandate imposed by the Act.

<sup>3</sup> See Riegle Community Development and Regulatory Improvement Act of 1994 (RDCRIA), Pub. L. 103-325, Title V, section 525, 108 Stat. 2260.