

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

[Docket No. APHIS-2005-0106]

RIN 0579-AB80

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

**SUMMARY:** We are proposing to revise and reorganize the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations into territories under U.S. administration, and make various editorial and nonsubstantive changes to regulations to make them easier to use. We are also proposing to make substantive changes to the regulations, including: Establishing criteria within the regulations that, if met, would allow us to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries more effectively and expeditiously; doing away with the practice of listing specific commodities that may be imported subject to certain types of phytosanitary measures; and providing for the issuance of special use permits for fruits and vegetables. These changes are intended to simplify and expedite our processes for approving certain new imports and pest-free areas while continuing to allow for public participation in the processes. This proposal, if adopted, would represent a significant structural revision of the fruits and vegetables import regulations and would establish a new process for approving certain new commodities for importation into the United States. It would not, however, allow the importation of any specific new fruits or vegetables, nor would it alter the conditions for importing currently approved fruits or vegetables except as specifically described in this document. To the extent to which trading partners consider the time it takes to conduct the rulemaking process a trade barrier, by reducing that time, these proposed changes may facilitate the export of U.S. agricultural commodities. The proposed

changes would not alter the manner in which the risk associated with a commodity import request is evaluated, nor would it alter the manner in which those risks are ultimately mitigated.

**DATES:** We will consider all comments that we receive on or before July 26, 2006. We will also consider comments made at public hearings to be held in Seattle, WA, on May 23, 2006; in Los Angeles, CA, on May 24, 2006; in Miami, FL, on May 26, 2006; and in Washington, DC, on June 20, 2006.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the "Search for Open Regulations" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS-2005-0106 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in Regulations.gov.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2005-0106, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2005-0106.

**Public Hearings:** Public hearings regarding this rule will be held at the following locations:

1. Seattle, WA: Seattle Renaissance Hotel, 515 Madison Street, Seattle, WA.
2. Los Angeles, CA: The Westin Los Angeles Airport, 5400 West Century Boulevard, Los Angeles, CA.
3. Miami, FL: Hilton Miami Airport, 5101 Blue Lagoon Drive, Miami, FL.
4. Washington, DC: USDA Jamie L. Whitten Building, 1400 Independence Avenue, SW., Washington, DC.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:**

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

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

**SUPPLEMENTARY INFORMATION:****Public Hearings**

We are advising the public that we are hosting four public hearings on this proposed rule. The first public hearing will be held in Seattle, WA, on Tuesday, May 23, 2006 from 9 a.m. to 1 p.m., local time. The second public hearing will be held in Los Angeles, CA, on Wednesday, May 24, 2006, from 1 p.m. to 5 p.m., local time. The third public hearing will be held in Miami, FL, on Friday, May 26, 2006, from 9 a.m. to 1 p.m., local time. The fourth public hearing will be held in Washington, DC, on June 20, 2006, from 9 a.m. to 1 p.m., local time.

A representative of the Animal and Plant Health Inspection Service will preside at the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the hearing record. A transcript of the public hearings will be placed in the rulemaking record and will be available for public inspection.

The purpose of the hearings is to give interested persons an opportunity for presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearings, except to clarify or explain provisions of the proposed rule.

The presiding officer may limit the time for each presentation so that all interested persons appearing at each hearing have an opportunity to participate. Each hearing may be terminated at any time if all persons desiring to speak and that are present in the hearing room have been heard.

Registration for the hearings may be accomplished by registering with the presiding officer 30 minutes prior to the scheduled start of each hearing. Persons who wish to speak at a hearing will be asked to sign in with their name and organization to establish a record for the

hearing. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

Persons wishing to speak at one or both of the public hearings may register in advance by phone or e-mail. Persons wishing to register by phone should call the Regulatory Analysis and Development voice mail at (301) 734-8138. Callers must leave a message clearly stating (1) the location of the hearing the registrant wishes to speak at, and (2) the registrant's name and organization. Persons wishing to register by e-mail must send an e-mail with the same information described above to <http://ppq.public.hearings@aphis.usda.gov>. Please write the location of the hearing you wish to attend in the subject line. Advance registration for the hearings must be received by 3 p.m. on the day prior to the hearing you wish to attend. Additional information on the hearings, including parking information, can be found on the Internet at <http://www.aphis.usda.gov/ppq/Q56>.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

## Background

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

In this document, we are proposing to revise and reorganize the fruits and vegetables regulations to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations of fruits and vegetables into U.S. territories, and make various editorial and nonsubstantive changes to regulations to make them easier to use. We are also proposing to make substantive changes to the regulations, including: (1) Establishing criteria within the regulations that, if met, would allow APHIS to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries more effectively and expeditiously; (2) doing away with the

process of listing, in the regulations, specific commodities that may be imported subject to certain types of phytosanitary measures; and (3) providing for the issuance of special use permits for fruits and vegetables. These changes are necessary to simplify and expedite the APHIS processes for approving new imports and pest-free areas while continuing to allow for public participation in the process. This proposal, if adopted, would represent a significant structural revision of the regulations, and would establish a new process for approving certain new commodities for importation into the United States. It would not, however, allow the importation of any specific new fruits or vegetables, nor would it alter the conditions for importing currently approved fruits or vegetables except as specifically described in this document.

## The Current Regulations

Currently, the regulations prohibit the importation into the United States of fruits and vegetables covered by the subpart,<sup>1</sup> unless the regulations specifically allow the importation of the particular fruit or vegetable.

The regulations can be roughly divided into two categories: Requirements of general applicability (contained in §§ 319.56 through 319.56-2 and §§ 319.56-3 through 319.56-8) and commodity-specific requirements (contained in §§ 319.56-2a through 319.56-2oo).

Under the regulations, all approved fruit and vegetable imports are subject to some type of restriction to ensure that the imported fruit or vegetable does not act as a pathway for the introduction of plant pests or noxious weeds into the United States. These restrictions are known as phytosanitary measures, and include any activities that have the effect of reducing the plant pest risk posed by an imported fruit or vegetable.

In nearly all cases, more than one phytosanitary measure must be applied to each type of imported fruit or vegetable for the commodity to be allowed importation into the United States. In the most typical scenario, fruits and vegetables must be imported under permit and are subject to inspection, and, if necessary, treatment, at the port of first arrival in the United States. These requirements are referred to elsewhere in this document as universal requirements. A partial list of commodities that may be imported under these conditions may be found in § 319.56-2t of the current regulations.

<sup>1</sup> The importation of citrus fruits is regulated under Subpart—Citrus Fruit (§ 319.28).

Other commodities must always be treated for pests before arriving at a U.S. port of entry, in addition to meeting these universal requirements. A partial list of such commodities may be found in § 319.56-2x of the current regulations.<sup>2</sup> Certain other fruits and vegetables must meet additional requirements (in some cases, called "systems approaches") to be eligible for importation into the United States. Such measures include sampling regimens, pest surveys, packing requirements, and other measures determined to be necessary to mitigate the pest risk posed by the particular commodity. Requirements for importing these commodities may be found in §§ 319.56-2a through 319.56-2oo.

## Proposed Revisions

### Reorganization of the Regulations and Consolidation of Similar Provisions

In this document, we are proposing to reorganize the regulations to make them easier to understand and use. Specifically, we are proposing to consolidate all requirements of general applicability into one section (proposed § 319.56-3, "General requirements for all imported fruits and vegetables"). Currently, general requirements are located in various sections (§§ 319.56 through 319.56-2 and 319.56-3 through 319.56-8) of the regulations, and several such provisions are repeated throughout the commodity-specific sections (§§ 319.56-2a through 319.56-2oo). If this proposal is adopted, all requirements of general applicability would be located at the beginning of the regulations, followed by all commodity-specific requirements, and redundant references to general requirements that are contained in commodity specific regulations would be removed.

In order to facilitate review of this proposal, which, if adopted, would relocate all current provisions to new sections within the regulations, we have prepared a cross-reference table that links the current provisions with the proposed provisions. The cross reference document may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov.) and may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. The cross reference document may also be viewed in our reading room

<sup>2</sup> Some commodities listed in §§ 319.56-2t and 319.56-2x require additional phytosanitary measures beyond requirements that they be imported under permit and are subject to inspection at the port of first arrival in the United States. Such requirements include special box markings and phytosanitary certifications by foreign national plant protection organizations.

(information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule). Further, for ease of reference, we provide the following outline of the proposed revision:

*Requirements of General Applicability*

- § 319.56-1 Notice of quarantine.
  - § 319.56-2 Definitions.
  - § 319.56-3 General requirements for all imported fruits and vegetables.
    - (a) Freedom from plants and portions of plants.
    - (b) Permit.
    - (c) Ports of entry.
    - (d) Inspection, treatment, and other requirements.
    - (e) Costs and charges for APHIS services.
    - (f) Responsibility for damages arising from quarantine actions or procedures.
  - § 319.56-4 Approval of certain fruits and vegetables for importation.
    - (a) Determination by the Administrator.
    - (b) Designated phytosanitary measures.
    - (c) Fruit and vegetables authorized importation under this section.
    - (d) Amendment of import requirements.
  - § 319.56-5 Pest-free areas.
  - § 319.56-6 Trust fund agreements.
  - § 319.56-7 Territorial applicability and exceptions.
  - §§ 319.56-8 through 319.56-9 [Reserved]
- Commodity-Specific Requirements*
- § 319.56-10 Importation of fruits and vegetables from Canada.
  - § 319.56-11 Importation of dried, cured, or processed fruits, vegetables, nuts, and legumes.
  - § 319.56-12 Importation of frozen fruits and vegetables.
  - § 319.56-13 Additional requirements for certain fruits and vegetables.
  - §§ 319.56-14 through 319.56-19 [Reserved]

- § 319.56-20 Apples and pears from Australia (including Tasmania) and New Zealand.
- § 319.56-21 Okra from certain countries.
- § 319.56-22 Apples and pears from certain countries in Europe.
- § 319.56-23 Apricots, nectarines, peaches, plumcot, and plums from Chile.
- § 319.56-24 Lettuce and peppers from Israel.
- § 319.56-25 Papayas from Central America and Brazil.
- § 319.56-26 Melon and watermelon from certain countries in South America.
- § 319.56-27 Fuji variety apples from Japan and the Republic of Korea.
- § 319.56-28 Tomatoes from certain countries.
- § 319.56-29 Ya variety pears from China.
- § 319.56-30 Hass avocados from Michoacan, Mexico.
- § 319.56-31 Peppers from Spain.
- § 319.56-32 Peppers from New Zealand.
- § 319.56-33 Mangoes from the Philippines.
- § 319.56-34 Clementines from Spain.
- § 319.56-35 Persimmons from the Republic of Korea.
- § 319.56-36 Watermelon, squash, cucumber, and oriental melon from the Republic of Korea.
- § 319.56-37 Grapes from the Republic of Korea.
- § 319.56-38 Clementines, mandarins, and tangerines from Chile.
- § 319.56-39 Fragrant pears from China.
- § 319.56-40 Peppers from certain Central American countries.

*Relocation of Treatment Schedules and Other Treatment-related Provisions to Part 305*

APHIS recently amended the regulations in 7 CFR part 305 by listing in that part treatment schedules for imported fruits and vegetables and other

requirements for certifying facilities and conducting treatments (see 70 FR 33264-33326, Docket No. 02-019-1). Prior to that amendment, treatment schedules were contained in the Plant Protection and Quarantine (PPQ) Treatment Manual, which was incorporated by reference into the regulations at 7 CFR 300.1.

The fruits and vegetables regulations also contain some treatment schedules for certain imported fruits and vegetables. In some cases, the schedules are the same as treatments now listed in part 305. In other cases, the schedules are somewhat different than the treatments specified in part 305. The discrepancies resulted from changes being made in the past to the PPQ Treatment Manual without corresponding changes being made to the fruits and vegetables regulations. In this document, we are proposing to remove treatment schedules from the fruits and vegetables regulations, as all current treatments for fruits and vegetables are correctly set out in part 305.<sup>3</sup>

The table below contains a list of treatment schedules currently contained in the fruits and vegetables regulations, as well as the identification number of appropriate treatment schedule for the given commodity that is currently listed in part 305. Again, under this proposal, all treatment schedules contained in the fruits and vegetables regulations would be removed, and treatment of affected commodities would have to be conducted in accordance with part 305.

Commodity	Origin	Pests	Treatment type	Location of treatment in subpart—fruits and vegetables	Applicable treatment in part 305
Acorns and chestnuts.	All except Canada and Mexico.	<i>Curculio elephas</i> (Cyllenhal) and <i>C. nucum</i> Linnaeus; the nut fruit tortrix, <i>et al.</i> , <i>Cydia splendana</i> (Hubner), <i>Cydia</i> spp., and <i>Hemimene juliana</i> (Curtis); and other insect pests of chestnuts and acorns.	Methyl bromide normal atmospheric pressure (NAP).	319.56-2b(a)(3)(i) and 319.56-2b(a)(3)(iii).	T-101-t-1.
Acorns and chestnuts.	All except Canada and Mexico.	Same as above .....	Methyl bromide (26" vacuum).	319.56-2b(a)(3)(ii) .....	T-101-u-1.
Yams .....	All (except Japan) .....	Internal and external feeders	Methyl bromide (NAP).	319.56-21-(a)(2) .....	T-101-f-3.
Avocados .....	Medfly-, melon fly-, and Oriental fruit fly-infested areas.	Medfly, melon fly ( <i>Batrocera cucurbitae</i> ), Oriental fruit fly ( <i>b. dorsalis</i> ).	Methyl bromide (NAP) and cold treatment.	319.56-2o .....	T-108-a.
Okra .....	Mexico, West Indies, South America.	Pink bollworm ( <i>Pectinophora gossypiella</i> ).	Methyl bromide (NAP).	319.56-2p(b)(3) .....	T-101-p-2.

<sup>3</sup> The methyl bromide treatment schedule for cherimoyas from Chile that is listed in current

§ 319.56-2z is not longer in use, and would be removed.

Commodity	Origin	Pests	Treatment type	Location of treatment in sub-part—fruits and vegetables	Applicable treatment in part 305
Cherimoya .....	Chile .....	Chilean false spider mite of grapes.	Methyl bromide (NAP), soapy water and wax.	319.56–2z(a)(1) .....	Methyl bromide: N/A; soapy water and wax: T–102–b. T–106–d–1.
Mangoes .....	Philippines .....	<i>Bactrocera</i> spp. fruit flies .....	Vapor heat .....	319.56–2ii(b) .....	

Also, under § 319.56–2(k) of the current regulations, treatment by irradiation in accordance with part 305 may be substituted for other treatments in part 305 for one or more of the plant pests listed in § 305.31(a). Since the proposed regulations would provide that certain commodities be treated in accordance with an approved treatment listed in part 305 of the regulations, we are proposing to remove the provisions in § 319.56–2(k) regarding the use of irradiation, as the use of that treatment is covered under part 305.

Further, current § 319.56–2n provides that fumigation with methyl bromide at normal atmospheric pressure followed by refrigerated storage in accordance with part 305 is an approved treatment for the Medfly, the oriental fruit fly, and the grape vine moth, and for certain pests of grapes and other fruit from Chile. Since all provisions contained in current § 319.56–2n would remain in force under other sections in the revised regulations (as described in the cross reference document), current § 319.56–2n is redundant and would be removed.

In addition to proposing to remove treatment schedules, we are also proposing to move to part 305 other provisions of the fruits and vegetables regulations that pertain to treatments. Specifically, we are proposing to move to § 305.15 the provisions contained in current § 319.56–2d, which pertain to the importation of cold treated fruits and vegetables. Current § 305.15 already contains requirements related to the cold treatment of fruits and vegetables. Any provisions contained in current § 319.56–2d that are not already present in § 305.15 would be moved into § 305.15. The cross reference document shows where the current provisions in § 319.56–2d would be located in proposed § 305.15.

Many sections of the fruits and vegetables regulations require treatments to be monitored by an inspector (as defined in current § 319.56–1). We are proposing to remove these provisions from the fruits and vegetables regulations, and consolidate them into one new section in part 305. Under this proposal, the regulations in a new § 305.3, “Monitoring and

certification of treatments,” would require that all treatments approved under part 305 be subject to monitoring and verification by APHIS. This change would not represent a change in program operations.

Further, we would add provisions to § 305.3 to make clear the existing requirement that any approved treatment listed in part 305 that is performed outside the United States must be monitored and certified by APHIS or an official from the plant protection service of the exporting country. We would also clarify the current requirement that all consignments of agricultural commodities that are treated outside the United States to be accompanied by a phytosanitary certificate issued by an official of the plant protection service of the exporting country certifying that treatment was applied in accordance with APHIS regulations. We would require that the phytosanitary certificate be provided to APHIS when the commodity is offered for entry into the United States. We would also require that the commodities must be stored and handled during the entire interval between treatment and export in a manner that prevents any infestation by plant pests and noxious weeds. These changes are necessary to ensure commodities are treated in accordance with APHIS requirements and to help ensure that they arrive in the United States free of quarantine pests.

#### *Section-by-Section Discussion of Additional Amendments*

Additional proposed amendments to the regulations are discussed below, by proposed section.

#### *Notice of Quarantine (Proposed § 319.56–1)*

Current § 319.56, also titled “Notice of quarantine,” prohibits the importation of fruits and vegetables except as specifically provided in the fruits and vegetables regulations or in regulations elsewhere in part 319. Proposed § 319.56–1 would replace existing § 319.56, and would describe the authority the Secretary of Agriculture has to regulate the importation of fruits

and vegetables.<sup>4</sup> Proposed § 319.56–1 would also continue to prohibit the importation of fruits and vegetables into the United States, except as provided in the fruits and vegetables regulations or elsewhere in part 319.

#### *Definitions (Proposed § 319.56–2)*

The current list of definitions for terms used in the regulations is contained in § 319.56–1. Under this proposal, the list would be moved to § 319.56–2. We are proposing to remove, revise, and relocate definitions for several terms currently defined in § 319.56–1 and elsewhere in the regulations, as well as to add several new definitions. All the new and revised definitions may be found in § 319.56–2 in the rule portion of this document.

Specifically, we are proposing to add definitions for *commodity*, *consignment*, *lot*, *national plant protection organization*, *phytosanitary certificate*, and *phytosanitary measure*. These additional definitions, which will clarify the meaning of terms used in context of the revised regulations, can be viewed in the rule portion of this document.

We are proposing to remove definitions for *general written permit* and *specific written permit*. Those definitions would be removed because the distinction between the two would no longer apply under the proposed regulations in § 319.56–3(b). See the discussion of permits under § 319.56–3 later in this document for additional explanation.

We are proposing to replace the current definitions for *commercial shipment* with a definition for *commercial consignment* in order to eliminate confusion over what constitutes a “shipment” at the port of entry into the United States. We would also add a definition for the term *noncommercial consignment*. Since the term *consignment* has been defined in the context of international trade

<sup>4</sup> The Secretary of Agriculture has delegated authority for the formulation, direction, and supervision of APHIS policies, programs, and activities to the Administrator of APHIS.

agreements, we would use that term in the regulations.

We are also proposing to move the definition for *West Indies* found in § 319.56–2p of the current regulations into proposed § 319.56–2.

*General Requirements for All Imported Fruits and Vegetables (Proposed § 319.56–3)*

As explained earlier in this document, we are proposing to consolidate all existing general requirements for imported fruits and vegetables into § 319.56–3. These requirements include provisions that pertain to:

- Freedom of imported fruits and vegetables from plant debris;
- Permits;
- Ports of entry;
- Inspection, treatment, and/or other requirements at the port of first arrival;
- Costs and charges for APHIS services; and
- Responsibility for damages arising from quarantine actions or procedures.

The current provisions for these requirements are contained in §§ 319.56–2 and 319.56–3 through 319.56–8. We propose to amend the current general requirements as follows:

**Freedom From Plant Debris**

Under current § 319.56–2(a), imported fruits and vegetables must be free from plant debris, as that term is defined in the regulations. This provision would remain unchanged under this proposal and would be relocated in proposed § 319.56–3.

**Permits**

Current § 319.56–3 states that, except for fruits or vegetables that may be imported under the general written permit provided in § 319.56–2(b), (c), and (d), or for fruits and vegetables imported under an oral permit in accordance with § 319.56–3(d), no fruits or vegetables may be imported unless a specific written permit has been issued for the fruits or vegetables and unless the fruits or vegetables meet all other applicable requirements of the regulations and any other requirements specified by APHIS in the specific written permit.

We believe the distinction between specific and general written permits is unnecessarily confusing, since general written permits simply authorize, in the text of the regulations, the importation of the following commodities without a specific written permit:

- Certain dried, cured, or processed fruits and vegetables (except frozen fruits and vegetables);
- Certain fruits and vegetables grown in Canada; and

- Certain fruits and vegetables grown in the British Virgin Islands that are imported into the U.S. Virgin Islands.

Therefore, we are proposing to amend the regulations pertaining to permits to state that the commodities described above may be imported without a permit, while all other fruits and vegetables must be imported under permit, in accordance with proposed § 319.56–3(b). The current provisions for importations under oral permits would still apply under proposed § 319.56–3(b)(4).

Other current provisions regarding application for permits; issuance of permits; amendment, denial, or withdrawal of permits; and appeals (contained in current §§ 319.56–3 and 319.56–4) would be relocated in paragraphs (b)(2), (b)(3), (b)(5), and (b)(6) of proposed § 319.56–3. The provisions for applying for permits would also be updated to reflect the various means (mail, fax, Internet) now available for applying for permits.

In this document, we are also proposing to add new provisions to the regulations that would authorize APHIS to issue special use permits that authorize the importation of small lots of fruits or vegetables that are otherwise prohibited importation under the regulations, provided that the fruits or vegetables:

- Are not intended for commercial distribution;
- Are to be imported, transported, stored, or held under specific conditions that the Administrator has determined will mitigate the pest risk posed by the imported fruits or vegetables to the extent practicable; and
- Are to be consumed, disposed of, destroyed, or re-exported at a time and in a manner and place ordered by an inspector or as specified in the permit.

These provisions would be contained in proposed § 319.56–3(b)(7), and would provide for the importation of fruits and vegetables for special events such as trade shows, for diplomatic presentations, and for scientific research. In each case, such imports would only be allowed under strict conditions approved by the Administrator to address the particular risk posed by the particular imported fruit or vegetable.

**Ports of Entry**

Some of the current commodity-specific sections of the regulations specify the ports of entry into which particular commodities may be imported. We propose to remove those provisions and combine them into one general provision, to be contained in proposed § 319.56–3(c). Proposed

§ 319.56–3(c) would provide that ports of entry include only those listed in the regulations of the Department of Homeland Security's Bureau of Customs and Border Protection (CBP) in 19 CFR 101.3(b)(1), and that fruits and vegetables will be required to be imported through specific ports only if so required under Subpart—Fruits and Vegetables or part 305, or if so required under the conditions of a permit issued for the importation of the particular fruit or vegetable. This section would also make it clear that fruits and vegetables that are to be treated for exotic fruit flies at ports in the United States may only be imported into certain ports, as provided in proposed § 305.15. Provisions for these requirements are contained in § 319.56–2d of the current regulations.

**Inspection, Treatment, and Other Requirements**

Requirements currently contained in current § 319.56–6 pertaining to the arrival of fruits and vegetables at ports of entry, inspection and treatment of such fruits and vegetables, notice of actions ordered by an inspector, refusal of entry, and release for movement would be relocated in proposed § 319.56–3(d). The current provisions in § 319.56–5 overlap with the provisions of § 319.56–6 and other sections, and would be removed.

Current § 319.56–7 authorizes inspectors to cooperate with Customs inspectors in the examination of all baggage or other personal belongings of passengers or members of crews of vessels or other carriers whenever such examination is deemed necessary for the purpose of enforcing the regulations with respect to the entry of any prohibited or restricted fruits or vegetables or plants or portions of plants which may be contained in the baggage or other belongings of such persons. This provision is no longer essential for the purposes of enforcing the proposed regulations given the consolidation of APHIS and Customs inspection personnel in CBP, and as such, would be removed.

**Costs and Charges for APHIS Services**

Current § 319.56–6 provides that APHIS will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty and at the usual places of duty, and that the owner of imported fruits or vegetables is responsible for all additional costs of inspection, treatment, movement, storage, or destruction ordered by an inspector under the regulations, including any labor, chemicals, packing materials, or

other supplies required. Similar provisions regarding costs and charges are contained in commodity-specific requirements in §§ 319.56–2a through 319.56–2oo. In this document, we are proposing to consolidate all provisions pertaining to costs and charges for inspection services into proposed § 319.56–3(e). This change would not affect program operations in any way, and would eliminate redundant text from the regulations.

#### Responsibility for Damages Arising From Quarantine Actions or Procedures

Some of the commodity-specific sections in §§ 319.56–2a through 319.56–2oo provide that USDA assumes no responsibility for any damage to imported fruits or vegetables that results from treatments required under the regulations. In this document, we are proposing to consolidate all provisions pertaining to responsibility for damages into proposed § 319.56–3(f). Again, this change would not affect program operations in any way and would eliminate redundant text from the regulations.

#### *Approval of Certain Fruits and Vegetables for Importation (Proposed § 319.56–4)*

Current § 319.56–2(e) provides that any other fruit or vegetable, except those restricted to certain countries and districts by special quarantine,<sup>5</sup> other orders, or provisions of the fruits and vegetables regulations<sup>6</sup> may be imported from any country under a permit issued in accordance with the fruits and vegetables regulations if APHIS, after reviewing evidence presented to it, is satisfied that the fruit or vegetable either:

- Is not attached in the country of origin by quarantine pests;
- Has been treated or is to be treated for all quarantine pests that exist in the country of origin, in accordance with conditions and procedures that may be prescribed by the Administrator;
- Is imported from a definite area or district in the country of origin that is free from all quarantine pests that attack the fruit or vegetable and its importation is in compliance with the criteria of § 319.56–2(f); or

<sup>5</sup> The importation of citrus fruits into the United States from eastern and southeastern Asia and certain other areas is restricted by Subpart—Citrus Fruit, § 319.28.

<sup>6</sup> Fruits and vegetables from designated countries or localities that are subject to commodity-specific import requirements prescribed in the fruits and vegetables regulations are not subject to the regulations in § 319.56–2(e) unless specified otherwise. Such fruits and vegetables are, however, subject to all other general requirements contained in the fruits and vegetables regulations.

• Is imported from a definite area or district of the country of origin that is free from quarantine pests that attack the fruit or vegetable and the criteria of § 319.56–2(f) are met with regard to those quarantine pests, provided that all other quarantine pests that attack the fruit or vegetable in the area or district of the country of origin have been eliminated from the fruit or vegetable by treatment or any other procedures that may be prescribed by the Administrator.

In short, the regulations in § 319.56–2(e) provide that APHIS may authorize the importation of a fruit or vegetable by simply issuing a permit once it is satisfied that the criteria in that paragraph have been met; those regulations do not envision that the fruit or vegetable would have to be specifically listed in the regulations in order to be eligible for entry. Until 1987, APHIS used those provisions in that manner, issuing permits to authorize the entry of eligible fruits and vegetables without adding those commodities to the regulations.<sup>7</sup>

However, in 1987, in order to increase the transparency of our decisionmaking with respect to the importation of fruits and vegetables, we elected to begin listing all newly approved fruits and vegetables in the regulations through notice-and-comment rulemaking.<sup>8</sup> This approach has afforded the public the opportunity to comment on the proposed importation of hundreds of commodities over the years. However, the number of requests we receive from foreign exporters and domestic importers to amend the regulations has been steadily increasing since 1987, and we have concluded that a different approach will be necessary if we are to keep pace with the volume of import requests. We believe this new approach, which is described in detail below, will enable us to be more responsive to the import requests of our trading partners while preserving the transparency afforded by the approach we initiated in 1987.

Using our current process, in order for an additional fruit or vegetable to be approved for importation, APHIS, after receiving the import request, first gathers information on the commodity and then performs a pest risk analysis.

<sup>7</sup> A comprehensive list of fruits and vegetables that are approved for importation, including those authorized importation under the provisions of § 319.56–2(e) but that are not specifically listed in the regulations, may be found in the APHIS's manual "Regulating the Importation of Fruits and Vegetables." The manual is posted on the Internet at [http://www.aphis.usda.gov/ppq/manuals/port/FV\\_Chapters.htm](http://www.aphis.usda.gov/ppq/manuals/port/FV_Chapters.htm).

<sup>8</sup> The first rule issued under this policy was finalized on November 19, 1992 (see 57 FR 54485–54492, Docket No. 88–143–2).

The pest risk analysis usually contains two main components: (1) A risk assessment, to determine what pests of quarantine significance are associated with the proposed import and which of those are likely to follow the import pathway, and (2) a risk management analysis, to identify phytosanitary measures that could be applied to the proposed import and evaluate the potential effectiveness of those measures. When the risk analysis is complete, APHIS may then propose to allow the importation of the commodity through a proposed rule published in the **Federal Register**. Following its evaluation of public comments on the proposal and any other supporting documentation, APHIS may then issue a final rule that specifically lists the fruit or vegetable, and any applicable phytosanitary measures, in the regulations. The results of a pest risk analysis may also reveal that the risks posed by a proposed import cannot be sufficiently mitigated for a variety of reasons, and such imports continue to be prohibited importation into the United States.

The current process for approving new imports takes a significant period of time, ranging on average from 18 months to over 3 years (beginning with the initial request and ending with the publication of a final rule). In this document, we are proposing to establish a regulatory approach that would allow APHIS to approve or reject certain fruits and vegetables for importation without specific prior rulemaking (as was the case prior to 1987), but in a manner that (unlike our process prior to 1987) would provide for public review and comment on the scientific documentation on which such decisions would be based. The process, which would be codified in proposed § 319.56–4 (see the rule portion of this document), would require the publication of notices in the **Federal Register** to advise the public of the findings of pest risk analyses, and would invite comment on those analyses prior to authorizing any imports.

We believe the proposed process would measurably speed up the evaluation and approval or denial of a large number of requests to import additional fruits and vegetables, while continuing to provide opportunity for public analysis of and comment on the science associated with such imports.

This proposed process for approving imports would apply only to commodities that, based on the findings of risk analysis, we determine can be safely imported subject to one or more of the following phytosanitary measures, which are referred to

elsewhere in this document as designated measures:

- Inspection upon arrival in the United States and subject to other general requirements of proposed § 319.56–3; and
- Certified origin from a pest-free area in the country of origin in accordance with revised § 319.56–5; and/or
- Treatment for pest(s) in accordance with part 305; and/or
- Inspection and certification that commodity is pest free in the country of

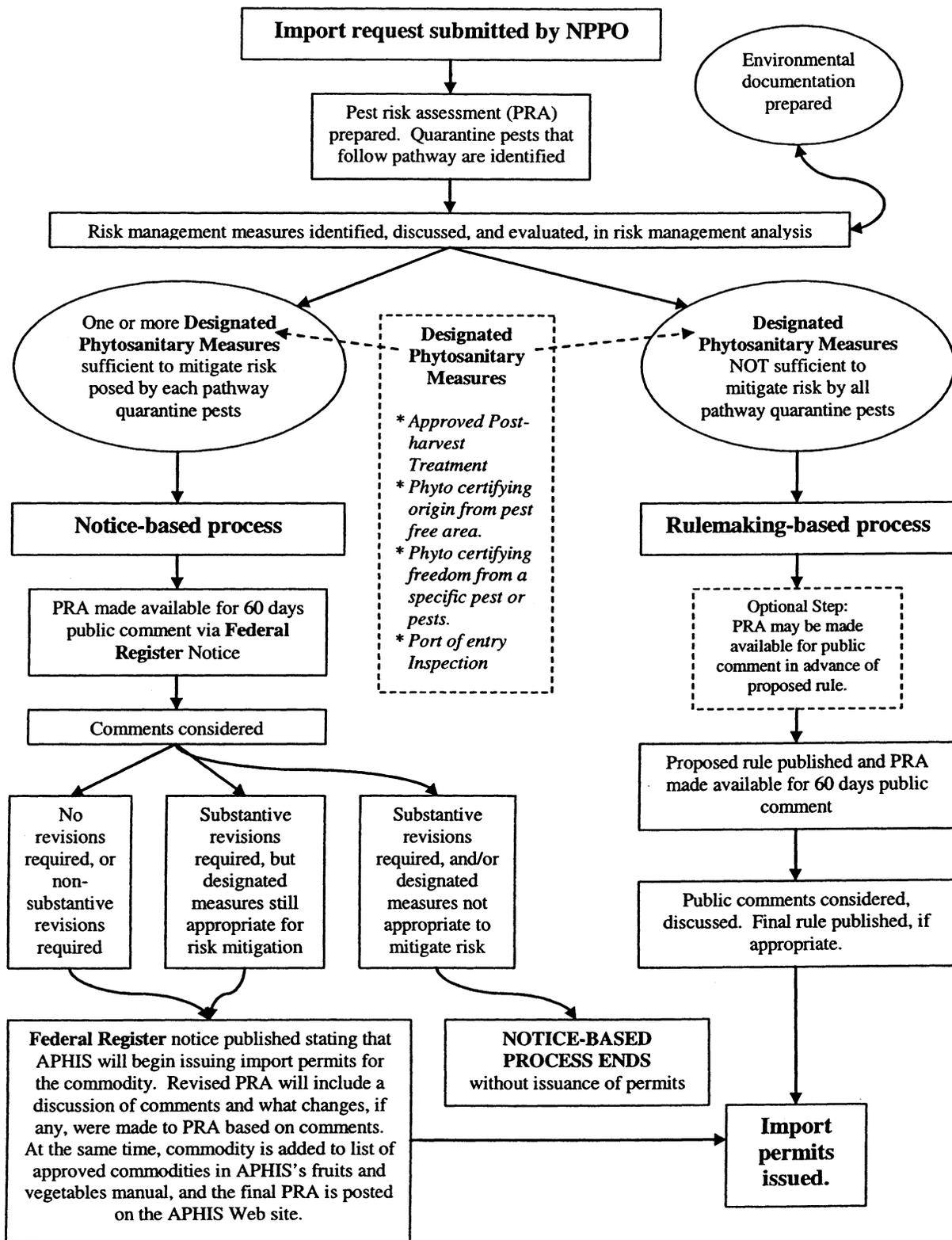
origin by the national plant protection organization (NPPO) of the exporting country.

The importation of fruits and vegetables that require additional phytosanitary measures beyond one or more of the designated measures cited above would continue to require specific prior rulemaking. For ease of discussion in this document, we refer to the proposed streamlined process as the “notice-based process” and the existing

process as the “rulemaking-based process.” A flowchart to describe the process for considering and evaluating commodity import requests under the proposed regulations is shown as figure 1. Note that the determination as to which process to follow (rulemaking or the notice-based process) would be based exclusively on the conclusions of risk analysis.

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Figure 1. - Import request evaluation process.



Using the proposed process, when APHIS receives a request from an NPPO<sup>9</sup> to allow importation of an additional commodity, it would gather information on the commodity and conduct a pest risk assessment.<sup>10</sup> When the assessment is complete, if quarantine pests are associated with the commodity in the country or other region of origin<sup>11</sup>, we would evaluate whether the risk posed by each quarantine pest can be mitigated by one or more of the designated measures cited previously in this document.<sup>12</sup> If the designated measures alone are not sufficient to mitigate the risk posed by the import—*i.e.*, if additional risk mitigation is required beyond one or more of the designated phytosanitary

measures—any further action on approving the commodity for importation would be undertaken using the rulemaking-based process for evaluating new imports. However, if APHIS determines in a risk management analysis that the risk posed by each identified quarantine pest associated with the fruit or vegetable in the country or other region of origin can be mitigated by one or more of the designated measures, our findings would be communicated using the notice-based process; APHIS would publish in the **Federal Register**, for a minimum of 60 days public comment, a notice announcing the availability of the pest risk analysis. Each pest risk analysis made available for public

comment will specify which of the designated phytosanitary measures would be required to be applied by APHIS.

The following is a selection of commodities that have been approved for importation by APHIS since 2002. Had the proposed regulations been in place since that time, commodities in the left column would have been evaluated for approval using the notice-based process, while commodities in the right column would have been evaluated for approval via rulemaking. Note that this list is not comprehensive; not all recently approved commodities are listed.

Notice-based process candidates	Rulemaking required
Blueberries from South America (70 FR 16431) .....	Peppers from Central America (71 FR 11288).
Peppers from Chile (67 FR 61547) .....	Fragrant Pears from China (70 FR 76133).
Basil from Honduras (67 FR 61547) .....	Papayas from Brazil and Central America (70 FR 16431).
Longans from China (67 FR 61547) .....	Citrus from Chile (69 FR 71691).
Persimmon from Spain (67 FR 61547) .....	Hass avocados from Mexico (69 FR 69748).
Fig from Mexico (67 FR 61547) .....	Grapes from the Republic of Korea (68 FR 70448).
Citrus from Australia (67 FR 61547) .....	Clementines from Spain (67 FR 64702).

Under the streamlined process, APHIS would evaluate comments received in response to our notice of availability of the risk analysis. In the event that we receive no comments, or in the event that commenters do not provide APHIS with analysis or data to reveal that the conclusions of the pest risk analysis are incorrect and that changes to the pest risk analysis are necessary, APHIS would then publish another notice in the **Federal Register** announcing that the Administrator has determined that, based on the information available, the application of one or more of the designated measures described above (and as specified in a given pest risk analysis) is sufficient to mitigate the risk that plant pests or noxious weeds could be introduced into or disseminated within the United States via the imported fruit or vegetable. APHIS would begin issuing import permits for the particular commodity, subject to the conditions described in the pest risk analysis, beginning on the date the **Federal Register** notice is published.

In the event that commenters provide APHIS with analysis or data that reveals

that changes to the pest risk analysis are necessary, and if the changes made affect the conclusions of the analysis (*i.e.*, that inspection and origin from a pest-free area and/or treatment are not sufficient to mitigate the risk posed by the identified pests), APHIS would proceed as follows:

- If additional phytosanitary measures beyond the designated measures described earlier in this document are determined to be necessary to mitigate the risk posed by the particular imported fruit or vegetable to the extent practicable, as determined by the Administrator, any further action on the commodity would follow the rulemaking-based process.
- If additional risk mitigation beyond the measures evaluated in the pest risk analysis is determined to be required, but the measures still only include one or more of the designated measures described earlier in this document, APHIS may publish another notice announcing that the Administrator has determined that, based on the information available, the application of one or more of the designated measures described earlier in this document is

sufficient to mitigate the risk that plant pests or noxious weeds could be introduced into or disseminated within the United States via the imported fruit or vegetable. APHIS would begin issuing import permits for the particular commodity, subject to the conditions described in the revised pest risk analysis, beginning on the date specified in the **Federal Register** notice. Alternately, if APHIS believes that the revisions to the pest risk analysis are substantial, and that there may be continued uncertainty as to whether the designated measures are sufficient to mitigate the risk posed by the fruit or vegetable, APHIS may elect to make the revised risk analysis available for public comment via a notice in the **Federal Register**, or may make any further action on approving the commodity for importation subject to rulemaking.

Note that APHIS does not set policy or regulatory requirements based on issues of economic competitiveness; our authority is tied to risk, and therefore our decisionmaking is based on an analysis of risk. While the proposed process would not preclude the submission of comments regarding

<sup>9</sup> All requests to allow the importation of a currently prohibited fruit or vegetable into the United States must be submitted by the NPPO of the exporting country to be considered by APHIS.

<sup>10</sup> On October 28, 2004, we published in the **Federal Register** (69 FR 62823–62829, Docket No. 02–132–1) a proposal to amend the regulations by establishing regulations governing the submission

of requests to change the part 319 import regulations. The proposed regulations were designed to help ensure that foreign NPPOs provide us with the information we need to prepare a risk analysis and/or other analyses that evaluate the risks and other effects associated with a proposed change to the regulations. Final action on that proposal is pending.

<sup>11</sup> Risk analyses could consider a country, part of a country, or all or parts of several countries.

<sup>12</sup> If no quarantine pests are identified in the PRA as likely to follow the pathway, a detailed risk management analysis would likely not be performed, but the importation of the commodity would still be subject to the general requirements of proposed § 319.56–3.

issues unrelated to risk, comments on issues such as economic competitiveness (e.g., comments that the proposed import would result in decreased sales for domestic producers of the same commodity) would not merit a detailed response by APHIS. This proposal would allow APHIS to focus public discussion on the analysis of pest risk, which is the primary basis for our decisionmaking. We believe this policy is consistent with the provisions of the Plant Protection Act, as well as international trade agreements.

The notice-based process would employ the use of **Federal Register** notices to communicate APHIS's consideration and approval or denial of requests that were previously only approved via rulemaking. As described above, **Federal Register** notices would be used to announce the availability of pest risk analyses for public comment. **Federal Register** notices would also be used to announce when the Administrator has determined that a particular commodity that has been subject to risk analysis and public comment can, based on the findings of pest risk analysis, be approved for importation into the United States. These notices would make clear the conditions under which such importations could occur (i.e., subject to inspection, and, if necessary, origin from a pest-free area and/or treatment), and would state that APHIS will immediately begin issuing permits for the importation of the commodity. As described later in this document, these notices would also be used to make available any documentation of our consideration of the potential effects of the new imports on the environment, as required under the National Environmental Policy Act, as well as any other analyses determined by APHIS to be necessary under other Federal Statutes, such as the Endangered Species Act.

If the notice-based process is adopted for use by APHIS, we would not list commodities approved under this approach in the regulations, though such commodities would be listed in APHIS's fruits and vegetables manual and the documentation supporting their approval would be made available on the Internet; we also would remove from the regulations those listed commodities that are currently approved for importation subject to one or more of the designated measures described earlier in this document. Consequently, the lists of commodities contained in current §§ 319.56–2t and 319.56–2x would be removed, as would a number of other provisions in current commodity-specific sections in the

regulations that authorize importation of specific fruits or vegetables in accordance with one or more of the designated measures.<sup>13</sup> The following current sections would be removed for this reason:

- § 319.56–2e, “Administrative instructions; conditions governing the entry of cipollini from Morocco;”
- § 319.56–2g, “Administrative instructions prescribing method of treatment of garlic from specified countries;”
- § 319.56–2h, “Regulations governing the entry of grapes from Australia;”
- § 319.56–2i, “Administrative instructions prescribing treatments for mangoes from Central America, South America, and the West Indies;”
- § 319.56–2k, “Administrative instructions prescribing method of fumigation of field-grown grapes from specified countries;”
- § 319.56–2l, “Administrative instructions prescribing method of treatment of imported yams;”
- § 319.56–2m, “Administrative instructions prescribing method of fumigation of apricots, grapes, nectarines, peaches, plumcot, and plums from Chile;”
- § 319.56–2n, “Administrative instructions prescribing a combination treatment of fumigation plus refrigeration for certain fruits;”
- § 319.56–2o, “Administrative instructions prescribing method of treatment of avocados for the Mediterranean fruit fly, the melon fly, and the Oriental fruit fly;”
- § 319.56–2q, “Administrative instructions: Conditions governing the entry of citrus from South Africa;”
- § 319.56–2v, “Conditions governing the entry of citrus from Australia;” and
- § 319.56–2z, “Administrative instructions governing the entry of cherimoyas from Chile.”

Additionally, paragraphs (b) and (c) of § 319.56–2y (pertaining to the importation of cantaloupe, honeydew melons, and watermelon from Brazil and Venezuela) would also be removed for the same reason.

As explained earlier in this document, the same restrictions that currently apply under the sections listed above would continue to apply.

We recognize that removing a large number of commodities from the regulations may cause some confusion as to whether a particular commodity is approved for importation into the United States, and under what

conditions. However, for many years, APHIS has maintained a fruits and vegetables manual that was designed to be a hands-on reference for our inspectors. The manual is a complete reference for all approved fruit and vegetable imports: In addition to mirroring or referencing requirements for all commodities whose importation is authorized under the regulations, the manual contains listings and requirements for fruits and vegetables that had been authorized importation prior to September 30, 1987, and that continue to be allowed importation under permit and subject to the same conditions that were applied prior to that date, but that are not specifically listed in the regulations. The manual is available for viewing on the APHIS Web site at [http://www.aphis.usda.gov/ppq/manuals/port/FV\\_Chapters.htm](http://www.aphis.usda.gov/ppq/manuals/port/FV_Chapters.htm), and is frequently used by importers and other interested persons, in addition to APHIS personnel.

Under this proposal, commodities that meet the requirements in proposed § 319.56–4 would be added to the manual, but not the regulations. Furthermore, the manual will list which of the designated measures apply to such commodities. Note that before we would publish any final rule amending the regulations as described in this document, APHIS intends to revise the manual to simplify it and make it easier to use. We are in early stages of converting the manual into a searchable database that will allow interested persons to search by commodity or by country, and that will list clearly the conditions that apply to each particular commodity from a specified country. A searchable database is already available at: <https://manuals.cphst.org/q56/Q56Main.cfm>, but we are planning to replace it with one that is easier to use and understand. We envision the revised manual as a comprehensive source for all types of users: inspectors, importers, and other members of the public.

We would also include in proposed § 319.56–4 provisions that would allow APHIS to amend import requirements or withdraw approval of particular commodities whose importation is approved under § 319.56–4. Specifically, APHIS could amend import requirements if we determine that the designated phytosanitary measures are not sufficient to mitigate the risk posed by the particular fruit or vegetable. This could occur due to interceptions of new pests in imported fruits or vegetables or the discovery of types of new evidence of risk. Under this provision, APHIS could prohibit or further restrict importation of the

<sup>13</sup> Some commodities listed in §§ 319.56–2g, 319.56–2t, and 319.56–2x are allowed importation subject to additional measures beyond the designated measures described earlier in this document. Those commodities would be required to be imported in accordance with proposed § 319.56–13, and would remain subject to the same restrictions as currently apply to their importation. Commodities that require such additional measures (e.g., box marking or specified stages of ripeness) would continue to be authorized importation through specific rulemaking.

particular fruit or vegetable by publishing a notice in the **Federal Register** advising the public of its finding. In such cases, APHIS would take immediate action as appropriate at ports of entry, and would follow such action as quickly as practicable with notice in the **Federal Register**. The notice would specify the amended import requirements, provide an effective date for the change, and would invite public comment on the subject. It is likely that most such actions would be effective immediately, in order to address newly identified risks in timely fashion; however, if there is uncertainty as to the risk posed, APHIS may request comment on a change in import conditions prior to making such a change effective.

We would also encourage parties interested in being informed of changes to our import policies, such as those proposed in this rule, to register for APHIS's stakeholder registry at <https://web01.aphis.usda.gov/PPQStakeWeb2.nsf>. Persons who register and who select "plant imports" and "fruits and vegetables" as topics of interest would be notified when changes to our fruit and vegetable import policies are made, including when we make import risk analyses available for comment or approve new imports using the proposed process.

#### Commercial Shipments

Often, pest risk analyses for the importation of new commodities consider only the risks posed by commercially produced and shipped fruit; non-commercial shipments may pose an entirely different pest risk than commercial shipments. Currently, and as indicated elsewhere in this document (see proposed § 319.56–13), many fruits and vegetables may only be imported in commercial shipments for that reason. We are inviting comment on whether we should add "commercial shipments only" as a fifth designated measure under the proposed regulations in § 319.56–4.

#### *Pest-Free Areas (Proposed § 319.56–5)*

Current § 319.56–2(e) establishes area freedom from pests as a phytosanitary measure for the purposes of the fruits and vegetables regulations. Under § 319.56–2(e), fruits and vegetables (except those for which there are commodity-specific provisions in the fruits and vegetables regulations or elsewhere in part 319) may be imported under a permit and upon compliance with the regulations, if APHIS is satisfied that the fruit or vegetable either:

- Is not attacked in the country of origin by quarantine pests;
- Is imported from a definite area or district in the country of origin that is free from all quarantine pests that attack the fruit or vegetable, and the area or district meets APHIS requirements in § 319.56–2(f) for pest freedom; or
- Is imported from a definite area or district of the country of origin that is free from quarantine pests that attack the fruit or vegetable, and the area or district meets APHIS requirements in § 319.56–2(f) for pest freedom, provided that all other quarantine pests that attack the fruit or vegetable in the area or district of the country of origin have been eliminated from the fruit or vegetable by treatment or any other procedures that may be prescribed by the Administrator.

Currently, APHIS-approved pest-free areas in foreign countries are listed in § 319.56–2 (h) and (j) and in various commodity-specific sections of the fruits and vegetables regulations (e.g., §§ 319.56–2q, 319.56–2v, 319.56–2y, 319.56–2ii). A comprehensive list of pest-free areas that currently meet APHIS standards may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov.).

APHIS currently recognizes changes in the pest-free status of countries via rulemaking. For example, if an area within a country where fruit flies are known to exist is determined to be free of fruit flies, in order for a fruit or vegetable that is a fruit fly host to be imported from that area without treatment or other mitigation for fruit flies, APHIS lists the specific area in the regulations as a fruit fly-free area. If changes in the pest-free status of such areas occur, APHIS again revises the regulations to recognize the change. Given the time it takes to propose a change to the regulations, accept comments on the proposal, and publish a final rule amending the regulations, the regulations often do not reflect the actual status of a particular area.

In this document, we are proposing to establish criteria within the regulations that, if met, would allow APHIS to be more responsive in recognizing changes in the pest-free status of foreign areas. Under proposed § 319.56–5, when APHIS is provided with evidence that the pest-free status of a foreign area has changed, we will publish in the **Federal Register** a notice announcing the change in status and take public comments on the notice for 60 days. The notice would make available copies of the information showing that the area in question meets the following criteria (which are the

same criteria provided in the current regulations):

(1) APHIS made a determination that the area is free of specified pest(s) in accordance with the criteria for establishing freedom from pests found in International Standard for Phytosanitary Measures No. 4, "Requirements for the establishment of pest free areas." (The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference at 7 CFR 300.5.)

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

If public comments submitted to APHIS provide evidence that our determination of pest-freedom is incorrect, APHIS would announce in a subsequent **Federal Register** notice that the status of the area in question has changed.

A comprehensive list of pest-free areas would continue to be made available by APHIS on the Internet, but no such list would be contained in the regulations. Rather, the regulations would simply identify the standards an area must meet to be considered pest free, as shown in proposed § 319.56–5.

In conjunction with this proposed change, we would also include a provision in proposed § 319.56–5 regarding how we would acknowledge the decertification of pest-free areas. In the event of pest infestation in an approved pest-free area, APHIS would publish in the **Federal Register** a notice announcing that the pest-free status of the area in question has been withdrawn, and that imports of host crops for the pest in question are subject to application of an approved treatment. If a treatment for the pest is not available, the imports would be prohibited importation. In order for a decertified pest-free area to be reinstated, it would have to be approved by APHIS and meet the criteria for establishing freedom from pests found in International Standard for Phytosanitary Measures No. 4, "Requirements for the establishment of pest free areas."

In addition to the proposed changes described above, we would consolidate existing restrictions on fruits and vegetables imported from pest-free areas into proposed § 319.56–5, including requirements for labeling of fruits and vegetables. Requirements for labeling

are currently contained in § 319.56–2(g). Additionally, we would clarify the existing requirement that the imported fruits and vegetables would have to be accompanied by a phytosanitary certificate bearing an additional declaration that the fruits or vegetables originated in a pest-free area that meets the requirements of § 319.56–5(a) and (b).

Also, in conjunction with this change, we would clarify and strengthen the current requirements in § 319.56–2(g) regarding safeguarding of fruits and vegetables that are imported from pest-free areas. We would require fruits or vegetables moved from a pest-free area into or through a non-free area to be safeguarded during the time they are present in a non-free area by insect-proof mesh screens or plastic tarpaulins, including while in transit to the packing house and while awaiting packaging. Further, we would require fruits or vegetables that are moved through a non-free area during transit to a port to be packed in insect-proof cartons or containers or be covered by insect-proof mesh or plastic tarpaulins during transit to the port and subsequent export to the United States. These safeguards would provide necessary protection of imported commodities against pest infestation while they are in transit to the United States and are consistent with standard operating procedures of all current programs for the export of fruits or vegetables from pest-free areas.

#### *Trust Fund Agreements (Proposed § 319.56–6)*

Several of the current commodity-specific regulations contain provisions regarding the establishment of trust funds for the payments of APHIS services that are provided in foreign countries. The language of those provisions is generally consistent from one section to another, and as a result, the regulations contain a great deal of redundant text. To eliminate the redundant text, we propose to simplify the language in each section where it exists, and reference a new general trust fund provision, to be contained in proposed § 319.56–6. This change is purely editorial in nature and would not affect the operation of any current or future APHIS programs. The following sections of the current regulations contain trust fund agreement stipulations that would be amended under this proposal: §§ 319.56–2h, 319.56–2r, 319.56–2s, 319.56–2z, 319.56–2cc, 319.56–2dd, 319.56–2ff, 319.56–2ii, 319.56–2jj, and 319.56–2mm.

#### *Territorial Applicability and Exceptions (Proposed § 319.56–7)*

The regulations in “Subpart—Fruits and Vegetables” generally apply to fruits and vegetables imported into any U.S. State, including U.S. territories and possessions. However, the regulations also provide for the importation of certain fruits and vegetables into certain territories and possessions under conditions that differ from the conditions that apply to importations into the rest of the United States. For example, current § 319.56a contains special restrictions that apply to the importation of fruits and vegetables into Guam. Also, § 319.56–2(d) contains restrictions that apply to the importation of fruits and vegetables into the U.S. Virgin Islands from the British Virgin Islands. Additional provisions pertaining to importations of fruits and vegetables into U.S. territories are located in current §§ 319.56, 319.56–2, 319.56–2a, and § 319.56–8.

We are proposing to simplify the regulations by consolidating all territorial import requirements into one section, proposed § 319.56–7. The requirements pertaining to Guam would be contained in proposed § 319.56–7(b), and requirements pertaining to the U.S. Virgin Islands would be contained in proposed § 319.56–7(c). In conjunction with these changes, we are proposing to amend the existing territorial import requirements to update place names, to reflect changes in political associations, and to update import conditions based on changes in pest prevalence in exporting countries.

Specifically, we would remove the provision in current § 319.56–2a(a)(1) regarding imports from the Marianas Islands into Guam. The entire Marianas Island Archipelago, except Guam, is part of the Commonwealth of the Northern Mariana Islands (CNMI), which is under U.S. administration. Any requirements pertaining to movements of fruits and vegetables into Guam from other U.S. States (as defined in proposed § 319.56–2 to include CNMI) should be located in 7 CFR part 318—Hawaiian and Territorial Quarantine Notices. However, the regulations in part 318 are outdated and do not cover movements of fruits and vegetables from CNMI to the continental United States. The regulations in part 318 require additional amendment; however, the additional amendments are outside the scope of this proposal, which focuses on the revision of the fruits and vegetables regulations. Therefore, we would make no changes to part 318 in this action, but would make the necessary revisions to part 318

in a separate rulemaking. In the meantime, we would continue to administratively enforce restrictions on the movement of fruits and vegetables from CNMI.

We would update references to the Caroline Islands in § 319.56a(3) and Netherlands New Guinea in § 319.56a(8). The Caroline Islands are currently known as Palau and the Federated States of Micronesia, and Netherlands New Guinea is currently known as Papua New Guinea.

The current regulations in § 319.56a provide that *Allium* spp. may be imported into Guam without treatment. We are proposing to clarify that only *Allium* spp. without tops may be imported into Guam, due to the presence of the leaf tip die back disease, *Mycosphaerella schoenoprasii*, and exotic species of leaf miners of *Allium* spp. in countries that regularly trade with Guam. Those pests, which are associated with the *Allium* spp. tops and are not pests of *Allium* spp. bulbs, are not present in Guam. The restrictions on the importation of *Allium* spp. tops is necessary to prevent the introduction of *Mycosphaerella schoenoprasii* and exotic species of leaf miners into Guam.

In addition, we would remove the provision in current § 319.56a(d) that prohibits the importation of coconuts with husks into Guam from the Trust Territory (*i.e.*, the former U.N. Trust Territory of the Pacific under U.S. administration, now Palau, the Marshall Islands, the Northern Mariana Islands, and the Federated States of Micronesia). Under proposed § 319.56–7(b)(1)(xi), all fruits and vegetables approved for entry into any other part or port of the United States may be imported into Guam; and coconuts without husks are eligible for importation into all U.S. States under the provisions of proposed § 319.56–4. Coconuts with husks are not approved for importation into the United States under the regulations.

We would also remove the provisions in current § 319.56a(e), which state that application of the provisions of current §§ 319.56–2d, 319.56–2e, 319.56–2g, 319.56–2k, 319.56–2l, and 319.56–2p is impracticable in the case of traffic into Guam (due to lack of treatment facilities) and therefore such application is withdrawn. Guam now has a treatment facility adequate to treat commodities enterable under the sections cited above, and therefore, current § 319.56a(e) is no longer accurate.

We would also remove a provision now in § 319.56(c) that provides that the Administrator may, by permit, authorize importations into Guam under

conditions specified in the permit that are less stringent than those contained in “Subpart—Fruits and Vegetables.” The proposed special use permit regulations in § 319.56–3(b)(7) would provide an equivalent means for authorizing the importation of fruits and vegetables into Guam as is currently allowed under § 319.56(c).

Sections 319.56–8 through 319.56–9 would be reserved to provide additional space in “Subpart—Fruits and Vegetables” for future amendments, should such amendments be needed.

*Importation of Fruits and Vegetables From Canada (Proposed § 319.56–10)*

Under current § 319.56–2(c), fruits and vegetables grown in Canada (except potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road) may be imported into the United States without further restriction. This provision would remain unchanged under this proposal and would be relocated in proposed § 319.56–10.

*Importation of Dried, Cured, or Processed Fruits, Vegetables, Nuts, and Legumes (Proposed § 319.56–11)*

Under current § 319.56–2, dried, cured, or processed fruits, vegetables, nuts, and legumes are allowed importation into the United States without a permit or phytosanitary certificate, unless the regulations specifically provide otherwise. Exceptions are contained in §§ 319.56–2a and 319.56–2b. Under the proposed regulations, the provisions regarding importation of coconuts into Guam from the Trust Territory would be removed, and the remaining exceptions would be moved to proposed § 319.56–11, for the same reasons described under the description of proposed § 319.56–7 above.

The provisions regarding exceptions would also be reorganized and simplified. Enforceable provisions would remain unchanged, except that we would add a new provision prohibiting the importation of macadamia nuts in the husk or shell from all countries or regions, except from St. Eustatius. This proposed provision is consistent with current APHIS policy on the importation of macadamia nuts and is necessary to protect against the introduction of exotic pests associated with macadamia nuts from foreign countries or regions other than St. Eustatius. Any imports of macadamia nuts in the husk or shell from other countries or regions would be contingent on the findings of pest risk analysis.

*Importation of Frozen Fruits and Vegetables (Proposed § 319.56–12)*

Current § 319.56–2c prescribes quick freezing in accordance with part 305 as a satisfactory treatment for all fruits and vegetables enterable under permit under § 319.56. Such frozen fruits and vegetables may be imported from any country under permit, in compliance with §§ 319.56–1 through 319.56–7 (exclusive of non-related administrative instructions), at ports authorized in the permits. The regulations also provide that the importation of frozen fruits and vegetables is not authorized when such fruits and vegetables are subject to attack in the area of origin by plant pests that may not, in the judgment of the Administrator, be destroyed by freezing.

We are proposing to simplify the text of the requirements for importing frozen fruits and vegetables to provide that frozen fruits and vegetables may be imported into the United States only if they are quick frozen in accordance with part 305. The regulations would also provide that the importation of certain frozen fruits and vegetables is not authorized when the fruits and vegetables are subject to attack in the area of origin by plant pests that may not be destroyed by freezing. These provisions would be located in proposed § 319.56–12. These changes are not substantive and would not affect existing entry requirements for imported frozen fruits and vegetables.

*Additional Requirements for Certain Fruits and Vegetables (Proposed § 319.56–13)*

The majority of fruits and vegetables listed in current § 319.56–2t are allowed importation into the United States subject to inspection and other universal requirements. Similarly, the majority of fruits and vegetables listed in current § 319.56–2x are allowed importation into the United States with treatment, in addition to inspection and other universal requirements. In addition, under § 319.56–2g, garlic may be imported from certain countries with treatment, in addition to inspection and other universal requirements. As explained elsewhere in this document, most such commodities would no longer be listed in the regulations under this proposal. However, as also explained earlier in this document, some commodities listed in current §§ 319.56–2g, 319.56–2t and 319.56–2x, as well as some commodities not listed in the regulations but that are allowed importation under permit in accordance with § 319.56–2(e), are allowed importation subject to additional measures beyond inspection and

treatment. We are proposing to list those commodities, and any requirements that apply to their importation beyond the general requirements of § 319.56–3, in § 319.56–13. Such commodities would remain subject to the same restrictions that currently apply to their importation. See proposed § 319.56–13 for a list of commodities and applicable requirements. Authorization of additional commodities subject to any of these additional measures or measures other than the designated measures described earlier in this document would continue to require prior specific rulemaking.

Sections 319.56–14 through 319.56–19 would be reserved to provide additional space in “Subpart—Fruits and Vegetables” for future amendments, should such amendments be needed.

*Commodity-Specific Provisions (Proposed §§ 319.56–20 Through 319.56–40)*

Sections 319.56–2a through 319.56–200 contain restrictions on the importation of specific commodities. As explained elsewhere in this document, a number of these sections will be removed if this proposal is adopted. However, all or part of the following sections would be retained under this proposal:

- § 319.56–2j, “Conditions governing the entry of apples and pears from Australia (including Tasmania) and New Zealand;”
- § 319.56–2p, “Administrative instructions prescribing treatment and relieving restrictions regarding importation of okra from Mexico, the West Indies, and certain countries in South America;”
- § 319.56–2r, “Administrative instructions governing the entry of apples and pears from certain countries in Europe;”
- § 319.56–2s, “Administrative instructions governing the entry of apricots, nectarines, peaches, plumcot, and plums from Chile;”
- § 319.56–2u, “Conditions governing the entry of lettuce and peppers from Israel;”
- § 319.56–2w, “Administrative instruction; conditions governing the entry of papayas from Central America and Brazil;”
- § 319.56–2y, “Conditions governing the entry of melon and watermelon from certain countries in South America;”
- § 319.56–2aa, “Conditions governing the entry of watermelon, squash, cucumber, and oriental melon from the Republic of Korea;”
- § 319.56–2cc, “Administrative instructions governing the entry of Fuji variety apples from Japan and the Republic of Korea;”
- § 319.56–2dd, “Administrative instructions: conditions governing the entry of tomatoes;”
- § 319.56–2ee, “Administrative instructions: Conditions governing the entry of Ya variety pears from China;”
- § 319.56–2ff, “Administrative instructions governing movement of Hass

avocados from Michoacan, Mexico, to approved States;”

- § 319.56–2gg, “Administrative instructions: conditions governing the entry of peppers from Spain;”
- § 319.56–2hh, “Conditions governing the entry of peppers from New Zealand;”
- § 319.56–2ii, “Administrative instructions: conditions governing the entry of mangoes from the Philippines;”
- § 319.56–2jj, “Administrative instructions: conditions governing the importation of clementines from Spain;”
- § 319.56–2kk, “Persimmons from the Republic of Korea.”
- § 319.56–2ll, “Conditions governing the entry of grapes from the Republic of Korea;”
- § 319.56–2mm, “Conditions governing the importation of clementines, mandarins, and tangerines from Chile.”
- § 319.56–2nn, “Administrative instructions: Conditions governing the entry of fragrant pears from China.” and
- § 319.56–2oo, “Administrative instructions: Conditions governing the entry of peppers from certain Central American countries.”

Under this proposal, some or all of the provisions contained in the sections listed above would be relocated to new sections of the proposed regulations, as shown in the cross reference document. In some cases, we would make no revisions to the actual content of the sections, but simply change paragraph and section designations. In other cases, we are proposing to amend the text to make the regulations easier to understand, to correct errors, or to update them to reflect current APHIS operating procedures. None of these changes would represent significant changes in import policy. Proposed changes that are substantive in nature are described first, by section. Non-substantive editorial changes are described next, also by section.

#### Proposed Substantive Revisions

##### *Okra From Certain Countries (Proposed § 319.56–21)*

Current § 319.56–2p contains varying restrictions on the importation of okra from countries where the pink bollworm (*Pectinophora gossypiella*) is known to exist. The regulations are outdated, and contain differing restrictions for the importation of okra from countries even though the regulations are all aimed at excluding pink bollworm from the United States, and despite the fact that the conditions in the regulations are inconsistent with those enforced by inspectors at ports of entry. Under this proposal, the majority of provisions contained in current § 319.56–2p would be relocated to proposed § 319.56–21, and all imports from pink bollworm-infested areas would be subject to the same requirements. The proposed revisions would bring our okra import

regulations up to date with current practice and would make the import provisions equivalent to our domestic regulations that pertain to pink bollworm (7 CFR 301.52 through 301.52–10).

##### *Apricots, Nectarines, Peaches, Plumcot, and Plums From Chile (Proposed § 319.56–23)*

Current § 319.56–2s contains restrictions on the importation of apricots, nectarines, peaches, plumcot, and plums from Chile. Under this proposal, all provisions contained in current § 319.56–2s would be relocated to proposed § 319.56–23, except that the provision in § 319.56–2s(b) pertaining to trust fund agreements would be amended and become part of revised § 319.56–6, as explained earlier in this document. In addition, we would update the provisions in current paragraph (d)(1) to ensure the regulations reflect current APHIS operating practices regarding biometric sampling of fruit. The sampling regimens specified in the current regulations would be removed and replaced with provisions that require sampling, but which do not specify the percentage of fruit to be sampled or the confidence level of the inspection. This change is necessary because sampling levels change depending on the pest dynamics associated with the commodity being imported, and the regulations should be designed to account for appropriate increases or decreases in sampling rates.

##### *Tomatoes From Certain Countries (Proposed § 319.56–28)*

Current § 319.56–2dd contains restrictions on the importation of tomatoes from certain countries. Under this proposal, all provisions contained in current § 319.56–2dd would be relocated to proposed § 319.56–28, except that: (1) The provision in § 319.56–2dd(d)(3) pertaining to trust fund agreements would be amended and become part of revised § 319.56–6, as explained earlier in this document; and (2) the various provisions pertaining to packing and safeguarding of tomatoes would be amended to require tomatoes to be safeguarded from the time of harvest through export by insect-proof mesh screens or plastic tarpaulins, including while in transit to the packing house and while awaiting packaging. In addition, tomatoes would be required to be packed in insect-proof cartons or containers, or covered by insect-proof mesh or plastic tarpaulins during transit to the airport and subsequent export to the United States. These proposed revisions are necessary to ensure that

tomatoes are safeguarded against insect infestation prior to shipment to the United States. The current regulations require packaging and containers to be fruit fly-proof, not insect-proof.

#### Proposed Non-Substantive Revisions

##### *Apples and Pears From Australia (Including Tasmania) and New Zealand (Proposed § 319.56–20)*

Current § 319.56–2j contains restrictions on the importation of apples and pears from Australia (including Tasmania) and New Zealand. Under this proposal, most provisions contained in current § 319.56–2j would be relocated to proposed § 319.56–20.<sup>14</sup> This change would not substantively affect the current regulations, but would make them easier to understand.

##### *Apples and Pears From Certain Countries in Europe (Proposed § 319.56–22)*

Current § 319.56–2r contains restrictions on the importation of apples and pears from certain countries in Europe. Under this proposal, all provisions contained in current § 319.56–2r would be relocated to proposed § 319.56–22, except that the provision in § 319.56–2r(b) pertaining to trust fund agreements would be amended and become part of proposed § 319.56–6, as explained earlier in this document.

##### *Lettuce and Peppers From Israel (Proposed § 319.56–24)*

Current § 319.56–2u contains restrictions on the importation of lettuce and peppers from Israel. Under this proposal, all provisions contained in current § 319.56–2u would be relocated to proposed § 319.56–24.

##### *Papayas From Central America and Brazil (Proposed § 319.56–25)*

Current § 319.56–2w contains restrictions on the importation of papayas from Central America and Brazil. Under this proposal, all provisions contained in current § 319.56–2w would be relocated to proposed § 319.56–25.

##### *Melon and Watermelon From Certain Countries in South America (Proposed § 319.56–26)*

Current § 319.56–2y contains restrictions on the importation of melon and watermelon from certain countries in South America. Specifically:

<sup>14</sup> As explained elsewhere in this document, general provisions such as those contained in § 319.56–2j(a)(3) through (a)(6) would be consolidated into provisions of general applicability (universal requirements) in proposed §§ 319.56–3 and 305.3.

- Paragraph (a) pertains to the importation of cantaloupe and watermelon from Ecuador;
- Paragraph (b) pertains to the importation of cantaloupe, honeydew melons, and watermelon from Brazil;
- Paragraph (c) pertains to the importation of cantaloupe, honeydew melons, and watermelon from Venezuela; and
- Paragraph (d) pertains to the importation of cantaloupe, netted melon, vegetable melon, winter melon, and watermelon from Peru.

Under this proposal, all provisions contained in paragraph (a) would be relocated to proposed § 319.56–26. The provisions of paragraphs (b) and (c) would be removed from the regulations because their importation would be authorized under proposed § 319.56–4. The basic provisions of paragraph (d) would be moved to proposed § 319.56–26, except that some provisions regarding origin of the fruit from a pest free area would be covered under proposed § 319.56–5.

*Fuji Variety Apples From Japan and the Republic of Korea (Proposed § 319.56–27)*

Current § 319.56–2cc contains restrictions on the importation of Fuji variety apples from Japan and the Republic of Korea. Under this proposal, all provisions contained in current § 319.56–2cc would be relocated to proposed § 319.56–27, except that the provisions in paragraphs (c) and (d) of § 319.56–2cc would be revised or removed as explained earlier in this document under the headings “Trust Fund Agreements (Proposed § 319.56–6)” and “General requirements for all imported fruits and vegetables (Proposed § 319.56–3).” We would also amend current § 319.56–2cc(a) to remove the reference to the kanzawa mite (*Tetranychus kanzawai*). This mite is no longer considered a quarantine pest because it exists in the United States, and there is no official control program for it. This change would have no effect on current import conditions, as the treatment required for kanzawa mite would still be required to address the risk posed by other identified pests of apples.

*Ya Variety Pears From China (Proposed § 319.56–29)*

Current § 319.56–2ee contains restrictions on the importation of Ya variety pears from China. Under this proposal, all provisions contained in current § 319.56–2ee would be relocated to proposed § 319.56–29.

*Hass Avocados From Michoacan, Mexico (Proposed § 319.56–30)*

Current § 319.56–2ff contains restrictions on the importation of Hass avocados from Michoacan, Mexico. Under this proposal, all provisions contained in current § 319.56–2ff would be relocated to proposed § 319.56–30, except that the provision in § 319.56–2ff(b) pertaining to trust fund agreements would be amended and become part of revised § 319.56–6, as explained earlier in this document.

*Peppers From Spain (Proposed § 319.56–31)*

Current § 319.56–2gg contains restrictions on the importation of peppers from Spain. Under this proposal, all provisions contained in current § 319.56–2gg would be relocated to proposed § 319.56–31.

*Peppers From New Zealand (Proposed § 319.56–32)*

Current § 319.56–2hh contains restrictions on the importation of peppers from New Zealand. Under this proposal, all provisions contained in current § 319.56–2hh would be relocated to proposed § 319.56–32.

*Mangoes From the Philippines (Proposed § 319.56–33)*

Current § 319.56–2ii contains restrictions on the importation of mangoes from the Philippines. Under this proposal, all provisions contained in current § 319.56–2ii would be relocated to proposed § 319.56–33, except that:

- The provisions in § 319.56–2ii(b) regarding the treatment schedule and procedure for mangoes would be removed, as those provisions also exist in part 305.
- The provision in § 319.56–2ii(f) pertaining to trust fund agreements would be amended and become part of revised § 319.56–6, as explained earlier in this document.
- The provision in § 319.56–2ii(g) pertaining to responsibility for damages would be removed, as explained earlier in this document under the heading “General Requirements for All Imported Fruits and Vegetables (Proposed § 319.56–3).”

*Clementines From Spain (Proposed § 319.56–34)*

Current § 319.56–2jj contains restrictions on the importation of clementines from Spain. Under this proposal, all provisions contained in current § 319.56–2jj would be relocated to proposed § 319.56–34, except that the provision in § 319.56–2jj(a) pertaining to trust fund agreements would be

amended and become part of revised § 319.56–6, as explained earlier in this document. In addition, the provisions in § 319.56–2jj(e) and (i) that pertain to restrictions on the distribution of clementines for the 2002–2003 shipping season would be removed, as those provisions have expired.

*Persimmons From the Republic of Korea (Proposed § 319.56–35)*

Current § 319.56–2kk contains restrictions on the importation of persimmons from the Republic of Korea. Under this proposal, all provisions contained in current § 319.56–2kk would be relocated to proposed § 319.56–35.

*Watermelon, Squash, Cucumber, and Oriental Melon From the Republic of Korea (Proposed § 319.56–36)*

Current § 319.56–2aa contains restrictions on the importation of watermelon, squash, cucumber, and oriental melon from the Republic of Korea. Under this proposal, all provisions contained in current § 319.56–2aa would be relocated to proposed § 319.56–36.

*Grapes From the Republic of Korea (Proposed § 319.56–37)*

Current § 319.56–2ll contains restrictions on the importation of grapes from the Republic of Korea. Under this proposal, all provisions contained in current § 319.56–2ll would be relocated to proposed § 319.56–37.

*Clementines, Mandarins, and Tangerines From Chile (Proposed § 319.56–38)*

Current § 319.56–2mm contains restrictions on the importation of clementines, mandarins, and tangerines from Chile. Under this proposal, all provisions contained in current § 319.56–2mm would be relocated to proposed § 319.56–38, except that the provision in § 319.56–2mm(f) pertaining to trust fund agreements would be amended and become part of revised § 319.56–6, as explained earlier in this document.

*Fragrant Pears From China (Proposed § 319.56–39)*

Current § 319.56–2nn contains restrictions on the importation of fragrant pears from China. Under this proposal, all provisions contained in current § 319.56–2nn would be relocated to proposed § 319.56–39.

*Peppers From Certain Central American Countries (Proposed § 319.56–40)*

Current § 319.56–2oo contains restrictions on the importation of

Peppers from certain Central American countries. Under this proposal, all provisions contained in current § 319.56–200 would be relocated to proposed § 319.56–40.

#### Miscellaneous Changes

In addition to the changes described elsewhere in this document, we propose to update terms and references in the regulations as follows:

- References to contact points for APHIS program units and other Government agencies that have been reorganized would be changed as appropriate.
- References to *PPQ Inspector* would be replaced with references to *Inspector* (as defined in proposed § 319.56–2).
- References to the *Department* would be replaced with references to *APHIS*.
- Taxonomic names for certain pests would be updated to reflected changes in scientific classifications.

We would also remove provisions pertaining to the importation of yams from Cuba (see current § 319.56–21(b)(2)), as trade of those commodities with Cuba is prohibited under U.S. law.

In conjunction with the proposed revision of Subpart—Fruits and Vegetables, we would also update, as necessary, various references to sections of the fruits and vegetables regulations located elsewhere in 7 CFR chapter III.

#### Executive Order 12866 and Regulatory Flexibility Act

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

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

We do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, APHIS welcomes public comment that would enable us to more fully consider impacts of the proposed rule, specifically information on costs that may not be covered by this analysis.

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

This proposed rule would revise and reorganize the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of generally applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations of fruits and vegetables into U.S. territories, and make various editorial and nonsubstantive changes to regulations to make them easier to use. APHIS is also proposing to make substantive changes to the regulations, including: (1) Establishing criteria within the regulations that, if met, would allow APHIS to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries without undertaking rulemaking; (2) doing away with the process of listing specific commodities that may be imported subject to certain types of risk management measures; and (3) providing for the issuance of special use permits for fruits and vegetables. These changes are necessary to simplify and expedite the APHIS process for approving new imports and pest-free areas while continuing to allow for public participation in the process.

International trade in fruits and vegetables—in particular, many new and newly traded commodities—expanded rapidly over the past two decades, while also undergoing a marked change in the products demanded. According to Food and Agriculture Organization (FAO) data, the average value share of fruits and vegetables (including pulses and tree nuts) in global agricultural exports increased from 11.7 percent in the period 1977–81 to 15.1 percent in 1987–91 and reached an all time high of 16.5

percent in 1997–2001.<sup>15</sup> Imports have become increasingly important for domestic fresh fruit and vegetable consumption. In 2004, the U.S. imported more than \$7 billion in fresh fruits and vegetables. Maintaining the current process will make it difficult to keep pace with this rapidly increasing volume of import requests.

The proposed process for approving imports would apply only to commodities that, based on the findings of risk analysis, APHIS determines can be safely imported subject to one or more designated risk management measures. The new process would be a notice-based process while the existing process is a rulemaking-based process.

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

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

<sup>15</sup> Huang, Sophia Wu. *Global Trade Patterns, in Fruits and Vegetables*. Chapter 2. Economic Research Service/USAD.

consumers would benefit when increased competition results in lower prices.

In the current process, once APHIS has conducted a risk analysis and identified what phytosanitary measures are necessary to address the pest risk posed by the commodity subject to an import request, APHIS then proceeds through rulemaking. Through rulemaking, APHIS amends the fruits and vegetables regulations by listing the commodity from a specific part of the world as eligible, under specified conditions, for importation into the United States. Some import requests that might otherwise have very quickly led to new imports are delayed considerably by the rulemaking process. One reason for this is the complexities of the rulemaking process itself. There are certain statutory, executive branch, and departmental process requirements that are typically not required under a notice based process. Another is the nature of the requests. Few if any of these requests warrant an entire rulemaking in and of themselves. These requests are primarily small in stature either because they are specialty crops or are grown in limited quantities in the requesting area. Therefore these requests, when their risk analyses have been completed and needed phytosanitary measures have been identified, are necessarily grouped together for movement through the rulemaking process. These changes, along with other minor regulatory changes, are covered in rulemakings referred to as periodic amendments to Q56.

A significant number of the commodity import requests that APHIS receives would likely fit the notice-based process criteria as laid out in this proposed rule. The number of import requests has grown significantly. There are currently approximately 400 commodity import requests being processed by APHIS. Because of the nature of the import requests likely to qualify for the notice-based approach, those commodities would most likely otherwise be included in periodic amendments to Q56.

Included in the 11th periodic amendment<sup>16</sup> were numerous herbs from Central America, figs from Mexico, peppers from Chile, cape gooseberry from Colombia, longan from China, persimmon from Spain, yard-long-bean from Nicaragua, and yellow pitaya from Colombia. These commodities would fit

the notice-based process criteria of this proposed rule, subject only to designated mitigation measures. Had these commodities followed the notice-based process of this proposed rule, these commodities would have been available to U.S. consumers far sooner than was actually the case. For example, all of the pest risk analyses and risk management decisions associated with the herbs from Central America were completed by the end of 2001. The final rule allowing the import of these commodities was not published and effective until June 25, 2003.

In 2004 and 2005, approximately 454,000 kg of the above commodities were imported into the U.S. from the countries covered in the amendment. It is estimated that the average monthly value per commodity of these shipments was about \$3,900.<sup>17</sup> There are approximately 400 commodity import requests currently being processed by APHIS. A significant percentage of these requests may fit the notice-based process criteria of this proposed rule. The rulemaking process is an inherently longer process than a notice-based process would be. There are complexities in the rulemaking process that are not present in the notice-based process. In addition, few if any of the requests that would fall into the notice-based process warrant an entire rulemaking in and of themselves, and must therefore be grouped with other commodities for rulemaking. Therefore, a notice based approach to commodity import approvals could be 6 to 12 months shorter than under a rulemaking approach.

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

Based on these assumptions, we could expect imports valued at between \$2.8 million and \$9.4 million to occur under a notice-based process that would not occur under the current rulemaking process. These added sales represent

benefits of this proposed rule. The proposed rule will also have the benefit of improving trade relations with other countries by speeding import approvals. In addition, by moving to a notice-based process for certain commodities, fewer APHIS resources will have to be devoted to rulemaking for these commodities. Those resources will then become available for other uses.

This proposed rule would not alter the manner in which the risks associated with a commodity import request are evaluated, nor would it alter the manner in which those risks are ultimately mitigated. The change would merely allow a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined that the commodity can be safely imported subject to one or more designated risk management measures.

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

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

If the notice-based approach is adopted for use by APHIS, the commodities approved under the notice-based track approach would no longer be listed in the regulations, nor would commodities that are currently approved for importation subject to one or more of the designated measures described previously be listed.

The fruits and vegetables manual<sup>18</sup> would contain a listing of all commodities approved for importation into the United States and would serve

<sup>16</sup> Importation of Fruits and Vegetables. Final Rule. Docket No. 02-024-6. **Federal Register**/Vol. 68, No. 122/Wednesday, June 25, 2003/Rules and Regulations.

<sup>17</sup> Shipment information was obtained from APHIS' PQ280 database. Information on value is from the U.S. Census Bureau, Foreign Trade Statistics 'cowpeas,' 'figs,' 'fruit not elsewhere specified,' 'other spices and herbs,' 'other berries,' and 'peppers' from 2004 and 2005, in 2005 dollars.

<sup>18</sup> *Regulating the Importation of Fresh Fruits and Vegetables*. United States Department of Agriculture. Marketing and Regulatory Programs. Animal and Plant Health Inspection Service. Plant Protection and Quarantine. [http://www.aphis.usda.gov/ppq/manuals/port/FV\\_Chapters.htm](http://www.aphis.usda.gov/ppq/manuals/port/FV_Chapters.htm).

as a comprehensive list and reference of enterable fruits and vegetables.

Most of these changes would not alter how or whether a commodity is approved for importation, merely how that status would be presented. These changes should therefore have little, if any, impact on users of the system.

This proposed rule would make several changes to the issuance of permits for the importation of fruits and vegetables. This proposed rule would amend the regulations pertaining to permits to state that certain dried, cured, or processed fruits and vegetables; certain fruits and vegetables grown in Canada; and certain fruits and vegetables grown in the British Virgin Islands that are imported into the U.S. Virgin Islands; may be imported without a permit, while all other fruits and vegetables must be imported under permit. Because this change merely removes an unnecessarily confusing distinction between specific and general written permits, the change should have minor, but positive impact on users.

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

This proposed rule would also add new provisions to the regulations which would authorize APHIS to issue special use permits that authorize the importation of small lots of fruits or vegetables that are otherwise prohibited importation under the regulations. These permits would provide for the importation of fruits and vegetables for special events such as trade shows and for scientific research. In each case, such imports would only be allowed under strict conditions approved by the administrator to address the particular risk posed by the particular imported fruit or vegetable. This change could facilitate future trade opportunities, scientific research, and potentially pest management, but would have little direct impact on imports or consumers.

This proposed rule would revise, reorganize and update some of the regulations, update terms and remove outdated requirements and references, and make various editorial and nonsubstantive changes to regulations to make them easier to use. The proposed reorganization of the regulations would not affect any requirements for importing commodities but would

simplify the regulations and organize them to facilitate future revisions. In addition, this proposal would also clarify treatment requirements in 7 CFR part 305. These changes do not represent a change in program operations and therefore should not affect users of the system.

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

In 2004, okra was imported from 11 countries into the United States with a value of \$17.4 million. Mexico has been the primary source of these imports. In 2004, Mexico accounted for nearly 70 percent of the imports. Other major sources are El Salvador, Honduras and Nicaragua, together accounting for about 31 percent of the imports in 2004.

Currently, the regulations contain varying restrictions on the importation of okra from countries where pink bollworm is known to exist. These restrictions include fumigation of imports from pink bollworm infested countries that are moving into infested areas of the U.S. The proposed conditions would remove this restriction. This may reduce the cost associated with some imports. However, this change would primarily impact Mexican imports. Mexico is already, by far, the U.S.' largest foreign source of okra. In addition, this change would only affect a limited portion of those okra imports. Therefore, this change should have at most a minor effect on okra imports and domestic okra prices.

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

and therefore should not affect users of the system.

This proposed rule would also amend the various provisions pertaining to packing and safeguarding of tomatoes. The proposed rule would require tomatoes to be safeguarded from harvest to export by insect-proof mesh screens or plastic tarpaulins, including while in transit to the packing house and while awaiting packaging. In addition, tomatoes would be required to be packed in insect-proof cartons or containers, or covered by insect-proof mesh or plastic tarpaulins for transit to the airport and subsequent export to the United States.

Annual fresh tomato imports were valued at about \$852 million on average for the period 2000–2004. This represents more than 14 percent of the value of all fruit and vegetable imports in that period. Fresh tomato imports are primarily from Mexico, which represents nearly 70 percent of the value of tomato imports from all countries for that period. Other important origin countries for U.S. imports of fresh tomatoes are Canada and the Netherlands.

Complying with the provisions of this change could represent added cost to importers. However, this additional cost should be small since the change represents a change in the rigorosity of the packaging and containers protecting against attack by insects, not whether the tomatoes are protected. The current regulations already require packaging and containers to be fruit-fly proof. Therefore, the change should have little impact on importers of tomatoes. We welcome comments on the size of this added cost.

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

importing the majority of currently approved fruits or vegetables.

Of particular note with respect to the proposed changes to the approval process, the change would merely allow a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined that the commodity can be safely imported subject to one or more designated risk management measures. The proposed rule would not alter the manner in which the risk associated with a commodity import request is evaluated, nor would it alter the manner in which those risks are ultimately mitigated. Consumers would have quicker access to imported fruits and vegetables, though risks would still be evaluated and appropriate mitigations required, as they are currently. Also, given the growing number of requests to ship foreign fruits and vegetables to the United States, some trading partners may perceive the time required to conduct the rulemaking process as a barrier to trade. Such perception may impede their consideration of U.S. requests to ship U.S. commodities to their markets. To the extent to which trading partners consider the time it takes to conduct the rulemaking process a trade barrier, by reducing that time; this rule may facilitate the export of U.S. agricultural commodities.

#### *Initial Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to evaluate the potential effects of proposed and final rules on small businesses, small organizations, and small governmental jurisdictions.

Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impacts of rules on small entities. Section 603(b) of the Act specifies the content of an IRFA. Each IRFA must contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report of record;

- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

- Descriptions of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Our responses to these requirements follow.

#### *Rationale*

This proposed rule would revise and reorganize the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of generally applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations of fruits and vegetables into U.S. territories, and make various editorial and nonsubstantive changes to regulations to make them easier to use. APHIS is also proposing to make substantive changes to the regulations, including: (1) Establishing criteria within the regulations that, if met, would allow APHIS to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries without undertaking rulemaking; (2) doing away with the process of listing specific commodities that may be imported subject to certain types of risk management measures; and (3) providing for the issuance of special use permits for fruits and vegetables. These changes are necessary to simplify and expedite the APHIS process for approving new imports and pest-free areas while continuing to allow for public participation in the process.

#### *Objectives and Legal Basis*

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

Consumers benefit from the ability to purchase fruits and vegetables from a variety of sources, foreign as well as domestic. Many of the commodities that would be covered by this proposed rule would be niche products, unavailable or limited in availability in the United States. This proposed rule would allow importers to more quickly meet consumer demand for those niche products. In addition, climate causes

most domestic fruit and vegetable production to be seasonal, with the largest harvests occurring during the summer and fall. Imports supplement domestic supplies, especially of fresh products during the winter, resulting in increased choices for consumers. Even where the new imports would compete directly with domestic production, consumers would benefit when increased competition results in lower prices.

Under the regulations in "Subpart—Fruits and Vegetables," APHIS prohibits or restricts the importation of fresh fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

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

Those entities most likely to be economically affected by the proposed rule are domestic importers and producers of fruits and vegetables. The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small. Import/export merchants, agents and brokers are identified within the broader wholesaling trade sector. A firm primarily engaged in wholesaling fresh fruits and vegetables is considered small if it employs not more than 100 persons. In 1997,<sup>19</sup> more than 96 percent (5,456 of 5,657) of fresh fruit and vegetable wholesalers would be considered small by SBA standards.<sup>20</sup> All types of fruit and vegetable farms are considered small if they have annual receipts of \$0.75 million or less. With some exceptions, vegetable and melon farms are largely individually owned and relatively small, with two-thirds harvesting fewer than 25 acres. In 2002, between 80 and 84 percent of vegetable and melon farms would be considered small. Similarly, although numbers have declined, fruit and tree nut production is still dominated by small, family or individually-run farm operations. In 2002, between 92 and 95 percent of all fruit and tree nut farms would be considered small.<sup>21</sup>

The number of entities that would be affected by this proposed rule is

<sup>19</sup> Establishment and firm size is not yet available for the 2002 Economic Census.

<sup>20</sup> 1997 Economic Census. Department of Commerce. U.S. Bureau of the Census. North American Industry Classification System (NAICS) Category—424480; Fresh fruit & vegetable wholesalers.

<sup>21</sup> 1997 Census of Agriculture. U.S. Department of Agriculture, National Agricultural Statistics Service. NAICS Categories—1112: Vegetable and melon farming; 1113: Fruit and tree nut farming.

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

Nevertheless, we invite public comment on the proposed rule—including any comment on the expected impacts for small entities, and on how the proposed rule could be modified to reduce expected costs or burdens for small entities consistent with its objectives. Any comment suggesting changes to the proposed criteria should be supported by an explanation of why the changes should be considered.

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

The proposed rule contains, under the heading “Paperwork Reduction Act,” a description of the information collection and recordkeeping requirements associated with the proposed rule.

#### *Duplication, Overlap or Conflict With Other Federal Rules*

APHIS is unaware of any Federal rules that are duplicative, overlapping, or conflicting with this proposed rule.

#### *Alternatives*

One alternative to this proposed rule would be to simply continue under APHIS’ current process of authorizing the importation of fruits and vegetables. In this case, we would continue to list all newly approved fruits and vegetables in the regulations through notice-and-comment rulemaking, as we have been doing since 1987. This approach is unsatisfactory, because the number of requests we receive from foreign exporters and domestic importers to amend the regulations has been steadily increasing. Maintaining the current process will make it difficult to keep pace with the volume of import requests. Therefore, this alternative was

rejected. We believe that the new approach would enable us to be more responsive to the import requests of our trading partners while maintaining the transparency of our decisionmaking afforded by notice-and-comment rulemaking.

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

#### **Future Analyses**

If this rule is adopted as a final rule, the requirements of Executive Order 12866 or the Regulatory Flexibility Act will be met through the analyses that accompany the final rule. The economic effects of importing the specific commodities that are approved using the streamlined approach would not be analyzed at the point of approval, since such approval would occur without additional rulemaking.

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### **National Environmental Policy Act**

The majority of the regulatory changes proposed in this document are nonsubstantive, and would therefore have no effects on the environment. However, this proposal, if adopted, would allow APHIS to approve certain new fruits and vegetables for importation into the United States without undertaking rulemaking. Despite the fact that those fruits and vegetable imports would no longer be contingent on the completion of rulemaking, the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C.

4321 *et seq.*) would still apply. As such, for each additional fruit or vegetable approved for importation, APHIS would make available to the public documentation related to our analysis of the potential environmental effects of such new imports. This documentation would likely be made available at the same time and via the same **Federal Register** notice as the risk analysis for the proposed new import.

#### **Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2005–0106. Please send a copy of your comments to: (1) Docket No. APHIS–2005–0106, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, APHIS is proposing, among other things, to establish a regulatory framework that would allow us to approve certain new fruits and vegetables for importation into the United States more effectively and expeditiously. These changes are intended to simplify and expedite our processes for approving certain new imports and pest-free areas while continuing to allow for public participation in the processes.

Under this proposed rule, APHIS may authorize the importation of additional fruits and vegetables subject to permitting and phytosanitary certification requirements. While the specific commodities that may be approved for importation using the new approach described in the proposed rule are unknown at this time, we have estimated the potential reporting burden on the public that could arise if the new approach is adopted. The new burden would be in the form of phytosanitary certificate requirements for some, and permit requirements for all, newly approved commodities.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information

collection requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.8238 hours per response.

*Respondents:* Importers, exporters, and national plant protection organizations.

*Estimated annual number of respondents:* 1,120.

*Estimated annual number of responses per respondent:* 3.

*Estimated annual number of responses:* 3,360.

*Estimated total annual burden on respondents:* 2,768 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

### 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 proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

### Lists of Subjects

#### 7 CFR Part 305

Agricultural commodities, Chemical treatment, Cold treatment, Garbage

treatment, Heat treatment, Imports, Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Quick freeze, Reporting and recordkeeping requirements, Transportation.

#### 7 CFR Part 319

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

#### 7 CFR Part 352

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

Accordingly, we propose to amend 7 CFR chapter III as follows:

### PART 305—PHYTOSANITARY TREATMENTS

1. The authority citation for part 305 would continue to read as follows:

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

#### § 305.2 [Amended]

2. In § 305.2, paragraph (i), the table would be amended as follows:

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

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

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

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

3. A new § 305.3 would be added to read as follows:

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

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

(b) Any treatment performed outside the United States must be monitored and certified by an inspector or an official from the national plant protection organization of the exporting country. If monitored and certified by an official of the plant protection organization of the exporting country, the treated commodities must be accompanied a phytosanitary certificate issued by the national plant protection organization of the exporting country

certifying that treatment was applied in accordance with APHIS regulations. The phytosanitary certificate must be provided to an inspector when the commodity is offered for entry into the United States. During the entire interval between treatment and export, the consignment must be stored and handled in a manner that prevents any infestation by pests and noxious weeds.

4. Section 305.15 would be revised to read as follows:

#### § 305.15 Treatment requirements.

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Treatment procedures.*

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

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

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

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

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

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

(7) The time required to complete the treatment begins when the temperature inside the fruit reaches the required

temperature. Refrigeration continues until the vessel arrives at the port of destination and the fruit is released for unloading by an inspector even though this may prolong the period required for the cold treatment.

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

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

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

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

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

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

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

and carelessness in applying the treatments may result in injury to the fruit, or its rejection for entry.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging

that prevents the escape of adult, larval, or pupal fruit flies.

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

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

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

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

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

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

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

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

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

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

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

(f) *Monitoring.* Treatment must be monitored by an inspector to ensure proper administration of the treatment. An inspector must also approve the recording devices and sensors used to monitor temperatures and conduct an operational check of the equipment

before each use and ensure sensors are calibrated. An inspector may approve, adjust, or reject the treatment.

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

(h) *Work plans.* Facilities located outside the United States may operate in accordance with a bilateral work plan. The work plan, if and when required, must be signed by a representative of the cold treatment facility, the national plant protection organization of the country of origin (NPPO), and APHIS. The work plans must contain requirements for equipment, temperature, circulation, and other operational requirements for performing cold treatment to ensure that cold treatments are administered properly. Work plans for facilities outside the United States may also include trust fund agreement information regarding payment of the salaries and expenses of APHIS employees on site. Work plans must allow officials of the NPPO and APHIS to inspect the facility to monitor compliance with APHIS regulations.

#### § 305.17 [Amended]

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

#### PART 319—FOREIGN QUARANTINE NOTICES

6. The authority citation for part 319 would continue to read as follows:

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

#### § 319.28 [Amended]

7. Section 319.28 would be amended as follows:

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

b. In paragraph (e), the words “the Fruits and Vegetables Quarantine (§ 319.56)” would be removed and the words “Subpart—Fruits and Vegetables of this part” would be added in their place.

**§ 319.37–2 [Amended]**

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

**§ 319.40–2 [Amended]**

9. In § 319.40–2, paragraph (c) would be amended by removing the words “§§ 319.56 through 319.56–8,”.

**§ 319.40–9 [Amended]**

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

**§ 319.41a [Amended]**

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

12. Subpart—Fruits and Vegetables, §§ 319.56 through 319.56–8, would be revised to read as follows:

**Subpart—Fruits and Vegetables**

Sec.

- 319.56–1 Notice of quarantine.
- 319.56–2 Definitions.
- 319.56–3 General requirements for all imported fruits and vegetables.
- 319.56–4 Approval of certain fruits and vegetables for importation.
- 319.56–5 Pest-free areas.
- 319.56–6 Trust fund agreements.
- 319.56–7 Territorial applicability and exceptions.
- 319.56–8 through 319.56–9 [Reserved]
- 319.56–10 Importation of fruits and vegetables from Canada.
- 319.56–11 Importation of dried, cured, or processed fruits, vegetables, nuts, and legumes.
- 319.56–12 Importation of frozen fruits and vegetables.
- 319.56–13 Additional requirements for certain fruits and vegetables.
- 319.56–14 through 319.56–19 [Reserved]
- 319.56–20 Apples and pears from Australia (including Tasmania) and New Zealand.
- 319.56–21 Okra from certain countries.
- 319.56–22 Apples and pears from certain countries in Europe.
- 319.56–23 Apricots, nectarines, peaches, plumcot, and plums from Chile.
- 319.56–24 Lettuce and peppers from Israel.
- 319.56–25 Papayas from Central America and Brazil.
- 319.56–26 Melon and watermelon from certain countries in South America.
- 319.56–27 Fuji variety apples from Japan and the Republic of Korea.
- 319.56–28 Tomatoes from certain countries.
- 319.56–29 Ya variety pears from China.
- 319.56–30 Hass avocados from Michoacan, Mexico.
- 319.56–31 Peppers from Spain.
- 319.56–32 Peppers from New Zealand.
- 319.56–33 Mangoes from the Philippines.
- 319.56–34 Clementines from Spain.

- 319.56–35 Persimmons from the Republic of Korea.
- 319.56–36 Watermelon, squash, cucumber, and oriental melon from the Republic of Korea.
- 319.56–37 Grapes from the Republic of Korea.
- 319.56–38 Clementines, mandarins, and tangerines from Chile.
- 319.56–39 Fragrant pears from China.
- 319.56–40 Peppers from certain Central American countries.

**Subpart—Fruits and Vegetables****§ 319.56–1 Notice of quarantine.**

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

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

**§ 319.56–2 Definitions.**

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

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

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

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

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

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

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

*Cucurbits.* Any plants in the family Cucurbitaceae.

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

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

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

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

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

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

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

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

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

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

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

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

(4) Describes the consignment;

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

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

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

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

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

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

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

*Port of first arrival.* The first port within the United States where a consignment is (1) offered for consumption entry or (2) offered for entry for immediate transportation in bond.

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

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

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

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

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

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

specifically provided otherwise in this subpart.

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

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

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

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

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

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

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

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

(iii) *By fax.* Persons who wish to apply by fax for a permit to import fruits or vegetables into the United States

must do so by faxing their application to: Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permit Services, (301) 734–5786.

(3) *Issuance of permits.* If APHIS approves a permit application, APHIS will issue a permit specifying the conditions applicable to the importation of the fruit or vegetable.

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

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

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

(7) *Special use permits.* The Administrator may grant special use permits that authorize the importation of small lots of fruits or vegetables that are otherwise prohibited importation under this part, provided that the fruits or vegetables:

(i) Are not intended for commercial distribution;

(ii) Are to be imported, transported, and stored or displayed under specific conditions which the Administrator has

determined will mitigate the pest risk posed by the imported fruits or vegetables; and

(iii) Are to be consumed, disposed of, destroyed, or re-exported at a time and in a manner and place ordered by an inspector or as specified in the permit.

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

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

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

(1) *Notice of arrival; assembly for inspection.* Any person importing fruits and vegetables into the United States must offer those agricultural products for inspection and entry at the port of first arrival. The owner or agent must

assemble the fruits and vegetables for inspection at the port of first arrival, or at any other place designated by an inspector, and in a manner designated by the inspector. All fruits and vegetables must be accurately disclosed and made available to an inspector for examination. The owner or the agent must provide an inspector with the name and address of the consignee and must make full disclosure of the type, quantity, and country and locality of origin of all fruits and vegetables in the consignment, either orally for noncommercial consignments or on an invoice or similar document for commercial consignments.

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

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

- (i) Released it;
- (ii) Ordered treatment at the port of first arrival and, after treatment, released the fruit or vegetable;
- (iii) Authorized movement of the fruit or vegetable to another location for treatment, further inspection, or destruction; or
- (iv) Ordered the fruit or vegetable to be reexported.

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

(e) *Costs and charges.* APHIS will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty

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

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

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

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

(b) *Designated phytosanitary measures.*

(1) Fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56–3.

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

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

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

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

(c) *Fruits and vegetables authorized importation under this section.*

(1) *Previously approved fruits and vegetables.* Fruits and vegetables that were authorized importation under this subpart either directly by permit or by specific regulation as of [effective date of final rule] and that were subject only to one or more of the designated phytosanitary measures cited in paragraph (b) of this section and the general requirements of § 319.56–3, may continue to be imported into the United States under the same requirements that applied before [effective date of final rule], except as provided in paragraph (d) of this section.

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

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

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

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

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

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

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

(4) *Pre-export inspection.* A quarantine pest is associated with the commodity in the country or region of origin, but the commodity is subject to pre-export inspection, and the commodity is to be accompanied by a phytosanitary certificate that contains an additional declaration that the commodity has been inspected and found free of such pests in the country or region of origin.

(ii) *Issuance of import permits.* The Administrator announced in a subsequent **Federal Register** notice that APHIS would begin issuing permits for importation of the fruit or vegetable subject to requirements specified in the notice because:

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

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

(C) Changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

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

#### § 319.56–5 Pest-free areas.

As provided elsewhere in this subpart, certain fruits and vegetables may be imported into the United States provided that the fruits or vegetables

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

(a) *Application of international standard for pest free areas.* APHIS requires that determinations of pest-free areas be made in accordance with the criteria for establishing freedom from pests found in International Standard for Phytosanitary Measures No. 4, "Requirements for the establishment of pest free areas." The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in § 300.6 of this chapter.

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

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

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

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

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

(i) The name of the orchard or grove of origin, or the name of the grower; and  
 (ii) The name of the municipality and State in which the fruits or vegetables were produced; and

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

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

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

#### **§ 319.56–6 Trust fund agreements.**

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

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

#### **§ 319.56–7 Territorial applicability and exceptions.**

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

##### *(b) Importations of fruits and vegetables into Guam.*

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

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

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

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

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

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

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

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

(vii) Lettuce from Papua New Guinea.

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

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

(x) Green corn on the cob.

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

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

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

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

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

(1) Fruits and vegetables grown in the British Virgin Islands may be imported into the U.S. Virgin Islands in accordance with § 319.56–3 of this subpart, except that:

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

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

(2) Okra produced in the West Indies may be imported into the U.S. Virgin Islands without treatment but are

subject to inspection at the port of arrival.

§§ 319.56–8 through 319.56–9 [Reserved]

§ 319.56–10 Importation of fruits and vegetables from Canada.

Fruits and vegetables grown in Canada may be imported into the United States subject to applicable requirements in § 319.56–3, except that, in accordance with § 319.37–2 of this part, potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road may not be imported into the United States.

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

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

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

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

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

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

(c) *Macadamia nuts.* Macadamia nuts in the husk or shell are prohibited importation into the United States unless the macadamia nuts were

produced in, and imported from, St. Eustatius.

§ 319.56–12 Importation of frozen fruits and vegetables.

Frozen fruits and vegetables may be imported into the United States in accordance with § 319.56–3. Such fruits and vegetables must be held at a temperature not higher than 20 °F during shipping and upon arrival in the United States, and in accordance with the requirements for importing frozen fruits and vegetables in part 305 of this chapter. The importation from foreign countries of frozen fruits and vegetables is not authorized when such fruits and vegetables are subject to attack in the area of origin by plant pests that may not, in the judgment of the Administrator, be destroyed by quick freezing.

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

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

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
Algeria	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Angola	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Antigua and Barbuda	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Argentina	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Australia (Tasmania only).	Cucurbit	As defined in 319.56–2	Fruit	(b)(3).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Austria	Asparagus, white	<i>Asparagus officinalis</i>	Shoot	(b)(4)(iii).
Bahamas	Cucurbit	As defined in 319.56–2	Fruit	(b)(3).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Barbados	Cucurbit	As defined in 319.56–2	Fruit	(b)(3).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Belgium	Apricot	<i>Prunus armeniaca</i>	Fruit	(b)(5)(xiv).
	Cucumber	<i>Cucumis sativus</i>	Fruit	(b)(3).
	Fig	<i>Ficus carica</i>	Fruit	(b)(5)(xiv).
	Nectarine	<i>Prunus persica</i> var. <i>nucipersica</i>	Fruit	(b)(5)(xiv).
	Peach	<i>Prunus persica</i>	Fruit	(b)(5)(xiv).
	Plum	<i>Prunus domestica</i>	Fruit	(b)(5)(xiv).
Belize	Eggplant	<i>Solanum melongena</i>	Fruit	(b)(3).
	Papaya	<i>Carica papaya</i>	Fruit	(b)(1)(i), (b)(2)(iii).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(iii).
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3).
Benin	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Bolivia	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Brazil	Cantaloupe	<i>Cucumis melo</i> var. <i>cantaloupensis</i>	Fruit	(b)(1)(v), (b)(3).
	Cassava	<i>Manihot esculenta</i>	Fruit	(b)(2)(vii).
	Honeydew melon	<i>Cucumis melo</i>	Fruit	(b)(1)(v), (b)(3).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Watermelon	<i>Citrullus lanatus</i> var. <i>lanatus</i>	Fruit	(b)(1)(v), (b)(3).
Burkina Faso	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Cameroon	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Cayman Islands	Cucurbit	Cucurbitaceae	Fruit	(b)(3).
	Papaya	<i>Carica papaya</i>	Fruit	(b)(3).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Chile	African horned cucumber.	<i>Cucumis metuliferus</i>	Fruit	(b)(2)(i).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).

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

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
China	Litchi	<i>Litchi chinensis</i>	Fruit	(b)(2)(v).
Columbia	Eggplant	<i>Solanum melongena</i>	Fruit	(b)(3).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Yellow pitaya	<i>Selinicereus megalanthus</i>	Fruit	(b)(5)(xvi).
Congo, Democratic Republic of.	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Cook Islands	Ginger	<i>Zingiber officinalis</i>	Root	(b)(2)(ii).
	Banana	<i>Musa</i> spp	Fruit	(b)(4)(i).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi), (b)(5)(vii).
Costa Rica	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	Eggplant	<i>Solanum melongena</i>	Fruit	(b)(3).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(iii).
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3).
Cote d'Ivoire	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Cyprus	Lemon	<i>Citrus limon</i>	Fruit	(b)(3).
	Lime	<i>Citrus aurantiifolia</i> and <i>Citrus limettioides</i>	Fruit	(b)(3).
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3).
Dominica	Grapefruit	<i>Citrus paradisi</i>	Fruit	(b)(3).
	Orange, sweet	<i>Citrus sinensis</i>	Fruit	(b)(3).
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Tangerine	<i>Citrus reticulata</i>	Fruit	(b)(3).
Dominican Republic	Cucurbit	Cucurbitaceae	Fruit	(b)(2)(iii), (b)(3).
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(iii), (b)(2)(vi).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(iii), (b)(2)(vi).
	Ethrog	<i>Citrus medica</i>	Fruit	(b)(3).
	Honeydew melon	<i>Cucumis melo</i>	Fruit	(b)(3).
Ecuador	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(iii), (b)(2)(vi).
Egypt	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
El Salvador	Cucurbit	Cucurbitaceae	Fruit	(b)(3).
	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).
	Oregano or sweet marjoram.	<i>Origanum</i> spp	Leaf and stem	(b)(2)(i).
	Parsley	<i>Petroselinum crispum</i>	Leaf and stem	(b)(2)(i).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(iii).
	Rosemary	<i>Rosmarinus officinalis</i>	Leaf and stem	(b)(2)(i).
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3).
	Waterlily or lotus	<i>Nelumbo nucifera</i>	Roots without soil	(b)(2)(i).
	Yam-bean or Jicama	<i>Pachyrhizus</i> spp	Roots without soil	(b)(2)(i).
Fiji	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi), (b)(5)(vii).
France	Bean	<i>Glycine max</i> (Soybean); <i>Phaseolus coccineus</i> , (Scarlet or french runner bean); <i>Phaseolus lunatus</i> (lima bean); <i>Phaseolus vulgaris</i> (green bean, kidney bean, navy bean, pinto bean, red bean, string bean, white bean); <i>Vicia faba</i> (faba bean, broadbean, haba, habichuela, horsebean, silkworm bean, windsor bean); <i>Vigna radiata</i> (mung bean); <i>Vigna unguiculata</i> (includes: ssp. <i>cylindrica</i> , ssp. <i>dekintiana</i> , ssp. <i>sesquipedalis</i> (yard-long bean, asparagus bean, long bean) ssp. <i>unguiculata</i> (southern pea, black-eyed bean, black-eyed pea, cowpea, crowder pea)).	Fruit	(b)(5)(xiii).
	Cucurbit	Cucurbitaceae	Fruit	(b)(3).
	Tomato	<i>Lycopersicon esculentum</i>	Fruit, stem and leaf	(b)(4)(ii).
French Guiana	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
French Polynesia, including Tahiti.	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi), (b)(5)(vii).
Ghana	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).
Greece	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3).
Grenada	Atemoya	<i>Annona squamosa</i> x <i>A. cherimola</i>	Fruit	(b)(3).
	Cherimoya	<i>Annona cherimola</i>	Fruit	(b)(3).
	Custard apple	<i>Annona reticulata</i>	Fruit	(b)(3).
	Cucurbit	Cucurbitaceae	Fruit	(b)(3).
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).

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

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements	
Netherlands	Cucurbit	<i>Cucurbitaceae</i>	Fruit	(b)(2)(iii), (b)(3).	
	Peach	<i>Prunus persica</i>	Fruit	(b)(5)(xiv).	
	Pepper	<i>Capsicum</i> spp	Fruit	(b)(5)(xi).	
Netherlands Antilles	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
New Zealand	Cucurbit	<i>Cucurbitaceae</i>	Fruit	(b)(3).	
	Passion fruit	<i>Passiflora</i> spp	Fruit	(b)(2)(vi).	
Nicaragua	Cucurbit	<i>Cucurbitaceae</i>	Fruit	(b)(3).	
	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).	
	Naranjilla	<i>Solanum quitoense</i>	Fruit	(b)(3).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(iii).	
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3), (b)(4)(ii).	
	Waterlily or lotus	<i>Nelumbo nucifera</i>	Roots without soil	(b)(2)(i).	
	Yam-bean or Jicama	<i>Pachyrhizus</i> spp	Roots without soil	(b)(2)(i).	
Niger	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Nigeria	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Panama	Cucurbit	As defined in 319.56-2	Fruit	(b)(2)(iii), (b)(3).	
	Eggplant	<i>Solanum melongena</i>	Fruit	(b)(3).	
	Rambutan	<i>Nephelium lappaceum</i>	Fruit	(b)(2)(i), (b)(5)(iii).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Paraguay	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3), (b)(4)(ii).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Peru	Honeydew melon	<i>Cucumis melo</i>	Fruit	(b)(1)(v), (b)(2)(i), (b)(3), (b)(5)(xii).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Philippines	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(5)(vii).	
Portugal (including Azores).	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Portugal (Azores only).	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(3), (b)(4)(ii).	
Republic of Korea	Dasheen	<i>Colocasia</i> spp., <i>Alocasia</i> spp., and <i>Xanthosoma</i> spp.	Root	(b)(2)(iv).	
St. Kitts and Nevis	Sand pear	<i>Pyrus pyrifolia</i> var. <i>culta</i>	Fruit	(b)(5)(x).	
	Strawberry	<i>Fragaria</i> spp	Fruit	(b)(5)(ii).	
	Cucurbit	As defined in 319.56-2	Fruit	(b)(3).	
St. Lucia	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Cucurbit	As defined in 319.56-2	Fruit	(b)(3).	
St. Martin	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).	
St. Vincent	Barbados cherry	<i>Malpighia glabra</i>	Fruit	(b)(2)(vi).	
	Cucurbit	As defined in 319.56-2	Fruit	(b)(3).	
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).	
Senegal	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Sierra Leone	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Cucumber	<i>Cucumis sativus</i>	Fruit	(b)(3).	
	Cucurbit	<i>Cucurbitaceae</i>	Above ground parts	(b)(3).	
	Eggplant	<i>Solanum melongena</i>	Fruit with stem	(b)(3).	
	Garlic	<i>Allium sativum</i>	Bulb	(b)(5)(vi). <sup>1</sup>	
	Lemon	<i>Citrus limon</i>	Fruit	(b)(3).	
	Lettuce	<i>Lactuca</i> spp	Above ground parts	(b)(3).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
	Tomato	<i>Lycopersicon esculentum</i>	Fruit	(b)(4)(ii).	
	Watermelon	<i>Citrullus lanatus</i> var. <i>lanatus</i>	Fruit	(b)(3).	
	Sri Lanka	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi), (b)(5)(vii).
		Brassica	<i>Brassica oleracea</i>	Above ground parts	(b)(2)(viii).
	Taiwan	Carambola	<i>Averrhoa carambola</i>	Fruit	(b)(2)(ix), (b)(5)(xviii).
		Litchi	<i>Litchi chinensis</i>	Fruit	(b)(2)(v).
		Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi), (b)(5)(vii).
Thailand	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi), (b)(5)(vii).	
Togo	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	
Trinidad and Tobago	Cassava	<i>Manihot exculenta</i>	Fruit	(b)(2)(vi).	
	Cucurbit	<i>Cucurbitaceae</i>	Above ground parts	(b)(2)(iii), (b)(3).	
	Eggplant	<i>Solanum melongena</i>	Fruit	(b)(3).	
	Cucurbit	<i>Cucurbitaceae</i>	Fruit	(b)(3).	
	Lime, sour	<i>Citrus aurantiifolia</i>	Fruit	(b)(3).	
	Papaya	<i>Carica papaya</i>	Fruit	(b)(2)(vi).	
	Pineapple	<i>Ananas comosus</i>	Fruit	(b)(2)(vi).	

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
Tunisia .....	Pineapple .....	<i>Ananas comosus</i> .....	Fruit .....	(b)(2)(vi).
Turkey .....	Pineapple .....	<i>Ananas comosus</i> .....	Fruit .....	(b)(2)(vi).
Uruguay .....	Pineapple .....	<i>Ananas comosus</i> .....	Fruit .....	(b)(2)(vi).
Venezuela .....	Cantaloupe .....	<i>Cucumis melo</i> var. <i>cantaloupensis</i> .....	Fruit .....	(b)(1)(v), (b)(3).
	Honeydew melon ....	<i>Cucumis melo</i> .....	Fruit .....	(b)(1)(v), (b)(3).
	Pineapple .....	<i>Ananas comosus</i> .....	Fruit .....	(b)(2)(vi).
	Watermelon .....	<i>Citrullus lanatus</i> var. <i>lanatus</i> .....	Fruit .....	(b)(1)(v), (b)(3).

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

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

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

(1) *Pest-free areas.*

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

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

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

(iv) The commodity must be from an area that meets the requirements of § 319.56–5 for freedom from fruit flies, and must meet applicable requirements of § 319.56–5. The phytosanitary certificate must also include an additional declaration stating: “Upon inspection, these articles were found free of *Dysmicoccus neobrevipes* and *Planococcus minor*.”

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

(2) *Restricted importation and distribution.*

(i) Prohibited entry into Puerto Rico, 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.”

(v) Prohibited entry into Florida.

Cartons in which commodity is packed must be stamped “Not for importation into or distribution within FL.”

(vi) Prohibited entry into Hawaii.

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

(viii) Prohibited entry into Alaska.

(ix) Prohibited entry into Florida.

(x) Allowed importation into Hawaii only.

(3) *Commercial shipments only.*

(4) *Stage of development.*

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

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

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

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

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

(5) *Other conditions.*

(i) 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 *Psedococcus 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.

(vi) 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 free of living stages of *Brachycerus* spp. and *Dyspessa ulula* (Bkh.), based on field inspection and certification and reexamination at the port of departure prior to exportation.

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

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

(ix) Prohibited from the Palestinian controlled portions of the West Bank and Gaza Strip; otherwise must be accompanied by a phytosanitary certificate which declares that only tomato varieties 111, 121, 124, 139, and 144 are included in the shipment and

the tomatoes were packed into fruit fly proof containers within 24 hours after harvesting.

(x) Only precleared shipments are authorized. The shipment must be accompanied by a PPQ Form 203 signed by the APHIS inspector on site in the exporting country.

(xi) Must be accompanied by a phytosanitary certificate stating: "The peppers in this shipment have been inspected and verified as being grown in greenhouses in the Netherlands."

(xii) Must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organization of the exporting country that includes a declaration indicating that the fruit was inspected and found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*).

(xiii) Must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organization of the exporting country that includes a declaration certifying that the products were grown and packed in the exporting country.

(xiv) Must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organization of the exporting country that includes a declaration certifying that the products were grown in a greenhouse in the exporting country.

(xv) Must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organization of the exporting country that includes a declaration certifying that the products were grown in a greenhouse in the exporting country on Honshu Island or north thereof.

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

(xvii) Must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organization of Israel that declares "These tomatoes were grown in registered greenhouses in the Arava Valley of Israel."

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

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

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

Apples and pears from Australia (including Tasmania) and New Zealand may be imported only in accordance

with this section and other applicable provisions of this subpart.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

producing orchard for the remainder of the shipping season.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) [Reserved]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) *Plant pests; authorized treatments.*

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

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

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

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

risk of introducing insect pests into the United States;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) [Reserved]

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

(f) *Plant pests; authorized treatments.*

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

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

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

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

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

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

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

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

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

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

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

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

(iii) The lettuce must be inspected during its active growth phase and the

inspection must be monitored by a representative of the Israeli Ministry of Agriculture;

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

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

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

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

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

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

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

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

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

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

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

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

(7) Prior to movement from approved insect-proof screenhouses in the Arava

Valley, the peppers must be packed in either individual insect-proof cartons or in non-insect-proof cartons that are covered by insect-proof mesh or plastic tarpaulins; covered non-insect-proof cartons must be placed in shipping containers.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Beginning at least 30 days before harvest began and continuing through

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

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

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

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

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

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

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

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

(j) In the State of Espirito Santo, Brazil, if the average McPhail trap catch was greater than seven South American fruit flies (*Anastrepha fraterculus*) per trap per week, measures were taken to control the South American fruit fly population in the production area. If the

average McPhail trap catch exceeds 14 South American fruit flies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer South American fruit flies per trap per week.

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

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

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

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

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

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

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

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

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

(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

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

of the commodity followed by the words "Not to be distributed in the following States or territories: AL, AS, AZ, CA, FL, GA, GU, HI, LA, MS, NM, PR, SC, TX, VI".

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

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

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

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

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

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

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

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

(b) *APHIS inspection.* The apples must be inspected upon completion of the treatments required by paragraph (a) of this section, prior to export from Japan or the Republic of Korea, by an APHIS inspector and an inspector from the national plant protection agency of Japan or the Republic of Korea. The apples shall be subject to further disinfection in the exporting country if plant pests are found prior to export.

Imported Fuji variety apples inspected in Japan or the Republic of Korea are also subject to inspection and disinfection at the port of first arrival, as provided in § 319.56–3.

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

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

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

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

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

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

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

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

cancellation of exports from all registered greenhouses within 2 kilometers of the find until the source of infestation is determined and the Medfly infestation is eradicated;

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

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

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

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

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

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

(3) Capture of a single Medfly inside or outside a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of the infestation is determined, the Medfly infestation is eradicated, and measures are taken to preclude any future infestation;

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

(5) From June 1 through September 30, the tomatoes must be packed within 24 hours of harvest. They must be safeguarded by insect-proof mesh screen

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

or plastic tarpaulin while in transit to the packing house and while awaiting packing. They must be packed in insect-proof cartons or containers, or covered by insect-proof mesh screen or plastic tarpaulin. These safeguards must be intact upon arrival in the United States; and

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

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

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

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

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

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

(5) Capture of a single Medfly in a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of the infestation is determined, the Medfly infestation has been eradicated, and measures are taken to preclude any future infestation. Capture of a single

Medfly within 200 meters of a registered greenhouse will necessitate increasing trap density in order to determine whether there is a reproducing population in the area. Six additional traps must be placed within a radius of 200 meters surrounding the trap where the Medfly was captured. Capture of two Medflies within 200 meters of a registered greenhouse and within a 1-month time period will necessitate Malathion bait sprays in the area every 7 to 10 days for 60 days to ensure eradication;

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

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

(d) *Tomatoes (fruit) (Lycopersicon esculentum) from Chile*. Tomatoes from Chile, whether green or at any stage of ripeness, may be imported into the United States only in accordance with this section and other applicable provisions of this subpart.

(1) The tomatoes must be treated in Chile with methyl bromide in accordance with part 305 of this chapter. The treatment must be conducted in facilities registered with the Servicio Agrícola y Ganadero (SAG) and with APHIS personnel monitoring the treatments;

(2) The tomatoes must be treated and packed within 24 hours of harvest. Once treated, the tomatoes must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packing house and awaiting packing. They must be packed in insect-proof cartons or containers, or insect-proof mesh or plastic tarpaulin under APHIS monitoring for transit to the airport and subsequent export to the

United States. These safeguards must be intact upon arrival in the United States; and

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

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

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

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

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

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

(5) AQIS must maintain records of trap placement, checking of traps, and

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

any fruit fly captures, and must make the records available to APHIS upon request;

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packing house or while awaiting packing. They must be placed in insect-proof cartons or containers, or securely covered with insect-proof mesh or plastic tarpaulin for transport to the airport or other shipping point. These safeguards must be intact upon arrival in the United States; and

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

**§ 319.56–29 Ya variety pears from China.**

Ya variety pears may be imported into the United States from China only in accordance with this section and other applicable provisions of this subpart.

(a) *Growing and harvest conditions.* (1) The pears must have been grown by growers registered with the Chinese Ministry of Agriculture in an APHIS-approved export growing area in the Hebei or Shandong Provinces.

(2) Field inspections for signs of pest infestation must be conducted by the Chinese Ministry of Agriculture during the growing season.

(3) The registered growers shall be responsible for following the phytosanitary measures agreed upon by APHIS and the Chinese Ministry of Agriculture, including applying pesticides to reduce the pest population and bagging the pears on the trees to reduce the opportunity for pests to attack the fruit during the growing season. The bags must remain on the pears through the harvest and during their movement to the packing house.

(4) The packing houses in which the pears are prepared for exportation shall not be used for any fruit other than Ya variety pears from registered growers during the pear export season. The packing houses shall accept only those pears that are in intact bags as required by paragraph (a)(3) of this section. The pears must be loaded into containers at the packing house and the containers then sealed before movement to the port of export.

(b) *Treatment.* Pears from Shandong Province must be cold treated for *Bactrocera dorsalis* in accordance with part 305 of this chapter.

(c) Each consignment of pears must be accompanied by a phytosanitary certificate issued by the Chinese

Ministry of Agriculture stating that the conditions of this section have been met.

**§ 319.56–30 Hass avocados from Michoacan, Mexico.**

Fresh Hass variety avocados (*Persea americana*) may be imported from Michoacan, Mexico, into the United States in accordance with the requirements of § 319.56–3 of this subpart, and only under the following conditions:

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

(2) Between January 31, 2005 and January 31, 2007, the avocados may be imported into and distributed in all States except California, Florida, Hawaii, Puerto Rico, and U.S. Territories. After January 31, 2007, the avocados may be imported into and distributed in all States, but not Puerto Rico or any U.S. Territory.

(b) *Trust fund agreement.* The avocados may be imported only if the Mexican avocado industry association representing Mexican avocado growers, packers, and exporters has entered into a trust fund agreement with APHIS for that shipping season in accordance with § 319.56–6.

(c) *Safeguards in Mexico.* The avocados must have been grown in the Mexican State of Michoacan in an orchard located in a municipality that meets the requirements of paragraph (c)(1) of this section. The orchard in which the avocados are grown must meet the requirements of paragraph (c)(2) of this section. The avocados must be packed for export to the United States in a packinghouse that meets the requirements of paragraph (c)(3) of this section. The Mexican national plant protection organization (NPPO) must provide an annual work plan to APHIS that details the activities that the Mexican NPPO will, subject to APHIS' approval of the work plan, carry out to meet the requirements of this section; APHIS will be directly involved with the Mexican NPPO in the monitoring and supervision of those activities. The personnel conducting the trapping and pest surveys must be hired, trained, and supervised by the Mexican NPPO or by the Michoacan State delegate of the Mexican NPPO.

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

(ii) The municipality must be surveyed at least semiannually (once during the wet season and once during the dry season) and found to be free

from the large avocado seed weevil *Heilipus lauri*, the avocado seed moth *Stenoma catenifer*, and the small avocado seed weevils *Conotrachelus aguacatae* and *C. perseae*.

(iii) Trapping must be conducted in the municipality for Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) at the rate of 1 trap per 1 to 4 square miles. Any findings of Medfly must be reported to APHIS.

(2) *Orchard and grower requirements.* The orchard and the grower must be registered with the Mexican NPPO's avocado export program and must be listed as an approved orchard or an approved grower in the annual work plan provided to APHIS by the Mexican NPPO. The operations of the orchard must meet the following conditions:

(i) The orchard and all contiguous orchards and properties must be surveyed semiannually and found to be free from the avocado stem weevil *Copturus aguacatae*.

(ii) Trapping must be conducted in the orchard for the fruit flies *Anastrepha ludens*, *A. serpentina*, and *A. striata* at the rate of one trap per 10 hectares. If one of those fruit flies is trapped, at least 10 additional traps must be deployed in a 50-hectare area immediately surrounding the trap in which the fruit fly was found. If within 30 days of the first finding any additional fruit flies are trapped within the 260-hectare area surrounding the first finding, malathion bait treatments must be applied in the affected orchard in order for the orchard to remain eligible to export avocados.

(iii) Avocado fruit that has fallen from the trees must be removed from the orchard at least once every 7 days and may not be included in field boxes of fruit to be packed for export.

(iv) Dead branches on avocado trees in the orchard must be pruned and removed from the orchard.

(v) Harvested avocados must be placed in field boxes or containers of field boxes that are marked to show the official registration number of the orchard. The avocados must be moved from the orchard to the packinghouse within 3 hours of harvest or they must be protected from fruit fly infestation until moved.

(vi) The avocados must be protected from fruit fly infestation during their movement from the orchard to the packinghouse and must be accompanied by a field record indicating that the avocados originated from a certified orchard.

(3) *Packinghouse requirements.* The packinghouse must be registered with the Mexican NPPO's avocado export program and must be listed as an

approved packinghouse in the annual work plan provided to APHIS by the Mexican NPPO. The operations of the packinghouse must meet the following conditions:

(i) During the time the packinghouse is used to prepare avocados for export to the United States, the packinghouse may accept fruit only from orchards certified by the Mexican NPPO for participation in the avocado export program.

(ii) All openings to the outside must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents insects from entering the packinghouse.

(iii) The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(iv) Prior to the culling process, a biometric sample, at a rate determined by APHIS, of avocados per consignment must be selected, cut, and inspected by the Mexican NPPO and found free from pests.

(v) The identity of the avocados must be maintained from field boxes or containers to the shipping boxes so the avocados can be traced back to the orchard in which they were grown if pests are found at the packinghouse or the port of first arrival in the United States.

(vi) Prior to being packed in boxes, each avocado fruit must be cleaned of all stems, leaves, and other portions of plants and labeled with a sticker that bears the official registration number of the packinghouse.

(vii) The avocados must be packed in clean, new boxes, or clean plastic reusable crates. The boxes or crates must be clearly marked with the identity of the grower, packinghouse, and exporter. Between January 31, 2005 and January 31, 2007, the boxes or crates must be clearly marked with the statement "Not for importation or distribution in CA, FL, HI, Puerto Rico or U.S. Territories." After January 31, 2007, the boxes or crates must be clearly marked with the statement "Not for importation or distribution in Puerto Rico or U.S. Territories."

(viii) The boxes must be placed in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through Mexico to the port of first arrival in the United States. Prior to leaving the packinghouse, the truck or container must be secured by Sanidad Vegetal with a seal that will be broken when the truck or container is opened. Once sealed, the refrigerated truck or refrigerated container must remain

unopened until it reaches the port of first arrival in the United States.

(ix) Any avocados that have not been packed or loaded into a refrigerated truck or refrigerated container by the end of the work day must be kept in the screened packing area.

(d) *Certification.* All consignments of avocados must be accompanied by a phytosanitary certificate issued by the Mexican NPPO with an additional declaration certifying that the conditions specified in this section have been met.

(e) *Pest detection.* (1) If any of the avocado seed pests *Heilipus lauri*, *Conotrachelus aguacatae*, *C. perseae*, or *Stenomoma catenifer* are discovered in a municipality during the semiannual pest surveys, orchard surveys, packinghouse inspections, or other monitoring or inspection activity in the municipality, the Mexican NPPO must immediately initiate an investigation and take measures to isolate and eradicate the pests. The Mexican NPPO must also provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The municipality in which the pests are discovered will lose its pest-free certification and avocado exports from that municipality will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that municipality has been eliminated.

(2) If the Mexican NPPO discovers the stem weevil *Copturus aguacatae* in an orchard during an orchard survey or other monitoring or inspection activity in the orchard, the Mexican NPPO must provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard in which the pest was found will lose its export certification immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that orchard has been eliminated.

(3) If the Mexican NPPO discovers the stem weevil *Copturus aguacatae* in fruit at a packinghouse, the Mexican NPPO must investigate the origin of the infested fruit and provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard where the infested fruit originated will lose its export certification immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest

eradication measures taken have been effective and that the pest risk within that orchard has been eliminated.

(f) *Ports.* The avocados may enter the United States only through a port of entry located in a State where the distribution of the fruit is authorized pursuant to paragraph (a)(2) of this section.

(g) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival. At the port of first arrival, an inspector will sample and cut avocados from each consignment to detect pest infestation.

(h) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival, at any stops in the United States en route to an approved State, and upon arrival at the terminal market in the approved States. At the port of first arrival, an inspector will sample and cut avocados from each shipment to detect pest infestation.

(i) *Repackaging.* If any avocados are removed from their original shipping boxes and repackaged, the stickers required by paragraph (c)(3)(vi) of this section may not be removed or obscured and the new boxes must be clearly marked with all the information required by paragraph (c)(3)(vii) of this section.

#### § 319.56–31 Peppers from Spain.

Peppers (fruit) (*Capsicum* spp.) may be imported into the United States from Spain only under permit, and only in accordance with this section and all other applicable requirements of this subpart:

(a) The peppers must be grown in the Alicante or Almeria Province of Spain in pest-proof greenhouses registered with, and inspected by, the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF);

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

(c) Beginning October 1, and continuing through April 30, MAFF must set and maintain Mediterranean fruit fly (*Ceratitidis capitata*) (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all outside areas, including urban and residential areas, within 8 kilometers of the greenhouses, MAFF must set and maintain Medfly traps baited with trimedlure at a rate of four traps per square kilometer. All traps must be checked every 7 days;

(d) Capture of a single Medfly in a registered greenhouse will immediately halt exports from that greenhouse until the Administrator determines that the source of infestation has been identified, that all Medflies have been eradicated,

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

(e) The peppers must be safeguarded from harvest to export by insect-proof mesh or plastic tarpaulin, including while in transit to the packing house and while awaiting packing. They must be packed in insect-proof cartons or covered by insect-proof mesh or plastic tarpaulin for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States;

(f) The peppers must be packed for shipment within 24 hours of harvest;

(g) During shipment, the peppers may not transit other fruit fly-supporting areas unless shipping containers are sealed by MAFF with an official seal whose number is noted on the phytosanitary certificate; and

(h) A phytosanitary certificate issued by MAFF and bearing the declaration, "These peppers were grown in registered greenhouses in Alicante or Almeria Province in Spain," must accompany the consignment.

#### § 319.56–32 Peppers from New Zealand.

Peppers (fruit) (*Capsicum* spp.) from New Zealand may be imported into the United States only in accordance with this section and other applicable provisions of this subpart.

(a) The peppers must be grown in New Zealand in insect-proof greenhouses approved by the New Zealand Ministry of Agriculture and Forestry (MAF).

(b) The greenhouses must be equipped with double self-closing doors, and any vents or openings in the greenhouses (other than the double closing doors) must be covered with 0.6 mm screening in order to prevent the entry of pests into the greenhouse.

(c) The greenhouses must be examined periodically by MAF to ensure that the screens are intact.

(d) Each consignment of peppers must be accompanied by a phytosanitary certificate of inspection issued by MAF bearing the following declaration: "These peppers were grown in greenhouses in accordance with the conditions in § 319.56–32."

#### § 319.56–33 Mangoes from the Philippines.

Mangoes (fruit) (*Mangifera indica*) may be imported into the United States from the Philippines only in accordance with this section and other applicable provisions of this subpart.

(a) *Limitation of origin.* The mangoes must have been grown on the island of Guimaras, which the Administrator has determined meets the criteria set forth in § 319.56–5 with regard to the mango seed weevil (*Sternochetus mangiferae*).

(b) *Treatment.* The mangoes must be treated for fruit flies of the genus *Bactrocera* with vapor heat under the supervision of an inspector in accordance with the regulations in part 305 of this chapter.

(c) *Inspection.* Mangoes from the Philippines are subject to inspection under the direction of an inspector, either in the Philippines or at the port of first arrival in the United States. Mangoes inspected in the Philippines are subject to reinspection at the port of first arrival in the United States as provided in § 319.56–3.

(d) *Labeling.* Each box of mangoes must be clearly labeled in accordance with § 319.56–5(c)(1).

(e) *Phytosanitary certificate.* Each consignment of mangoes must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains additional declarations stating that the mangoes were grown on the island of Guimaras and have been treated for fruit flies of the genus *Bactrocera* in accordance with paragraph (b) of this section.

(f) *Trust Fund Agreement.* Mangoes that are treated or inspected in the Philippines may be imported into the United States only if the Republic of the Philippines Department of Agriculture (RPDA) has entered into a trust fund agreement with APHIS in accordance with § 319.56–6.

#### § 319.56–34 Clementines from Spain.

Clementines (*Citrus reticulata*) from Spain may only be imported into the United States in accordance with this section and other applicable provisions of this subpart.

(a) *Trust fund agreement.* Clementines from Spain may be imported only if the Government of Spain or its designated representative enters into a trust fund agreement with APHIS before each shipping season in accordance with § 319.56–6.

(b) *Grower registration and agreement.* Persons who produce clementines in Spain for export to the United States must:

(1) Be registered with the Government of Spain; and

(2) Enter into an agreement with the Government of Spain whereby the producer agrees to participate in and follow the Mediterranean fruit fly management program established by the Government of Spain.

(c) *Management program for Mediterranean fruit fly; monitoring.* The Government of Spain's Mediterranean fruit fly (*Ceratitis capitata*) management program must be approved by APHIS, and must contain the fruit fly trapping and recordkeeping requirements specified in this paragraph. The program must also provide that clementine producers must allow APHIS inspectors access to clementine production areas in order to monitor compliance with the Mediterranean fruit fly management program.

(1) *Trapping and control.* In areas where clementines are produced for export to the United States, traps must be placed in Mediterranean fruit fly host plants at least 6 weeks prior to harvest. Bait treatments using malathion, spinosad, or another pesticide that is approved by APHIS and the Government of Spain must be applied in the production areas at the rate specified by Spain's Medfly management program.

(2) *Records.* The Government of Spain or its designated representative must keep records that document the fruit fly trapping and control activities in areas that produce clementines for export to the United States. All trapping and control records kept by the Government of Spain or its designated representative must be made available to APHIS upon request.

(3) *Compliance.* If APHIS determines that an orchard is not operating in compliance with the regulations in this section, it may suspend exports of clementines from that orchard.

(d) *Phytosanitary certificate.* Clementines from Spain must be accompanied by a phytosanitary certificate stating that the fruit meets the conditions of the Government of Spain's Mediterranean fruit fly management program and applicable APHIS regulations.

(e) *Labeling.* Boxes in which clementines are packed must be labeled with a lot number that provides information to identify the orchard where the fruit was grown and the packinghouse where the fruit was packed. The lot number must end with the letters "US." All labeling must be large enough to clearly display the required information and must be located on the outside of the boxes to facilitate inspection.

(f) *Pre-treatment sampling; rates of inspection.* For each consignment of

clementines intended for export to the United States, prior to cold treatment, inspectors will cut and inspect 200 fruit that are randomly selected from throughout the consignment. If inspectors find a single live Mediterranean fruit fly in any stage of development during an inspection, the entire consignment of clementines will be rejected. If a live Mediterranean fruit fly in any stage of development is found in any two lots of fruit from the same orchard during the same shipping season, that orchard will be removed from the export program for the remainder of that shipping season.

(g) *Cold treatment.* Clementines must be cold treated in accordance with part 305 of this chapter. Upon arrival of clementines at a port of entry into the United States, inspectors will examine the cold treatment data for each shipment to ensure that the cold treatment was successfully completed. If the cold treatment has not been successfully completed, the shipment will be held until appropriate remedial actions have been implemented.

(h) *Port of entry sampling.* Clementines imported from Spain are subject to inspection by an inspector at the port of entry into the United States. At the port of first arrival, an inspector will sample and cut clementines from each consignment to detect pest infestation according to sampling rates determined by the Administrator. If a single live Mediterranean fruit fly in any stage of development is found, the consignment will be held until an investigation is completed and appropriate remedial actions have been implemented.

(i) *Suspension of program.* If APHIS determines at any time that the safeguards contained in this section are not protecting against the introduction of Medflies into the United States, APHIS may suspend the importation of clementines and conduct an investigation into the cause of the deficiency.

(j) *Definitions.* The following are definitions for terms used in this section:

*Consignment.* (1) *Untreated fruit.* For untreated fruit, the term means one or more lots (containing no more than a combined total of 200,000 boxes of clementines) that are presented to an inspector for pre-treatment inspection.

(2) *Treated fruit.* For treated fruit, the term means one or more lots of clementines that are imported into the United States on the same conveyance.

*Lot.* For the purposes of this section, a number of units of clementines that are from a common origin (i.e., a single

producer or a homogenous production unit<sup>8</sup>).

*Orchard.* A plot on which clementines are grown that is separately registered in the Spanish Medfly management program.

*Shipping season.* For the purposes of this section, a shipping season is considered to include the period beginning approximately in mid-September and ending approximately in late February of the next calendar year.

#### **§ 319.56–35 Persimmons from the Republic of Korea.**

Persimmons (fruit) (*Disopyros khaki*) may be imported into the United States from the Republic of Korea only in accordance with this section and other applicable provisions of this subpart.

(a) The production site, which is an orchard, where the persimmons are grown must have been inspected at least once during the growing season and before harvest for the following pests: *Conogethes punctiferalis*, *Planococcus kraunhiae*, *Stathmopoda masinissa*, and *Tenuipalpus zhizhilashiviliae*.

(b) After harvest, the persimmons must be inspected by the Republic of Korea's national plant protection organization (NPPO) and found free of the pests listed in paragraph (a) of this section before the persimmons may be shipped to the United States;

(c) Each consignment of persimmons must be accompanied by a phytosanitary certificate issued by the Republic of Korea's NPPO stating that the fruit is free of *Conogethes punctiferalis*, *Planococcus kraunhiae*, *Stathmopoda masinissa*, and *Tenuipalpus zhizhilashiviliae*.

(d) If any of the pests listed in paragraph (a) of this section are detected in an orchard, exports from that orchard will be canceled until the source of infestation is determined and the infestation is eradicated.

#### **§ 319.56–36 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).

<sup>8</sup> A homogeneous production unit is a group of adjacent orchards in Spain that are owned by one or more growers who follow a homogenous production system under the same technical guidance.

(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 319.56–36."

(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.

#### **§ 319.56–37 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. ambigua*, *S. pilleriana*, *S. auriferella*, or *M. fructigena*, and *Nippoptilia vitis*.

**§ 319.56–38 Clementines, mandarins, and tangerines from Chile.**

Clementines (*Citrus reticulata* Blanco var. Clementine), mandarins (*Citrus reticulata* Blanco), and tangerines (*Citrus reticulata* Blanco) may be imported into the United States from Chile only under the following conditions:

(a) The fruit must be accompanied by a permit issued in accordance with § 319.56–3(b).

(b) If the fruit is produced in an area of Chile where Mediterranean fruit fly (*Ceratatis capitata*) is known to occur, the fruit must be cold treated in accordance with part 305 of this chapter. Fruit for which cold treatment is required must be accompanied by documentation indicating that the cold treatment was initiated in Chile (a PPQ Form 203 or its equivalent may be used for this purpose).

(c) The fruit must either be produced and shipped under the systems approach described in paragraph (d) of this section or fumigated in accordance with paragraph (e) of this section.

(d) *Systems approach.* The fruit may be imported without fumigation for *Brevipalpus chilensis* if it meets the following conditions:

(1) *Production site registration.* The production site where the fruit is grown must be registered with the national plant protection organization (NPPO) of Chile. To register, the production site must provide Chile's NPPO with the following information: Production site name, grower, municipality, province, region, area planted to each species, number of plants/hectares/species, and approximate date of harvest. Registration must be renewed annually.

(2) *Low prevalence production site certification.* Between 1 and 30 days prior to harvest, random samples of fruit must be collected from each registered production site under the direction of Chile's NPPO. These samples must undergo a pest detection and evaluation

method as follows: The fruit and pedicels must be washed using a flushing method, placed in a 20 mesh sieve on top of a 200 mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The process must then be repeated. The contents of the sieves must then be placed on a petri dish and analyzed for the presence of live *B. chilensis* mites. If a single live *B. chilensis* mite is found, the production site will not qualify for certification as a low prevalence production site and will be eligible to export fruit to the United States only if the fruit is fumigated in accordance with paragraph (e) of this section. Each production site may have only one opportunity per harvest season to qualify as a low prevalence production site, and certification of low prevalence will be valid for one harvest season only. The NPPO of Chile will present a list of certified production sites to APHIS.

(3) *Post-harvest processing.* After harvest and before packing, the fruit must be washed, rinsed in a chlorine bath, washed with detergent with brushing using bristle rollers, rinsed with a hot water shower with brushing using bristle rollers, predried at room temperature, waxed, and dried with hot air.

(4) *Phytosanitary inspection.* The fruit must be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile after the post-harvest processing. A biometric sample will be drawn and examined from each consignment of fruit, which may represent multiple grower lots from different packing sheds. Clementines, mandarins, or tangerines in any consignment may be shipped to the United States only if the consignment passes inspection as follows:

(i) Fruit presented for inspection must be identified in the shipping documents accompanying each lot of fruit that identify the production site(s) where the fruit was produced and the packing shed(s) where the fruit was processed. This identity must be maintained until the fruit is released for entry into the United States.

(ii) A biometric sample of boxes from each consignment will be selected and the fruit from these boxes will be visually inspected for quarantine pests, and a portion of the fruit will be washed and the collected filtrate will be microscopically examined for *B. chilensis*.

(A) If a single live *B. chilensis* mite is found, the fruit will be eligible for

importation into the United States only if it is fumigated in Chile in accordance with paragraph (e) of this section. The production site will be suspended from the low prevalence certification program and all subsequent lots of fruit from the production site of origin will be required to be fumigated as a condition of entry to the United States for the remainder of the shipping season.

(B) If inspectors find evidence of any other quarantine pest, the fruit in the consignment will remain eligible for importation into the United States only if an authorized treatment for the pest is available in the PPQ Treatment Manual and the entire consignment is treated for the pest in Chile under APHIS supervision.

(iii) Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment meets the conditions of § 319.56–38(d).

(e) *Approved fumigation.*

Clementines, mandarins, and tangerines that do not meet the conditions of paragraph (d) of this section may be imported into the United States if the fruit is fumigated either in Chile or at the port of first arrival in the United States with methyl bromide for *B. chilensis* in accordance with part 305 of this chapter. An APHIS inspector will monitor the fumigation of the fruit and will prescribe such safeguards as may be necessary for unloading, handling, and transportation preparatory to fumigation. The final release of the fruit for entry into the United States will be conditioned upon compliance with prescribed safeguards and required treatment.

(f) *Trust fund agreement.*

Clementines, mandarins, and tangerines may be imported into the United States under this section only if the NPPO of Chile has entered into a trust fund agreement with APHIS in accordance with § 319.56–6.

**§ 319.56–39 Fragrant pears from China.**

Fragrant pears may be imported into the United States from China only under the following conditions:

(a) *Origin, growing, and harvest conditions.* (1) The pears must have been grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization of China.

(2) All propagative material introduced into a registered production site must be certified free of the pests listed in this section by the national plant protection organization of China.

(3) Within 30 days prior to harvest, the national plant protection

organization of China or officials authorized by the national plant protection organization of China must inspect the registered production site for signs of pest infestation and allow APHIS to monitor the inspections. The national plant protection organization of China must provide APHIS with information on pest detections and pest detection practices, and APHIS must approve the pest detection practices.

(4) If any of the quarantine pests listed in this section are found during the pre-harvest inspection or at any other time, the national plant protection organization of China must notify APHIS immediately.

(i) Upon detection of Oriental fruit fly (*Bactrocera dorsalis*), APHIS may reject the lot or consignment and may prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

(ii) Upon detection of peach fruit borer (*Carposina sasaki*), yellow peach moth (*Conogethes punctiferalis*), apple fruit moth (*Cydia inopinata*), Hawthorn spider mite (*Tetranychus viennensis*), red plum maggot (*Cydia funebrana*), brown rot (*Monilinia fructigena*), Asian pear scab (*Venturia nashicola*), pear trellis rust (*Gymnosporangium fuscum*), Asian pear black spot (*Alternaria* spp.), or phylloxera (*Aphanostigma* sp. poss. *jackusiensis*), APHIS may reject the lot or consignment and may prohibit the importation into the United States of fragrant pears from the production site for the season. The exportation to the United States of fragrant pears from the production site may resume in the next growing season if an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken. If any of these pests is detected in more than one registered production site, APHIS may prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

(5) After harvest, the national plant protection organization of China or officials authorized by the national plant protection organization of China must inspect the pears for signs of pest infestation and allow APHIS to monitor the inspections.

(6) Upon detection of large pear borer (*Numonia piovorella*), pear curculio (*Rhynchites fovepessin*), or Japanese

apple curculio (*R. heros*), APHIS may reject the lot or consignment.

(b) Packing requirements. (1) The fragrant pears must be packed in cartons that are labeled in accordance with § 319.56–5(e).

(2) The fragrant pears must be held in a cold storage facility while awaiting export. If fruit from unregistered production sites are stored in the same facility, the fragrant pears must be isolated from that other fruit.

(c) Shipping requirements. (1) The fragrant pears must be shipped in insect-proof containers and all pears must be safeguarded during transport to the United States in a manner that will prevent pest infestation.

(2) The fragrant pears may be imported only under a permit issued by APHIS in accordance with § 319.56–3(b).

(3) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the national plant protection organization of China stating that the conditions of this section have been met and that the shipment has been inspected and found free of the pests listed in this section.

#### § 319.56–40 Peppers from certain Central American countries.

Fresh peppers (*Capsicum* spp.) may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua only under the following conditions:

(a) For peppers of the species *Capsicum annuum*, *Capsicum frutescens*, *Capsicum baccatum*, and *Capsicum chinense* from areas free of Mediterranean fruit fly (Medfly), terms of entry are as follows:

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

(2) A pre-harvest inspection of the growing site must be conducted by the national plant protection organization (NPPO) of the exporting country for the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato yellow mosaic virus, and if these pests are found to be generally infesting the growing site, the NPPO may not allow export from that production site until the NPPO has determined that risk mitigation has been achieved.

(3) The peppers must be packed in insect-proof cartons or containers or covered with insect-proof mesh or

plastic tarpaulin at the packinghouse for transit to the United States. These safeguards must remain intact until arrival in the United States.

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

(b) For peppers of the species *Capsicum annuum*, *Capsicum frutescens*, *Capsicum baccatum*, *Capsicum chinense*, and *Capsicum pubescens* from areas in which Medfly is considered to exist:

(1) The peppers must be grown in approved production sites registered with the NPPO of the exporting country. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO will visit and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

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

(3) Registered sites must contain traps for the detection of Medfly both within and around the production site.

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

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

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

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

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato yellow mosaic virus. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

(4) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Mexfly captures. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS' review.

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

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

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

(c) For peppers of the species *Capsicum pubescens* from areas in which Mexican fruit fly (Mexfly) is considered to exist:

(1) The peppers must be grown in approved production sites registered with the NPPO of the exporting country. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO must visit and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

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

(3) Registered sites must contain traps for the detection of Mexfly both within and around the production site.

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

(ii) If a single Mexfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to ship under the systems approach until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

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

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

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis*, pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana*, Andean potato mottle virus, and tomato yellow mosaic virus. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

(4) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Mexfly captures. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS' review.

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

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

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

#### § 319.75–2 [Amended]

13. In § 319.75–2, footnote 1 would be amended by removing the citation "7 CFR 319.56 *et seq.*" and adding the words "Subpart—Fruits and Vegetables of this part" in its place.

#### PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

14. The authority citation for part 352 would continue to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

15. In § 352.30, paragraphs (e) and (f) would be revised to read as follows:

#### § 352.30 Administrative instructions: Certain oranges, tangerines, and grapefruit from Mexico.

\* \* \* \* \*

(e) *Untreated fruit from certain municipalities in Sonora, Mexico.* Oranges, tangerines, and grapefruit in

transit to foreign countries may be imported from certain municipalities in Sonora, Mexico, that meet the criteria of § 319.56–5 for freedom from fruit flies in accordance with the applicable conditions in part 319 of this chapter.

(f) *Treated fruit.* Oranges, tangerines, and grapefruit from Mexico that have

been treated in Mexico in accordance with part 305 of this chapter may be moved through the United States ports for exportation in accordance with the regulations in part 319 of this chapter.

\* \* \* \* \*

Done in Washington, DC, this 19th day of April 2006.

**Charles D. Lambert,**

*Acting Under Secretary for Marketing and Regulatory Programs.*

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