DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 02–026–4]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables will be required to be treated or meet other special conditions. This action will provide the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables. We are also recognizing areas in several countries as free from certain fruit flies; amending the packing requirements for certain commodities; expanding locations in the northeastern United States where cold treatment can be conducted; updating and clarifying restrictions on the entry of fruits and vegetables; updating and clarifying permit procedures, including amendment, denial, or withdrawal of permits; requiring full disclosure of fruits and vegetables at the port of first arrival and clarifying the conditions under which they may be released for movement; and making other miscellaneous changes.

DATES: This regulation is effective June 25, 2003. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of June 25, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, Senior Import Specialist, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests.

On October 1, 2002, we published a proposed rule in the **Federal Register** (67 FR 61547–61564, Docket No. 02–026–1) to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. We also proposed to make several other amendments to update and clarify the regulations and improve their effectiveness. On November 7, 2002, we published a correction to the proposed rule (67 FR 6799, Docket No. 02–026–2).

We solicited comments concerning our proposal for 60 days ending December 2, 2002. We received 60 comments by that date. They were from growers, packers, shippers, industry and trade representatives, and representatives of State and foreign governments. While 42 commenters wrote to support specific portions of the rule, 18 wrote to express concern or object to some aspect of the proposed rule. These comments are discussed below.

General

Given that certain Animal and Plant Health Inspection Service (APHIS) functions and personnel were moved to the Department of Homeland Security (DHS), one commenter recommended that we delay issuing a final rule based on the proposed rule because a transition period is not an appropriate time to add new responsibilities and procedures. While we are allowing additional fruits and vegetables to be imported into the United States and are making other amendments to update and clarify the regulations and improve their effectiveness, we do not consider these amendments as new responsibilities and procedures. Therefore, we are not delaying this final rule as a result of the transfer of functions to DHS.

In accordance with Executive Order 12988, we included a statement in our proposed rule giving notice that any State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Two commenters objected to this language concerning the preemption of State and local laws. One commenter was concerned that APHIS was imposing mandates upon State and local governments by preempting their authority to restrict entry of fruits and vegetables imported under the regulations, without assuming the full cost of eradication for pests and diseases that may be hitchhiking on these commodities. Both commenters objected to the concept that imported fruits and vegetables are considered in foreign commerce until sold to the ultimate consumer.

One of the requirements under Executive Order 12988 is that a Federal agency specify in clear language the preemptive effect it believes will be given to its regulations. Preemption in foreign commerce is specifically addressed in § 436(a) of the Plant Protection Act (7 U.S.C. 7756(a)), which states that ''[n]o State or political subdivision of a State may regulate in foreign commerce any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order—(1) To control a plant pest or noxious weed; (2) to eradicate a plant pest or noxious weed; or (3) prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed.'' When foreign commerce ceases is a question of fact that must be addressed in each individual case. However, the Department of Agriculture has taken the position that fresh fruits and vegetables imported into the United States for immediate distribution and sale remain in foreign commerce until they are sold to the ultimate consumer. Other questions regarding when foreign commerce ceases must be addressed on a case-by-case basis and will be resolved based on the facts in each particular case.

One commenter recommended that the economic analysis address, in detail, the economic effects of domestic infestation that could occur under the proposed regulations. APHIS conducts economic analyses for import-related rulemaking using the assumption that the importation of a particular commodity will not result in the introduction of pests or diseases; indeed, the prevention of such introductions is a primary goal of those rulemakings. APHIS does, however, routinely attempt to quantify, to the extent possible, the size (in dollar terms) of the domestic industry that stands to be affected by a rulemaking. The introduction of a pest or disease would likely be detrimental to the economic health of that domestic industry, as well as related industries. However, without some indication as to the actual or likely scope of a pest or disease outbreak, any estimate of losses would have to range from somewhere above zero to 100 percent. Further, if we had a sense that an outbreak was likely, we would not promulgate the rule.

Another commenter stated that APHIS' relaxation of U.S. standards, while foreign trading partners continue to strengthen their opposition to similar standards, is multiplying the economic harm to American agricultural interests and amounts to ''unilateral agricultural disarmament'' in the international trade arena. Our regulations are based on pest risk assessments, survey data, and other science-based considerations. We analyze each amendment to the regulations concerning the admissibility of specific fruits and vegetables, and fruits and vegetables in general, independent of foreign export agreements. The amendments to the regulations in this rule are not a relaxation of our standards.

One commenter asked us to assure U.S. agricultural industries that the proposed amendments will not lessen the sanitary and phytosanitary standards of protection afforded to U.S. fruits and vegetables against infestation or disease from imports.

A major responsibility of the U.S. Department of Agriculture (the Department) is preventing the introduction and spread of plant pests; indeed, the Plant Protection Act requires the Department to carry out this responsibility. APHIS is responsible for implementing the regulations that carry out the intent of the Plant Protection Act. As part of this responsibility, we ensure that our resources are adequate to carry out our day-to-day functions such as verifying that agricultural commodities meet U.S. phytosanitary entry requirements at ports of entry and working with our cooperators to conduct plant pest surveys and eradication programs when necessary.

The amendments we are making to the regulations in this rule are not a reduction of sanitary and phytosanitary standards of protection. The amendments either strengthen or clarify the protection that the regulations provide. For instance, the amended packaging requirements for tomatoes from Spain, France, Morocco, and Chile will strengthen that protection by requiring that packaging safeguards remain intact upon arrival in the United States. Further, as discussed below, removing the criterion of ''without risk'' is intended to clarify the regulations to make them consistent with sound science.

Removing the ''Without Risk'' Criterion

Several commenters disagreed with our proposal to remove the ''without risk'' criterion from the regulations in § 319.56–2(e)(3) and (e)(4) that specify that certain fruits and vegetables may be imported from a definite area or district if that area or district is free of all or certain injurious insects (referred to elsewhere as pest-free areas) and the importation of the fruits and vegetables can be authorized ''without risk.''

One concern commenters expressed with the removal of the ''without risk'' criterion from the regulations is that this amendment will broaden APHIS' discretion without adequately ensuring that the phytosanitary security of our borders will be fully maintained. Several commenters were concerned that this amendment would allow trade or political issues to take precedence over the protection of U.S. agriculture.

Because the removal of the ''without risk'' criterion from the regulations is merely an administrative action to remove an impractical criterion, its removal will not affect APHIS' discretion or our responsibility to guard against the introduction of pests. This change will not affect the purpose of our regulations—to protect the United States from the introduction or spread of plant pests—nor will it cause trade or political issues to take precedence over our responsibility. Further, the regulations in § 319.56–6 provide APHIS with discretion to refuse entry, require treatment, or require destruction of shipments of fruits and vegetables. In this rule, we are strengthening this requirement by specifying that imported fruits and vegetables must be fully disclosed at the port of first arrival.

Another concern raised by commenters was that commodities such as citrus from South Africa and Australia are currently being imported into the United States under the criterion of ''without risk'' and therefore our removal of that criterion would be misleading. We believe that this comment reinforces the need to remove the ''without risk'' criterion because it indicates that we need to clarify our regulations—no fresh agricultural commodity may be imported ''without risk.'' While the regulations prescribe inspection and, in some cases, as with citrus from South Africa and Australia, provide additional safeguards to reduce risk and guard against the introduction of quarantine pests, risk cannot be completely eliminated. The International Plant Protection Convention (IPPC) of the United Nations' Food and Agriculture Organization addresses this issue in the International Standards for Phytosanitary Measures (ISPM) No. 1, ''Principles of Plant Quarantine as Related to International Trade.'' The specific principle for managed risk states that ''because some risk of the introduction of a quarantine pest always exists, countries shall agree to a policy of risk management when formulating phytosanitary measures.'' Thus the fact that some risk does exist is an internationally recognized principle.

One commenter stated that the ''without risk'' language should not be changed because such a change is not specifically mandated in the Plant Protection Act and is contrary to § 412 (7 U.S.C. 7712) of the Act. Instead, this commenter stated, retaining the ''without risk'' criterion grants the appropriate importance to APHIS' mandate to protect U.S. agriculture from quarantine pests that could cause substantial economic loss and other devastation to U.S. agriculture.

While the Plant Protection Act did not expressly direct the Department to remove the ''without risk'' criterion from the regulations, we disagree that the removal of the language is contrary to the Plant Protection Act. In fact, in its findings accompanying the Plant Protection Act, Congress stated in § 402(3) (7 U.S.C. 7701(3)) that ''it is the responsibility of the Secretary to facilitate exports, imports, and interstate commerce in agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce, to the extent practicable, as determined by the Secretary, the risk of dissemination of plant pests or noxious weeds.'' Given that the Act directs the Secretary to reduce risk ''to the extent practicable''—and not to zero—we believe that removing the impractical and unrealistic ''without risk'' criterion from the regulations is consistent with the intent of Congress as expressed in the Plant Protection Act.

One commenter stated that omitting a definition of acceptable risk would lead to a regulatory process that will be less based on sound science and that APHIS is seeking to avoid defining what ''without significant risk'' means for future importations. Further, commenters voiced concern that we are not replacing the ''without risk'' criterion with a standard that indicates an acceptable level of risk. It is APHIS' belief, which is based on sound science, that it is not appropriate to define an acceptable level of risk for all future imports. The risks associated with importations of fruits and vegetables vary depending upon the pest-commodity-origin complex. Further, the Plant Protection Act does not define the term ''acceptable level of risk'' or require the Secretary to define it, nor does the Plant Protection Act require the Secretary to prohibit imports unless he or she can conclude that there is zero risk of pest introduction. Instead, the Act gives the Secretary discretion to

allow imports where he or she can conclude that the restrictions imposed will prevent the introduction of a pest. In deciding whether to allow imports, the Secretary weighs a variety of factors that could include whether the pest attacks a single commodity or multiple commodities, reliability of the data on which the risk of establishment projections are based, and the feasibility of proposed mitigation measures.

The lack of a specific standard for an acceptable risk level will not lead to a regulatory process that will be less transparent or establish a system that is easily changed by outside parties as one commenter indicated. Removing the ''without risk'' criterion will not affect the rulemaking process. Any changes to the regulations will continue to be made using notice and comment rulemaking, which helps to ensure transparency. Further, the lack of a specific standard for an acceptable level of risk will not lead to a system that is easily changed by outside parties as we will continue to base our decisions on sound science.

One commenter linked the failure to address the standard of phytosanitary security to additional costs (*i.e.*, above those indicated in the proposed rule) associated with a Mediterranean fruit fly (*Ceratitis capitata*) (Medfly) outbreak. As stated in the proposed rule, we are removing the ''without risk'' criterion because it is impossible to satisfy. Therefore, no additional costs due to a Medfly outbreak would be associated with this change in the regulations.

Another commenter stated that we should establish acceptable levels of risk based on the outcome of a case concerning the importation of citrus from Argentina, *Harlan Land Company,* et al. vs. *United States Department of Agriculture,* et al., Case #CV–F–00–6106–REC/LJO (D. Ariz. Sept. 27, 2001). APHIS believes that the court's decision applies strictly to the rule at issue in that case and does not apply to this rule.

One commenter stated that the ''without risk'' criterion protects the environment in that if a foreign pest outbreak occurred and the pest became established in the United States, the environment would be compromised due to pesticide spraying and other pest control methods. Although eradication of quarantine pests may require the use of pesticides and other control methods, removing the ''without risk'' criterion does not have the potential to harm the environment. The ''without risk'' criterion is impractical, and its removal will not have any impact on the environment. In the event of an outbreak, APHIS would continue to prepare any necessary environmental documentation under the National Environmental Policy Act and the Endangered Species Act in advance of any pesticide use and other pest control methods.

Two commenters voiced concern that we were proposing to replace the ''without risk'' criterion with the IPPC standard pertaining to pest-free areas, but this was not our intent. As stated in the proposed rule, we are removing the ''without risk'' criterion from § 319–56–2(e)(3) and (e)(4) because it is impossible to satisfy that requirement. We are not replacing the criterion with either a definition of acceptable risk or with the IPPC standard for pest-free areas. We proposed to adopt ISPM No. 4, ''Requirements for the establishment of pest free areas,'' as a replacement for the specific criteria for area freedom in § 319.56–2(f). While ISPM No. 4 specifies that one of the considerations in establishing a pest-free area is the ''level of phytosanitary security required as related to the assessed level of risk, according to the pest risk analysis conducted,'' this is not a deviation from our current practice of conducting a pest risk analysis for commodities not previously approved for importation.

Incorporation by Reference of Standard for Establishment of Pest-free Areas

We proposed to replace the specific criteria in § 319.56–2(f) for pest-free areas with the ISPM No. 4, ''Requirements for the establishment of pest-free areas,'' which would be incorporated by reference into the regulations.

One commenter claimed our statement that ''[w]e believe that incorporating this standard by reference into our regulations would prevent the introduction of quarantine pests into the United States and provide requirements that are consistent with the IPPC'' is unrealistic because the standard could not completely eliminate the risk of introducing pests. The commenter is correct that our adoption of the standard by itself would not eliminate the risk of introducing pests. The standard describes requirements for the establishment and use of pest free areas as a risk management option for phytosanitary certification, and our intent was to communicate our belief that using the standard to determine the pest-free status of an area would provide us with an effective risk management tool that, more so than our existing criteria for the establishment of pest-free areas that have been found in § 319.56–2(f), is consistent with internationally recognized standards.

One commenter opposed the use of the IPPC standard because it appears that APHIS is proposing to supercede the Federal government's rulemaking authority with blanket approval for the IPPC to determine U.S. sanitary and phytosanitary standards. According to the commenter, this change could result in deferring the establishment of risk criteria to an international body, which could be arbitrary and capricious and lack transparency and accountability, as well as be an abuse of discretion. Another commenter who disagreed with using the IPPC standard objected on the grounds that we would be abdicating our responsibilities to an international group that would not always be controlled by the best science.

In making this amendment to the regulations, we are not abdicating our rulemaking authority or responsibilities to the IPPC, nor are we deferring our establishment of risk criteria to that body. Any decision made regarding the pest-free status of an area in the context of our import requirements will continue to be made by APHIS, just as has been the case under the provisions of § 319.56–2(f) that ISPM No. 4 will replace. It is important to note that incorporating ISPM No. 4 by reference has the effect of making that standard, in its current form (*i.e.*, the February 1996 version made available for review with the proposed rule), part of our own regulations. Because of that, we would have to initiate rulemaking to update the incorporation by reference—thus giving the public an opportunity to review and comment upon any changes that had been made to the standard—before any future changes that might be made by the IPPC to that 1996 version of ISPM No. 4 could become part of our regulations.

With respect to the issue of transparency raised by one of the commenters, we believe that our incorporation by reference of ISPM No. 4 will make our regulations more, and not less, transparent. The criteria in § 319.56–2(f) that we have used for recognizing pest-free areas make reference to surveys performed in accordance with requirements approved by the Administrator and phytosanitary requirements deemed by the Administrator to be at least equivalent to our own, but do not provide specific details regarding those survey and phytosanitary requirements. ISPM No. 4, on the other hand, provides both general and specific requirements for determination of pest-free areas, establishment and maintenance of pest-free areas, systems to establish freedom, phytosanitary measures to maintain freedom, checks to verify freedom has been maintained, and documentation and review.

Another commenter partly supported the reference to the IPPC standard but was concerned that stating that a country's program meets the requirements of the standard for a pest-free area is not entirely transparent. The standards are written broadly, and measures such as ad hoc monitoring, general surveillance, and specific surveillance vary from situation to situation. Only measures specifically applied to the identified pest risk should be used to support a statement that the appropriate level of protection has been attained.

We agree that the standards used to determine whether an area is pest free will vary. When we evaluate whether an area is pest free, we consider and apply the appropriate measures. We believe that the survey, data, research, pest risk assessment, and other elements that must be addressed under ISPM No. 4, which must be approved in each particular case by APHIS and which will be made available to the public for review before we make a final determination as to an area's pest free status, will provide for a transparent decisionmaking process and will ensure that measures specifically applied to the identified pest risks will be used to support our determinations.

Another concern expressed by a commenter was that incorporating this standard by reference would result in surrendering the survey for pests to the country of origin. Incorporating the IPPC standard for pest-free areas into the regulations will not affect the way that we approve pest surveys in the country of origin. Agricultural authorities in the country where the area is located will continue to conduct the surveys as they have done in the past, and the surveys will continue to be performed according to procedures approved by APHIS. Given that we will continue to approve the survey methodology and resulting data prior to determining whether an area is indeed pest free, APHIS' role in ensuring that the surveys are valid and meet the requirements of the regulations will not be affected by this amendment to the regulations.

One commenter voiced concern that adopting the IPPC standard could be a prelude to establishing low prevalence pest areas that would be totally governed by the IPPC. We will not use this standard to establish low prevalence pest areas, let alone such areas that would be totally governed by the IPPC. The scope of ISPM No. 4 does not provide for the recognition of low prevalence pest areas; it is limited to the requirements for pest-free areas, which the standard defines, in part, as ''an area in which a specific pest does not occur. * * *

One commenter suggested that we change the proposed language incorporating the IPPC standard by reference so that pest-free areas would not have to be added to our regulations through rulemaking before imports could be allowed from such areas. Specifically, he recommended that the Administrator of APHIS authorize administratively the importation of a fruit or vegetable under § 319.56–2(e)(3) or (4), whenever he or she determines that the fruit or vegetable is being imported from an area that satisfies the requirements of ISPM No. 4 for recognition as a pest-free area with respect to the pests of concern for that fruit or vegetable. We are considering the suggestion, and if we determine that making that change would be appropriate, we will propose it in a separate document published in the **Federal Register** for comment.

In this final rule, we are not making any changes based on the comments received on incorporation by reference of ISPM No. 4. However, we are making two editorial changes. First, we are clarifying that the Administrator must determine that the area is free of the pest or pests in accordance with the criteria for establishing freedom found in ISPM No. 4. In the proposed rule, we stated that ISPM specifies *requirements* for an area to meet; however, *criteria* are actually specified. Second, we are retaining the paragraph in the regulations that states that ''[w]hen used to authorize importation under § 319.56–2(e)(3), the criteria must be applied to all injurious insects that attack the fruit or vegetable; when used to authorize importation under § 319.56–2(e)(4), the criteria must be applied to those particular injurious insects from which the area or district is to be considered free.'' As proposed, that paragraph would have been removed, but we believe retaining that paragraph is necessary to specify how the criteria are applied to a definite area or district in the country of origin that is free from all injurious insects that attack the fruit or vegetable (§ 319.56–2(e)(3)) or is free from certain injurious insects that attack the fruit or vegetable (§ 319.56–2(e)(4)).

Rambutan From Central America and Mexico

We proposed to amend § 319.56–2t to allow the importation of rambutan from Central America and Mexico. One commenter supported the importation of rambutan from Central American countries but questioned whether cold treatment or other treatment of rambutan was required. If treatment is required, the commenter stated, electrification, irradiation, vapor, hot water, or fumigation treatments would be preferable to cold treatment. Rambutan from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Panama will be eligible to be imported under § 319.56–2t, which lists fruits and vegetables for which treatment is not a condition of entry. However, under § 319.56–6, rambutan, like any fruit or vegetable, may be subject to treatment if the inspector finds a pest of concern during inspection at the port of first arrival and determines that treatment is necessary. If a quarantine pest were to be found, an inspector would determine what action to take, including treatment, reexportation, or destruction of the shipment.

Another commenter requested more studies to support the importation of rambutan from Central America and Mexico. The commenter stated that fruit cutting for two seasons and the reliance on interceptions in passenger baggage and other information on which APHIS' decision was based are insufficient evidence that rambutan is not a fruit fly host in Central America and Mexico.

We believe that the evidence presented in the pest risk assessment is sufficient to support our decision to allow the importation of rambutan from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Panama. The research indicates that fruit flies that occur in Central America and Mexico are not likely to follow the pathway on undamaged rambutan fruit, and they are not reported as pests of rambutan in these regions. In the field study in which 47,188 fruits of 10 varieties were cut over two seasons, no Medfly was found. Another study that was conducted under laboratory conditions indicates that the Medfly was able to oviposit, but with very low pupation rate, in damaged fruit.[1] Therefore, we are requiring that the country of origin's national plant protection organization (NPPO) declare on the phytosanitary certificate that they have supervised the removal of all damaged fruit from the shipment prior to export to the United States. An additional study in Hawaii, which is not cited in the pest risk assessment, showed that Medfly could not successfully oviposit on rambutan

[1] Vasques, L.A. 2000. Evaluation of rambutan *Nephelium lappaceum* L. as a host of three species of fruit flies: *Ceratitis capita* Weidemann, *Anastrepha ludens* Loew, and *Anastrepha obliqua* Macquart, in Honduras Department of Plant Protection, Honduran Foundation Agriculture Research, FHIA, report submitted to USDA, APHIS.

under forced infestation experiments under controlled laboratory conditions.[2] Another consideration is that there is no valid report or other evidence that this fruit is a host of either Medfly or fruit flies of the genus *Anastrepha* under field conditions.

One commenter supported the importation of rambutan as well as other commodities from Honduras. He reported that Honduras would export approximately 1,500 metric tons of rambutan from the estimated 250 hectares of rambutan that will be in production in 2003. He also reported that there are more than 125 growers of rambutan in Honduras. We will include this information in the final regulatory flexibility analysis for this rule.

Fennel From El Salvador, Guatemala, and Nicaragua

We proposed to amend § 319.56–2t to allow the importation of fennel from El Salvador, Guatemala, and Nicaragua. Commenters indicated that imports of fennel would harm U.S. fennel producers. The commenters reported that fennel is grown in California and Arizona in sufficient quantities to meet the demand for commercial fennel. Commenters also objected to the use of fennel seed data in the economic analysis instead of data for fennel leaves and stems and provided production data for two of the four California counties in which they stated fennel is produced.

We have included information provided by the commenters regarding domestic fennel production in this rule's final regulatory flexibility analysis. We were unable to find supporting or additional data, which could be because this commodity is a specialty crop. We have removed the data on imports of fennel seed from El Salvador from the final regulatory flexibility analysis because they do not apply to the importation of fennel leaves and stems. We also address effects on domestic producers in the final regulatory flexibility analysis.

Several commenters objected to the importation of fennel into the United States from El Salvador, Guatemala, Honduras, and Nicaragua based on their dissatisfaction with the pest risk assessment. The commenters voiced concern that the pest risk assessment contained insufficient detail concerning research conducted to identify all potential pests. Commenters questioned whether *Agrotis segetum* is limited only to Honduras as reported in the pest risk assessment.

We would like to point out that while the pest risk assessment was conducted to examine the pest risk associated with the importation of fennel from El Salvador, Guatemala, Honduras, and Nicaragua, we proposed to allow the importation of fennel from only three of those countries—El Salvador, Guatemala, and Nicaragua.

The research conducted for the pest risk assessment was complete and thorough. We conducted an exhaustive search of literature and reviewed our historical plant pest database and interception information. In addition to the literature sources cited in the pest risk assessment, we consulted more than 135 other sources. One of those sources, the Government of Honduras, indicated that *A. segetum* is present in Honduras. *A. segetum* is a quarantine pest that the pest risk assessment identified as likely to follow the pathway. After considering the pest risk assessment and available mitigation measures for that quarantine pest, we determined that fennel from Honduras could not be proposed for importation into the United States. However, *A. segetum* was not listed in the sources consulted as occurring in El Salvador, Guatemala, or Nicaragua.

Some of the commenters voiced concerns that an interception from Guatemala of Lepidoptera species was not analyzed, referring to the note in the pest risk assessment that the absence of taxonomic information at the species level makes biological evaluations difficult. The interception of the Lepidoptera species was not further analyzed in the pest risk assessment as it was a single occurrence that was intercepted in fennel from Guatemala in 1996 with an inconclusive determination of quarantine status.

Several commenters were concerned about pests that were identified in the pest risk assessment as likely to follow the pathway. Table 2 of the pest risk assessment lists pests of fennel in El Salvador, Guatemala, Honduras, and Nicaragua that have been reported in scientific and regulatory literature. While table 2 lists 12 pests that are known to occur in these 4 Central American countries, only 1 of the 12 is a quarantine pest—*A. segetum.* Even though 11 of the pests were identified as likely to follow the pathway, we do not consider them quarantine pests because they are established in the United States. Under § 319.56–6, all imported fruits and vegetables, as a condition of entry into the United States, must be inspected; they are also subject to disinfection at the port of first arrival if an inspector requires it. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with plant pests that an inspector determines that it cannot be cleaned or treated.

Several commenters recommended that the exporting country must prove that it has a system in place to ensure that pests are not transported in fennel shipments, rather than relying on APHIS inspections at the port of entry, because they are concerned that there are no indications that inspections are sufficient to prevent an infested shipment from entering the United States.

APHIS successfully uses inspection at the point of entry as the only phytosanitary measure needed to mitigate the pest risk posed by several commodities from various countries. Inspectors are trained to find pests in agricultural commodities. In 2002, APHIS inspectors intercepted 68,556 quarantine pests, and it is estimated that an equal number of nonquarantine pests were intercepted. As discussed above, no quarantine pests were identified in the pest risk assessment as occurring in fennel from El Salvador, Guatemala, and Nicaragua. Therefore, inspection at the port of entry mitigates the pest risk posed by the importation of fennel from El Salvador, Guatemala, and Nicaragua.

Several commenters expressed concern that the pest risk assessment did not address the impact on U.S. growers should any pest be introduced. The pest risk assessment is consistent with the guidance provided by the North American Plant Protection Organization (NAPPO), the IPPC, and APHIS' Guidelines for Pathway-Initiated Pest Risk Assessments. The pest risk assessment examined pest risk associated with the importation into the United States of fresh leaves and stems of fennel from El Salvador, Guatemala, Honduras, and Nicaragua. Risk of introduction of pests was evaluated in qualitative terms of high, medium, and low. One of the risk elements that we considered in determining the consequences of introduction for *A. segetum* was the economic impact. As shown in table 3 of the pest risk assessment, we rated the economic impact of such an introduction as high.

Peppers From Israel

We proposed to amend § 319.56–2u to require that insect-proof containers remain intact during transit and be intact upon arrival in the United States. We also proposed an alternative packaging method of covering non-insect-proof boxes with insect-proof

[2] Phillips, Thomas W. 1998. Quarantine Hot Air Treatment for Hawaiian-Grown Rambutan, *Nephelium lappaceum*, To Disinfest the Fruit Flies *Bactrocera dorsalis* and *Ceratitis capitata*, USDA, Agricultural Research Service, report submitted to USDA, APHIS.

mesh or plastic tarpaulins that would then be placed inside a shipping container. We also proposed that, if the peppers were shipped through an area that was not a fruit-fly free area, the Israeli national plant protection organization would have to secure the shipping containers with a numbered seal, which would be required to remain intact until arrival in the United States.

One commenter objected to the proposed requirement that shipping containers remain sealed and intact until peppers from Israel arrive in the United States. The commenter relayed that the shipping containers transit Europe, where the shipping containers are opened to rearrange the boxes during transport to the United States. Thus the proposed seal on shipping containers transiting fruit-fly areas would not remain intact during transit from Israel to the United States.

The purpose of the packaging safeguards is to ensure that peppers shipped from Israel to the United States are protected from pests during all phases of their movement from the approved screenhouses. Our proposed requirements that the peppers be packed in either individual insect-proof cartons or in non-insect-proof cartons that are covered by insect-proof mesh or plastic tarpaulins that must arrive intact in the United States will remain unchanged. We are, however, removing the requirement that the shipping containers be sealed. Because the shipping containers are opened and the insect-proof cartons of peppers within the shipping container are transferred to another shipping container, we agree that the proposed requirements that shipping containers remain sealed at all times during the movement of peppers to the United States and that the seal be intact upon the arrival of the peppers in the United States are not feasible. Further, we believe that the certification on the phytosanitary certificate that the requirements of the regulations have been met, coupled with the requirement that the insect-proof packaging remain intact until the arrival of the peppers in the United States, will be adequate in protecting shipments of peppers from Israel from the infestation by pests during transport.

Yellow Pitaya From Colombia

We proposed to amend § 319.56–2x to allow the importation of yellow pitaya from Colombia. We specified that yellow pitaya would have to undergo vapor heat treatment for the Medfly and the South American fruit fly, *Anastrepha fraterculus*, in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference in 7 CFR 300.1.

We received four comments opposing the importation of yellow pitaya from Colombia into the United States. The commenters stated that the pest risk assessment is inadequate because it does not thoroughly evaluate pests of concern. Commenters indicated that the pest risk assessment should consider pests of the stem and root in addition to pests of the fruit because portions of the stem and root would accompany the fruit during shipment. Specific pests of concern provided in the comments are *Fusarium* and *Droxlera* spp. One commenter was concerned that the pest risk assessment overlooked a biotype of *Fusarium oxysporum* that is in Colombia but not present in the United States and that could affect U.S.-grown pitaya fruit as well as other cactus species.

We did not consider pests of the stem and root in the pest risk assessment because stem and root portions will not accompany the yellow pitaya fruit during shipment from Colombia to the United States. In Colombia, commercially produced fruit of yellow pitaya are harvested and shipped without attached stem or root portions. We conducted a thorough search of worldwide literature and did not find mention of ''*Droxlera* spp.'' or any published reports of a biotype of *F. oxysporum* that is present in Colombia but not present in the United States. As indicated in the pest risk assessment, *F. oxysporum* is a pathogen of yellow pitaya in Colombia, but because it is also present in the United States and not under official control, it is not considered a quarantine pest.

Commenters noted the drastic decline in surface area planted to pitaya in Colombia between 1990 and 1996 reported in the document ''Vapor heat treatment for pitaya fruit infested with eggs and larvae of Mediterranean fruit fly.'' Colombia reported 1,016.95 ha of pitaya in 1990, and in 1996, there was only 255.4 ha. They stated that Dr. Yosef Mizrahi of Israel reported that a strain of *Fusarium oxysporum* as well as another fruit fungus (which commenters stated might be *Droxlera* spp.) were responsible for this loss of production area. They also stated that Dr. Mizrahi has advised all U.S. researchers and producers of pitaya to not import any plant material of pitaya from Colombia to the United States for fear of transmitting these diseases.

We disagree that the decline in yellow pitaya was attributed to *Fusarium oxysporum* or another fruit fungus. The decline in acreage planted to yellow pitaya in Colombia from 1990–1996 is directly related to the cessation of shipments of commercial yellow pitaya fruit from Colombia to Japan. In 1989, Medfly was found to be associated with Colombian yellow pitaya fruit and exports to Japan were halted.[3] In the late 1990s, Japan and Colombia cooperated in the development of a successful vapor heat treatment for fruit flies in yellow pitaya. In 2000, Colombia resumed shipment of yellow pitaya fruit to Japan and successfully shipped 14.2 tons of vapor-heat-treated fruit to Japan between February and April 2000.

One commenter pointed out that, according to the pest risk assessment, action may be taken and further risk assessment may be conducted for certain pests if those pests are found in shipments of yellow pitaya. The commenter stated that APHIS must take the appropriate steps prior to allowing the importation rather than after the shipment arrives in the United States. Another concern was that some of the pests that were not further analyzed in the pest risk assessment were eliminated from consideration for reasons other than research evidence.

Shipments are subject to inspection at the port of entry and will be denied entry if pests of concern are intercepted. We do investigate pest problems associated with commodities in their countries of origin during our pest risk assessments. Our current method of performing pest risk assessments is to do an exhaustive search of literature and review our historical plant pest database and interception information. When available, we also use information from other sources, and occasionally conduct onsite investigations in proposed export areas. The pest risk assessments are science-based and largely dependent upon literature on plant pest problems in countries of origin. This literature is primarily investigative findings published by scientists. Our experience has shown that if a pest causes damage to an economic crop, the scientific community investigates the pest's biology and extent of pest damage in prescribing remedial actions.

Another concern raised by commenters was that APHIS' approval for the importation of yellow pitaya from Colombia would be based on the mitigation provided by a vapor heat treatment for Medfly, but that the pest risk assessment does not address the protection mechanisms against the other pests. In addition, some commenters stated that the pest risk assessment is

[3] ACCI. 2002. Cooperation con Japan: Pitahaya de Exportacion. Reportajes Agencia Colombiana de Cooperacion International (ACCI). Nota publicada en el boletin No. 7-Julio de 2000.

not definitive enough when stating that the vapor heat treatment may have mitigating effects on surface pests. One commenter argued that the use of the words ''may,'' ''likely,'' and ''unlikely'' in the pest risk assessment demonstrates a lack of a thorough risk assessment and that stating that it is ''very unlikely'' for a pest to remain with the imported fruit is unacceptable.

Our pest risk assessment was conducted in accordance with NAPPO and IPPC guidelines, which are referenced in our pest risk assessment. ISPM No. 11, ''Guidelines for Pest Risk Analysis for Quarantine Pests,'' describes three stages of pest risk analysis: Initiation, risk assessment, and risk management. The pest risk assessment for yellow pitaya from Colombia satisfies the requirements for the first two stages, initiation and risk assessment, by determining if a pest is a quarantine pest and evaluating the risk associated with its introduction via pitaya imported from Colombia. The pest risk assessment is qualitative, where risk is expressed in descriptive terms (high, medium, and low), rather than quantitative, where risk would be expressed in probabilities or frequencies. In addition to reflecting a qualitative risk assessment, our use of terms, such as ''may'' and ''likely'' reflects the fact that we cannot completely eliminate risk. Using more absolute terms, such as ''will'' and ''definitely,'' would be inaccurate. The pest risk management stage is not part of the pest risk assessment document that we prepared.

Pest risk management involves the process of reducing the risk of introduction of a quarantine pest and leads to a decision of whether to allow the importation of the commodity, and under what conditions. The conditions for pest risk management for imports of yellow pitaya fruit from Colombia were provided in the proposed rule. The risk management approach used to kill the internal feeders—*Anastrepha fraterculus* and the Medfly—is the vapor heat treatment. The risk management approach for external pests is inspection. We believe that the risks will be managed through inspection and treatment. In addition, in accordance with § 319.56–6, an inspector may refuse entry of a shipment that is contaminated with plant pests, soil, or other contaminants.

One commenter expressed concern that pesticides used on the pitaya crop in Colombia would not be allowed on similar fruit in the United States. The U.S. Food and Drug Administration (FDA) samples and tests imported fruits and vegetables for pesticide residues. If residue from a pesticide that is not approved in the United States is found, the FDA will deny the shipment's entry into the United States.

The commenter also disagreed with the statement in the pest risk assessment that the pesticides used on pitaya in Colombia would mitigate the pest risks. He questioned whether evidence exists that Colombia would administer the pesticides to all shipments of pitaya.

Colombia is a major producer of yellow pitaya and successfully exports fresh yellow pitaya fruit to dozens of countries. While any pesticides applied may help manage the risk of external pests, the risk management approach used for external pests is inspection. As discussed above, however, an inspector may refuse entry of a shipment if it is infested.

Citrus From Australia

We proposed to amend § 319.56–2v to add specific geographic areas to that section's list of areas in Australia from which citrus may be imported. One commenter recommended that we distinguish the Parish of Onley in the Shire of Mildura, Victoria, from the geographic subdivisions called ''hundreds.'' As the Parish of Onley is not one of the hundreds, we have changed § 319.56–2v(a)(1) in this final rule to distinguish the Parish of Onley from the listed hundreds. Data were submitted showing that the Parish of Onley and the additional hundreds meet the criteria for pest-free areas.

Another commenter stated that APHIS is proposing to allow new Australian production areas to export citrus to the United States but does not define its process for overseeing the continued freedom of those production areas from quarantine pests and diseases. Before a country conducts a survey, APHIS approves the survey protocol used to determine pest-free status. Once a free area is established, APHIS verifies that the area remains pest free. In addition to notification from the country concerning the maintenance of pest-free areas, we have several methods to verify that an area remains pest free. APHIS personnel are stationed overseas to evaluate the effectiveness of the survey and regulatory programs that the country of origin uses to maintain the pest-free areas. Another method is through agriculture inspection at the port of entry, as any findings of quarantine pests could indicate that an area is no longer a pest-free area. In the case of citrus from Australia, the regulations provide that in the event that surveys detect quarantine pests in the designated free areas, the citrus could be cold treated, if a treatment is available for the pest of concern, and remain eligible for importation into the United States.

The commenter correctly indicated that we do not define the process or our role in verifying the status of pest-free areas. Therefore, we are amending § 319.56–2(f) by stating that APHIS must approve the survey protocol used to determine pest-free status, and pest-free areas are subject to audit by APHIS to verify their status.

A commenter stated that APHIS is rewarding Australian producers with increased U.S. market access at the same time that Australia is dramatically restricting American growers from exporting to Australia. Our proposal and decision to allow imports of citrus from additional areas in Australia were based on data that indicated that the areas are free of destructive fruit flies.

One commenter correctly indicated that the value of citrus that Australia exported was underreported in the initial regulatory flexibility analysis at $37,000. We will adjust the final regulatory flexibility analysis to show $108.7 million as the value of Australian citrus exports for 2001.

Tomatoes

We proposed to amend § 319.56–2dd to allow the importation of tomatoes from Australia. We specified certain phytosanitary conditions under which the importation would be allowed to manage the risks presented by several species of fruit flies, loopers, worms, and caterpillars. One commenter recommended specific changes to these phytosanitary requirements.

First, the commenter recommended removing the requirement that McPhail traps be used and replacing that requirement with ''fruit fly traps of an approved type'' because specifying the type of fruit-fly trap is too restrictive. In response to this comment, we are removing the specification in § 319.56–2dd(e)(2) that the fruit-fly traps be McPhail traps and specifying instead that the traps be APHIS approved. As long as the regulations require the use of an APHIS-approved fruit-fly trap, phytosanitary security will not be affected.

Second, the commenter recommended rephrasing the wording used for the rate that fruit-fly traps must be set. The proposed rule stated that ''in all areas outside of the greenhouse and within 8 kilometers of the greenhouse, fruit-fly traps must be placed at the rate of at least four per square kilometer.'' The commenter reported that the current trapping grid in production areas in the fruit fly exclusion zone is based on a 1 km grid with a trap set at each corner

and recommended changing the wording concerning the placement of the traps to say ''placed on a 1 kilometer grid.'' Because this change in trap placement would not compromise the detection of any fruit flies in the area and will more accurately reflect trap placement, we are making this change in § 319.56–2dd(e)(2).

Third, the commenter recommended that the proposed requirement stating that ''outside of a registered greenhouse, if one fruit fly of any type is found within 2 kilometers, trap density and frequency of trap inspection must be increased to detect a reproducing colony'' be changed to ''outside of a registered greenhouse, if one fruit fly of the types specified in this notice is found within 2 kilometers of the facility, * * *'' Because this change would not affect the protection that the regulations provide, we have changed the requirement in § 319.56–2dd(e)(4) to state that the detection of one fruit fly of the species specified in § 319.56–2dd(e) would trigger an increase in trap density and inspections. In addition, we have made editorial changes to clarify that the threshold for cancellation of exports is the capture of two Medflies or three of the same species of *Bactrocera* within 2 kilometers of each other and within 30 days.

Finally, the commenter suggested including certain specifics in the operational workplan between the country of origin and the United States and excluding that information from the regulations. For example, the proposed rule would require that ''Capture of two Medflies or three of the same species of *Bactrocera* within 1 month will result in the cancellation of exports from all registered greenhouses within 2 kilometers of the find until the source of the infestation is determined and the fruit fly infestation is eradicated.'' The commenter stated that the distance between detections was based on detections within a 2 kilometer radius of the facility, but he recommended that we omit the specifics on the number of flies, distance between detections, and timeframe from the regulations and include that information in the operational workplan. We are not making any changes in response to this suggestion. We believe the specifics provide transparency in the regulations. These requirements, including that exports will be canceled from all registered greenhouses within 2 kilometers of the find, are consistent with our import requirements for tomatoes from Spain in § 319.56.2dd(a).

For the same reasons as discussed above under the heading ''Peppers from Israel,'' we are removing the proposed requirement for the sealing of shipping containers for tomatoes from Spain, France, Morocco and Western Sahara, and Australia (§ 319.56–2dd(a), (b), (c), and (e), respectively).

Another commenter requested that we review the use of ''pink'' and ''red'' to describe the ripeness of tomatoes in general. He contended that these terms are obsolete and potentially harmful with production of heirloom tomatoes of many different colors. While the regulations concerning the importations of tomatoes from Australia do not require that they be pink or red, the regulations do include this provision for certain other countries. If the pink or red criterion should become an issue with those importations, we will evaluate the adequacy of the pink or red criterion. However, at this time, we are not making any changes in response to this comment.

Persimmons From the Republic of Korea

We proposed to allow the importation of persimmons from the Republic of Korea under the conditions set forth in § 319.56–2kk. One commenter correctly stated that the proposed shipping restriction that would prohibit the entry of persimmons from the Republic of Korea into Hawaii, Puerto Rico, the Virgin Islands, and Guam would be unnecessary because the pest risk assessment was conducted for all areas of the United States. In addition, the commenter noted that persimmons from the Republic of Korea are currently imported into Guam. In response to this comment, we are removing the shipping restriction for persimmons from the Republic of Korea.

Another commenter objected to the importation of persimmons from the Republic of Korea, stating that APHIS is proposing an inadequate method of enforcement for ensuring that quarantine pests are controlled within production areas. Further, the commenter argued that establishing the orchard, which could be defined in many different ways, as the unit of reference for inspection and refusal of imports has no scientific justification.

We are allowing the importation of persimmons from the Republic of Korea into the United States under, among other things, the condition that the orchard where they were grown was inspected and found free of quarantine pests by the Republic of Korea's NPPO. After harvesting and before packaging a shipment of persimmons, the Republic of Korea's NPPO must inspect the shipment for quarantine pests, and if no pests are found, they must declare that on a phytosanitary certificate.

When the shipment enters the United States, it will be inspected again by a U.S. inspector who will decide whether to allow or refuse entry of the shipment. Costs associated with refusal of a shipment would be borne by the exporter; therefore, the exporter has added incentive to comply with the regulations. Traceback to an orchard would be accomplished through records kept by the Republic of Korea's NPPO. We regulate at the orchard level in many of our commodity import regulations, because doing so provides us with a meaningful way to eliminate products from the import chain when we identify problems; *i.e.*, we can limit enforcement actions to individual production sites rather than to entire growing areas. Based on our experience with mitigating pest risks and our success with inspection and enforcement, we believe that the conditions described above are adequate.

However, in response to this comment, we are making changes to clarify the regulations. In § 319.56–1, we are adding a definition of the term ''place of production'' that is consistent with the current IPPC definition. The definition for the term ''place of production'' is ''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.'' Because the definition of the term ''place of production'' includes the term ''field'' and ''production site'', we are also including definitions of those terms. The term ''field'' is defined using the IPPC definition of ''a plot of land with defined boundaries within a place of production on which a commodity is grown.'' The term ''production site'' is defined as ''a defined portion of a place of production utilized for the production of a commodity that is managed separately for phytosanitary purposes. This could 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.'' In § 319.56–2kk, which concerns persimmons from the Republic of Korea, we are replacing the first occurrence of the word ''orchard'' with ''production site, which is an orchard.''

Cold Treatment

One commenter voiced concerns about added provisions to allow the entry of cold treated commodities when failures of this treatment protocol have yet to be completely addressed. This commenter stated that (1) although the cold treatment for Medfly has been lengthened, the suspected operational

failure has not been reviewed; (2) at least one live larva of false codling moth was intercepted last year from cold treated citrus from South Africa; and (3) there has been no overall review of the efficacy of cold treatment protocols in light of the interceptions of live insects following treatment.

In general, when pests are intercepted following treatment, APHIS investigates possible causes and responds appropriately. In the specific case of multiple live Medfly interceptions in clementines from Spain, APHIS halted clementine imports until we evaluated the situation, and the Secretary determined that it was no longer necessary to prohibit the importation or interstate movement of the fruits if a lengthened cold treatment was applied, along with other safeguards. In conducting our evaluation, we reviewed the cold treatment protocols for Medfly. APHIS' review of the cold treatment applied to the clementine shipments that contained live Medfly larvae yielded no evidence that the treatment was improperly applied. In an interim rule (67 FR 63529–63536, Docket No. 02–071–1, effective and published October 15, 2002), we extended the duration of cold treatment for Medfly and added a requirement that inspectors will sample and cut fruit from each shipment cold treated for Medfly to monitor the effectiveness of the cold treatment.

In response to interceptions of the false codling moth from cold treated citrus in South Africa, we have taken three actions to help ensure fruit infested with false codling moth do not enter the United States with cold treated fruit. First, fruit entering through preclearance programs will be rejected before treatment if false codling moth is found. Second, additional fruit cutting is being instituted in the preclearance program. Third, at the ports of entry, fruit cold treated for false codling moth has been moved to the highest risk level—the number of fruit being cut on arrival is 150 per container or 1,500 for bulk shipments.

Permits

In § 319.56–3, we proposed to add provisions that oral permits may be issued in cases where no other importations are considered and the commodity is admissible with only inspection. One commenter questioned the ability to conduct tracebacks and keep records under the proposed oral permit provision. Specifically, the commenter asked how the oral request is documented, what form an oral request needs to be in, for what purposes does the oral request need to be made, and if an oral request can be denied, what would be the reasons for denial. The commenter stated that APHIS is also easing the burden upon importers in obtaining these permits by allowing oral permits to be satisfactory in securing inspection.

Allowing oral permits is a standard practice for noncommercial fruits or vegetables at the U.S. ports of entry. It is APHIS' policy to allow oral permits on a daily basis for fruits and vegetables brought in through passenger baggage. For these noncommercial shipments, no application is necessary. While oral permits are also issued to importers who are first-time importers of commercial shipments, the importers must apply in writing, which provides documentation of the importation as well as proof that the importers were informed of the requirements. Since this is a current practice, we do not view the amendments to the regulations as easing the burden upon importers. Instead, the amendments to the permit regulations will clarify and update our procedures.

As is the case with a fruit or vegetable that is imported with a written or electronic permit under § 319.56–6, entry of any fruit or vegetable that is being considered for importation under an oral permit would be denied if the inspector finds evidence of a pest or disease. The issuance of oral permits will not influence the requirement for a permit. Regardless of the form—oral, written, or electronic—a permit is required. Written or electronic permits are required from importers who routinely ship commercial products to the United States.

Based on the questions posed by the commenter, we are making several changes to further clarify the permit provisions. In the definitions in § 319.56–1 and throughout § 319.56–3, we have changed ''specific permit'' to *specific written permit.* Under the definition for specific written permit, we have specified that a specific written permit may also be issued by electronic means. In § 319.56–3(a), we are clarifying that for fruits and vegetables imported under an oral permit, a specific written permit is not required. Finally, we have rewritten the proposed § 319.56–3(d) to clarify that oral permits may be issued for noncommercial consignments if the commodity is admissible with inspection only. For commercial shipments, oral permits may be issued for fruits and vegetables arriving in the United States without a specific written permit if all applicable entry requirements are met and proof of application for a specific written permit has been supplied to an inspector.

In addition, we have modified the definition of *general permit* for clarity. As proposed , the definition referred to the authorization contained in paragraphs (b), (c), or (d) of § 319.56–2 for persons to import ''the articles named by the general permit.'' Because those paragraphs themselves serve as the general permit, we have amended the definition so that it refers to ''the articles named in those paragraphs.'' To further ensure clarity, we have amended § 319.56–2(b), (c), and (d) by adding a title to each of those paragraphs, *i.e.*, ''General permit for dried, cured, or processed fruits and vegetables,'' ''General permit for fruits and vegetables grown in Canada,'' and ''General permit for fruits and vegetables grown in the British Virgin Islands,'' respectively.

Miscellaneous Changes

In addition to amendments that we are making in response to comments received on the proposed rule, we are making several miscellaneous changes. We had proposed to amend § 319.56–2(e) by adding a footnote stating that fruits and vegetables from designated countries or localities that are subject to specific import requirements prescribed elsewhere in the regulations are ''not subject to the regulations in this section [*i.e.*, § 319.56–2] unless specified otherwise.'' In this final rule, we have amended that footnote to reflect our intent that such fruits and vegetables will not be subject to the regulations in paragraph (e) of § 319.56–2, rather than the entire section.

As proposed, we are amending the lists of ports in § 319.56–2d(b)(1) where cold treatment may be conducted if it was not conducted in transit to the United States. In addition, we are including the port of Corpus Christi, TX, to the list of ports as a result of a final rule (68 FR 2684–2686, effective and published January 21, 2003, Docket No. 00–068–3) that was published after the proposal for this rule. Because the ports listed in § 319.56–2d(b)(1) are also listed in § 319.56–2x(b) as ports where fruits and vegetables that require treatment for fruit flies may arrive when treatment has not been conducted before arrival in the United States, we are replacing the list of ports in § 319.56–2x(b) with a reference to § 319.56–2d(b)(1), thus eliminating the need to update both lists should future amendment be needed.

We are removing and reserving the administrative instructions governing importation of grapefruit, lemons, and oranges from Argentina in § 319.56–2f based on *Harlan Land Company,* et al. vs. *United States Department of*

Agriculture, et al., Case #CV–F–00–6106–REC/LJO (D. Ariz. Sept. 27, 2001).

We are amending the geographic description in § 319.56–2q of the free areas for importing citrus from South Africa to include the Warrenton magisterial district (a political division similar to a county in the United States) in the Northern Cape Province. Although the data submitted by South Africa, which we made available for review in the proposed rule, demonstrated that Warrenton and Hartswater magisterial districts are free of citrus black spot, our proposed amendment erroneously referred only to the Hartswater magisterial district. Because the production area for which the data were submitted falls within two different magisterial districts, § 319.56–2q refers to both the Hartswater and Warrenton magisterial districts in this final rule.

In a new paragraph for peppers from Israel (§ 319.56–2u(b)(9)) and the new section for persimmons from Korea (§ 319.56–2kk), we have changed the specific reference to each country's agricultural department to the more general reference of the national plant protection organization. We have made these changes to avoid the need to amend the regulations should the specific name of the national plant protection organization change.

Previously, § 319.56–3 pertained to applications for permits for importation of fruits and vegetables, and § 319.56–4 explained the permit procedures for importing fruits and vegetables. One of the changes we are making to the permit provisions is combining § 319.56–3 and § 319.56–4 into § 319.56–3. Another change is the addition of a new section § 319.56–4 for amendment, denial, or withdrawal of permits. These changes necessitate replacing references to the former § 319.56–4 with references to § 319.56–3. We have made this change in §§ 319.56a, 319.56–2b, 319.56–2n, 319.56–2o, 319.56–2bb, and 319.56–2ff.

In § 319.56–6, ''Inspection and other requirements at the port of first arrival,'' we proposed to amend paragraph (b) to require that the owner or the agent makes full disclosure of the type, quantity, and country of origin of all fruits and vegetables in the shipment on an invoice or similar document and present that document to an inspector prior to moving the fruits or vegetables. In this final rule, we have added language to clarify that the full disclosure of all fruits and vegetables in the shipment may be made either orally for noncommercial shipments or on an invoice or similar document for commercial shipments. To clarify that the fruit or vegetable must be released for movement prior to moving the fruits or vegetables from the port, we have added that movement from the port must be in accordance with paragraph (d) of § 319.56–6, which specifies the requirements for release for movement.

Finally, we have renumbered several footnotes in the subpart so that they will be sequential throughout the regulations and made other minor, nonsubstantive changes.

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

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule relieves restrictions on the importation of certain fruits and vegetables from certain countries while continuing to protect against the introduction of quarantine pests into the United States.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested producers, importers, shippers, and others to benefit immediately from the relieved restrictions. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

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

This final rule amends the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to such disinfection at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables will be required to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and spread of quarantine pests.

We are recognizing areas in several countries as free from certain fruit flies; removing the Province of Arica in Chile as an area free from Medfly; amending the packing requirements for certain commodities; expanding locations in the northeastern United States where cold treatment can be conducted; updating and clarifying restrictions on entry of fruits and vegetables; updating and clarifying permit procedures including amendment, denial, or withdrawal of permits; requiring full disclosure of fruits and vegetables at the port of first arrival and clarifying the conditions under which they are released for movement; and making other miscellaneous changes.

We have used all available data to estimate the potential economic effects of allowing the fruits and vegetables specified in this rule to be imported into the United States. However, some of the data we believe would be helpful in making this determination have not been available. Specifically, data are not available on: (1) The quantity of certain fruits and vegetables produced domestically; (2) the quantity of potential imports; and (3) the degree to which imported fruits and vegetables will displace existing imported or domestic products. In our proposed rule, we asked the public to provide such data.

In response to comments that we received, this analysis provides additional information for rambutan from Honduras, fennel from El Salvador, Guatemala, and Nicaragua, and citrus from Australia that was not contained in the analysis we included in the proposed rule. (The specific comments are discussed earlier in this document under the headings ''Rambutan from Central America and Mexico,'' ''Fennel from El Salvador, Guatemala, and Nicaragua,'' and ''Citrus from Australia.'') We have made additional changes to the data concerning citrus from Australia and South Africa and have included the Warrenton magisterial district in our discussion of citrus from South Africa.

Effects on Small Entities

Data on the number and size of U.S. producers of the various commodities that may be imported into the United States under this final rule are not available. However, since most fruit and

vegetable farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities discussed below are small. The potential economic effects of this final rule are discussed below by commodity and country of origin.

Citrus from Australia. The regulations contain provisions for the importation of citrus from certain areas in Australia. In this rule, we are adding new areas in Australia from which citrus may be imported into the United States. In 2001, while the United States produced almost 15 million metric tons of citrus, Australia produced 604,000 metric tons, which is approximately 4 percent of U.S. production. That same year, the value of U.S. citrus exports reached almost $591 million, whereas the value of Australian citrus exports reached $108.7 million. In 2001, the United States imported more than $298 million of citrus fruits; of that amount, $22 million, or 7 percent, was imported from Australia. Because the U.S. production of citrus is supplemented with citrus imports in order to satisfy the domestic demand, we do not believe that allowing the importation of citrus from additional areas in Australia will have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of citrus will benefit from the increase in its supply and availability.

Tomatoes from Australia. In 2000, the United States produced over 11 million metric tons of tomatoes, exported 208,564 metric tons, and imported 730,063 metric tons. Australia produced 413,617 metric tons of tomatoes, which is less than the total U.S. imports, and exported 3,807 metric tons in 2000. Because the U.S. production of tomatoes is supplemented with tomato imports in order to satisfy the domestic demand, we do not believe that allowing the importation of tomatoes from Australia will have a significant effect on either U.S. consumers or producers.

Peppers from Chile. From 1997 to 2000, the United States production of peppers (*Capsicum annuum*) increased 30 percent, from 678,000 metric tons to 885,630 metric tons. However, the U.S. demand for imports of peppers increased by 70 percent during the same time period. Although no trade data on peppers from Chile are available, we do not believe that peppers imported from Chile will have a significant impact on U.S. producers or other small entities.

Rambutan from Guatemala. There are no data available regarding domestic production of rambutan in the United States. In Guatemala, only one 280-square-kilometer farm commercially produces rambutan. Recent production data for rambutan in Guatemala indicate about 117 metric tons are produced per year. We believe any exports to the United States will be minimal and would not have any significant economic effect on U.S. producers, whether small or large, or consumers.

Figs from Mexico. According to the Food and Agriculture Organization of the United Nations, from 1997 to 2000, the United States produced an average of 47,000 metric tons of fresh figs per year. The U.S. production of fresh figs remained stable for those 4 years, but U.S. imports of fresh figs increased from 221 metric tons in 1997 to 427 metric tons in 2000, indicating an increase in the demand for fresh figs in the United States. From 1997 to 2000, Mexico produced an average of 3,000 metric tons of fresh figs per year. We do not expect a significant economic effect on U.S. producers, whether small or large, or consumers, because the U.S. demand for figs appears to be exceeding the U.S. production of fresh figs.

Citrus from South Africa. The regulations contain provisions for the importation of citrus from the Western Cape Province of South Africa. In this document, we are adding the Hartswater and Warrenton magisterial districts in the Northern Cape Province of South Africa to the areas from which citrus can be imported into the United States. In 2001, while the United States produced almost 15 million metric tons of citrus, South Africa produced 1.4 million metric tons, which is approximately 10 percent of U.S. production. That same year, the value of U.S. citrus exports reached almost $591 million, and the value of South African citrus exports reached $204.5 million. In 2001, the United States imported more than $298 million of citrus fruits; of that amount, $26,348,000, or 9 percent, was imported from South Africa. Because the U.S. production of citrus is supplemented with citrus imports in order to satisfy the domestic demand, we do not believe that expanding the areas from which the United States may import citrus from South Africa will have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of citrus will benefit from the increase in its supply and availability.

Peppers from Spain. From 1997 to 2000, the United States production of peppers (*Capsicum annuum*) increased 30 percent, from 678,000 metric tons to 885,630 metric tons. However, the U.S. demand for imports of peppers increased by 70 percent during the same time period. In 2000, the United States produced 885,630 metric tons of peppers and exported 71,478 metric tons. Of the 346,654 metric tons of peppers that the United States imported in 2000, 2,269 metric tons, or less than 1 percent, were imported from the Almeria Province of Spain. Under this rule, the United States may accept imports of peppers from the additional province of Alicante in Spain. Considering that the U.S. production of peppers is supplemented with imports of peppers in order to satisfy the domestic demand, we do not believe that allowing the importation of tomatoes from an additional province in Spain will have a significant effect on either U.S. consumers or producers.

Tomatoes from Spain. In 2000, the United States produced over 11 million metric tons of tomatoes, exported 208,564 metric tons, and imported 730,063 metric tons. Of the tomatoes imported into the United States, 5,650 metric tons, or less than 1 percent, were imported from Spain. Considering that the U.S. production of tomatoes is supplemented with imports of tomatoes in order to satisfy the domestic demand, we do not believe that allowing the importation of pink or red tomatoes from the municipalities of Albuñol and Carchuna in the Granada Province in Spain will have a significant effect on either U.S. consumers or producers.

Unavailability of Data. Due to the unavailability of data, we are unable to determine the effect that the importation of the following commodities will have on U.S. producers or consumers:

- Rambutan from Belize, Costa Rica, El Salvador, Honduras, Mexico, Nicaragua, and Panama.
- Longan from China.
- Cape gooseberries and yellow pitaya from Colombia.
- Loroco from El Salvador, Honduras, and Nicaragua.
- Parsley and rosemary from El Salvador.
- Waterlily or lotus and German chamomile from El Salvador, Guatemala, Honduras, and Nicaragua.
- Basil from Honduras.
- Yam-bean or Jicama root and oregano or sweet marjoram from El Salvador and Honduras.
- Yard-long bean from Nicaragua.
- Persimmon from Spain.

Fennel from El Salvador, Guatemala, and Nicaragua. There are no data available on the production of fennel in El Salvador, Guatemala, or Nicaragua. Fennel is produced in Arizona and California. While the estimated total value or quantity produced in the United States is not known, in 2001, Monterey County, CA, produced an estimated 741 acres of fennel valued at $3,303,000, and Santa Barbara County,

CA, produced an estimated 261 acres valued at $1.5 million. Fennel imports will directly compete with domestic production, and domestic producers may lose market share. Domestic consumers will benefit if increased competition results in lower prices. The costs associated with imports will likely be borne by a small group of domestic producers, while the more diffuse group of consumers will enjoy the benefits. Benefits enjoyed by consumers will likely be too small to be measured or even noticed.

Rambutan from Honduras. There are no data available on the production of rambutan in the United States. Honduras reported that there are over 125 growers of rambutan in that country. Honduras estimated that it would export 1,500 metric tons of rambutan from 250 hectares of rambutan that will be in production in 2003.

Persimmons from the Republic of Korea. In the United States, persimmons are a specialty crop produced on a small scale mainly in California and Texas; thus, no data on the U.S. production of persimmons are available. Therefore, we were unable to determine the effect this final rule would have on U.S. producers or consumers of persimmons. In 2000, South Korea produced 288,000 metric tons of persimmons, imported 2 metric tons, and exported 4,258 metric tons.

Yam-bean from Nicaragua. There are no data available regarding production of yam-bean or Jicama root in the United States. While the production of yam-bean or Jicama root in Nicaragua has remained stable for the past 3 years at approximately 133,000 metric tons per year, we are unable to determine the effect that imports of yam-bean will have on U.S. producers or consumers.

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

Executive Order 12988

This final rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the importation of fruits and vegetables under this rule will be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0210.

Government Paperwork Elimination Act Compliance

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

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

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

■ Accordingly, we are amending 7 CFR parts 300 and 319 as follows:

PART 300—INCORPORATION BY REFERENCE

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 300.1, paragraph (a) is amended as follows:

■ a. In paragraph (a)(5), by removing ''T107–a,'' and by removing the word ''and'' after the words ''September 2002;''.

■ b. In paragraph (a)(6), by removing the period and adding the word ''; and'' in its place.

■ c. By adding a new paragraph (a)(7) to read as follows:

§ 300.1 Plant Protection and Quarantine Treatment Manual.

(a) * * *

(7) Treatments T106–e, T107–a, and T107–j, dated April 2003.

* * * * *

■ 3. A new § 300.5 is added to read as follows:

§ 300.5 International Standards for Phytosanitary Measures.

(a) The International Standards for Phytosanitary Measures Publication No. 4, ''Requirements for the Establishment of Pest Free Areas,'' which was published February 1996 by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) *Availability*. Copies of International Standards for Phytosanitary Measures Publication No. 4:

(1) Are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW., Suite 700, Washington, DC; or

(2) May be obtained by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; or

(3) May be viewed on the APHIS Web site at *http://www.aphis.usda.gov/ppq/pim/standards/*. PART≤

PART 319—FOREIGN QUARANTINE NOTICES

■ 4. The authority citation for part 319 is revised to read as follows:

Authority: 7 U.S.C. 450 and 7701–7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.37–5 [Amended]

■ 5. In § 319.37–5, paragraph (b)(3)(xlii), the word ''*necratrix*'' is removed and the word ''*necatrix*'' is added in its place.

§ 319.56 [Amended]

■ 6. In § 319.56, paragraph (a)(2), the words ''injurious insects, including fruit and melon flies (Tephritidae)'' are removed and the words ''quarantine pests'' are added in their place.

§ 319.56a [Amended]

■ 7. In § 319.56a, paragraph (b), the citations ''§§ 319.56–3 and 319.56–4'' are removed and the citation ''§ 319.56–3'' is added in their place.

■ 8. Section 319.56–1 is amended by adding, in alphabetical order, new definitions for *field, general permit, permit, place of production, production*

site, quarantine pest, and *specific written permit* to read as follows:

§ 319.56–1 Definitions.

* * * * *

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

* * * * *

General permit. The authorization contained in § 319.56–2(b), (c), or (d) for any person to import the articles named in those paragraphs, in accordance with the requirements specified in those paragraphs, without being issued a specific written permit.

* * * * *

Permit. A written or oral authorization, including by electronic methods, to import fruits or vegetables in accordance with the regulations in this subpart.

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.

* * * * *

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.

Specific written permit. A written or electronic authorization issued by APHIS to a person to import a particular fruit or vegetable from a specified country in accordance with the requirements of this subpart and any additional conditions that may be assigned.

■ 9. Section 319.56–2 is amended as follows:

■ a. In paragraphs (b), (c), and (d), by adding a heading to read as set forth below.

■ b. In paragraph (e), by revising the introductory text to read as set forth below.

■ c. In paragraph (e)(1), by removing the words ''injurious insects, including fruit and melon flies (Tephritidae)'' and adding the words ''quarantine pests'' in their place.

■ d. In paragraph (e)(2), by removing the words ''injurious insects that attack it'' and adding the words ''quarantine pests'' in their place.

■ e. In paragraph (e)(3), by removing the words '', its importation can be authorized without risk,''; and by removing the words ''injurious insects'' and adding the words ''quarantine pests'' in their place.

■ f. In paragraph (e)(4), by removing the words '', its importation can be authorized without risk,'' and by removing the words ''certain injurious insects'', ''certain insects'', and ''injurious insects'' and adding the words ''quarantine pests'' in their place.

■ g. By revising paragraphs (f) and (h) and the OMB citation at the end of the section to read as set forth below.

■ h. In paragraph (j), by adding the words ''except Arica'' immediately after the words ''all Provinces in Chile''.

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(b) *General permit for dried, cured, or processed fruits and vegetables.* * * *

(c) *General permit for fruits and vegetables grown in Canada.* * * *

(d) *General permit for fruits and vegetables grown in the British Virgin Islands.* * * *

* * * * *

(e) Any other fruit or vegetable, except those restricted to certain countries and districts by special quarantine,[1] other orders, or provisions of the regulations in this subpart[2] may be imported from any country under a permit issued in accordance with this subpart and upon compliance with the regulations in this subpart, at the ports authorized in the permit, if the U.S. Department of Agriculture, after reviewing evidence presented to it, is satisfied that the fruit or vegetable either:

* * * * *

(f) Before the Administrator may authorize importation of a fruit or vegetable under paragraphs (e)(3) or (4) of this section, he or she must determine that the fruit or vegetable is being imported from an area that is free of the pest or pests in accordance with the criteria for establishing freedom found in International Standard for Phytosanitary Measures Publication No. 4, ''Requirements for the Establishment of Pest Free Areas.'' The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in § 300.5 of this chapter. APHIS must approve the survey protocol used to determine pest-free status, and pest-free areas are subject to audit by APHIS to verify their status. When used to authorize importation under paragraph (e)(3) of this section, the criteria must be applied to all quarantine pests that attack the fruit or vegetable; when used to authorize importation under paragraph (e)(4) of this section, the criteria must be applied to those particular quarantine pests from which the area or district is to be considered free.

* * * * *

(h) The Administrator has determined that the following areas in Mexico meet the criteria of paragraphs (e) and (f) of this section with regard to the plant pests *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus:* Comondu, La Paz, Loreto, Los Cabos, and Mulegé in the State of Baja California Sur; the municipalities of Bachiniva, Casas Grandes, Cuahutemoc, Guerrero, Namiquipa, and Nuevo Casas Grandes in the State of Chihuahua; the municipalities of Ahome, Choix, El Fuerte, Guasave, and Sinaloa de Leyva in the State of Sinaloa; and the municipalities of Altar, Atil, Bacum, Benito Juarez, Caborca, Cajeme, Carbo, Empalme, Etchojoa, Guaymas, Hermosillo, Huatabampo, Navojoa, Pitiquito, Plutarco Elias Calles, Puerto Penasco, San Luis Rio Colorado, San Miguel, and San Ignacio Rio Muerto in the State of Sonora. Fruits and vegetables otherwise eligible for importation under this subpart may be imported from these areas without treatment for the pests named in this paragraph.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0049 and 0579–0210)

§ 319.56–2b [Amended]

■ 10. In § 319.56–2b, paragraph (a)(1), the citation ''§ 319.56–4'' is removed and the citation ''§ 319.56–3'' is added in its place.

■ 11. Section 319.56–2d is amended as follows:

■ a. By redesignating footnote 1 as footnote 3.

■ b. By revising paragraph (b)(1) to read as set forth below.

§ 319.56–2d Administrative instructions for cold treatments of certain imported fruits.

* * * * *

[1] The importation of citrus fruits into the United States from eastern and southeastern Asia and certain other areas is restricted by the Citrus Fruit Quarantine, § 319.28.

[2] Fruits and vegetables from designated countries or localities that are subject to specific import requirements prescribed elsewhere in this subpart are not subject to the regulations in paragraph (e) of this section unless specified otherwise. Such fruits and vegetables are, however, subject to all other general requirements contained in other sections of this subpart.

(b) * * *

(1) Places of precooling and refrigeration. Refrigeration may be conducted while the fruit is on shipboard in transit to the United States. If not so refrigerated, the fruit must be both precooled and refrigerated 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. Fruit that is to be refrigerated in transit must be precooled either at a dockside refrigeration plant prior to loading aboard the carrying vessel, or aboard the carrying vessel. Refrigeration must be completed in the container, compartment, or room in which it is begun.

* * * * *

§ 319.56–2f [Removed and reserved]

■ 12. Section 319.56–2f is removed and reserved.

■ 13. Section 319.56–2j is amended as follows:

■ a. By redesignating footnotes 2 and 3 as footnotes 4 and 5, respectively.

■ b. By revising paragraph (a)(2) to read as set forth below.

■ c. In paragraph (a)(4), by removing the words ''this section'' and ''paragraph (a)(2) of this section'' and adding the words ''the PPQ Treatment Manual'' in their place; by adding the words ''or she'' immediately after the word ''he''; and by removing the word ''insect'' and adding the word ''quarantine'' in its place.

■ d. In paragraph (a)(5), by adding the words ''or her'' immediately after the word ''his''.

■ e. In paragraph (a)(6), by removing the words ''paragraph (a)(2) of this section'' and adding the words ''the PPQ Treatment Manual'' in their place.

§ 319.56–2j Conditions governing the entry of apples and pears from Australia (including Tasmania) and New Zealand.[4]

* * * * *

(a) * * *

(2) *Approved fumigation.* Fumigation with methyl bromide must be in accordance with the PPQ Treatment Manual, which is incorporated by reference in § 300.1 of this chapter.

* * * * *

§ 319.56–2k [Amended]

■ 14. In § 319.56–2k, footnote 1 is redesignated as footnote 6.

§ § 319.56–2n and 319.56–2o [Amended]

■ 15. In § 319.56–2n and § 319.56–2o, the introductory text of each section is amended by removing the citation ''§ 319.56–4'' and adding the citation ''§ 319.56–3'' in its place.

§ 319.56–2p [Amended]

■ 16. Section 319.56–2p is amended as follows:

■ a. In paragraph (a)(3)(i), by adding the words ''(including Hispaniola)'' immediately after the words ''the Greater Antilles''.

■ b. In paragraph (f), by removing the words ''injurious insects'' and adding the words ''quarantine pests'' in their place.

§ 319.56–2q [Amended]

■ 17. Section 319.56–2q is amended as follows:

■ a. In the introductory text of the section and in paragraph (a), by adding the words ''the Hartswater and Warrenton magisterial districts in the Northern Cape Province or'' immediately before the words ''the Western Cape Province''.

■ b. In paragraph (b), introductory text, by removing the words ''genus *Ceritatis*'' and adding the words ''genera *Ceratitis*'' in their place.

■ 18. In § 319.56–2t, the table is amended as follows:

■ a. By adding entries, in alphabetical order, under Belize, for rambutan; under Chile, for pepper; under Costa Rica, for rambutan; under El Salvador, for fennel, German chamomile, loroco, oregano or sweet marjoram, parsley, rambutan, rosemary, waterlily or lotus, and yam-bean or Jicama root; under Guatemala, for fennel, German chamomile, rambutan, and waterlily or lotus; under Honduras, for basil, German chamomile, loroco, oregano or sweet marjoram, rambutan, waterlily or lotus, and yam-bean or Jicama root; under Mexico, for fig and rambutan; under Nicaragua, for fennel, German chamomile, loroco, rambutan, waterlily or lotus, yam-bean or Jicama root; and under Panama, for rambutan to read as set forth below.

■ b. Under Guatemala, by placing the entry for ''Jicama'' in alphabetical order.

■ c. By revising, under Guatemala, the entries for loroco and rosemary, and, under Spain, the entry for tomato, to read as set forth below.

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	* * * *
Belize			
*	*	*	* * * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Belizean department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Belizean department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
Chile			

[4] Apples and pears from Australia (excluding Tasmania) where certain tropical fruit flies occur are also subject to the cold treatment requirements of § 319.56–2d.

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	* * * *
	Pepper	*Capsicum annuum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Chilean department of agriculture stating that the fruit originated in a fruit-fly-free area—see § 319.56–2(j).)
*	*	*	* * * *
Costa Rica			
*	*	*	* * * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Costa Rican department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Costa Rican department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
El Salvador			
*	*	*	* * * *
	Fennel	*Foeniculum vulgare*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	German chamomile.	*Matricaria recutita* and *Matricaria chamomilla*.	Flower and leaf. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Loroco	*Fernaldia* spp.	Flower, leaf, and stem.
	Oregano or sweet marjoram.	*Origanum* spp.	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Parsley	*Petroselinum crispum*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by El Salvador's department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of El Salvador's department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Rosemary	*Rosmarinus officinalis*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Waterlily or lotus.	*Nelumbo nucifera*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Yam-bean or Jicama root.	*Pachyrhizus* spp	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
Guatemala			
*	*	*	* * * *
	Fennel	*Foeniculum vulgare*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	German chamomile.	*Matricaria chamomilla* and *Matricaria recutita*.	Flower and leaf. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Loroco	*Fernaldia* spp	Flower and leaf.
*	*	*	* * * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Guatemalan department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Guatemalan department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
	Rosemary	*Rosmarinus officinalis*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
	Waterlily or lotus.	*Nelumbo nucifera*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	* * * *
Honduras			
*	*	*	* * * *
	Basil	*Ocimum basilicum*	Leaf and stem. (Must be accompanied by a phytosanitary certificate issued by the Honduran department of agriculture stating that the fruit is free from *Planococcus minor.* Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
	German chamomile.	*Matricaria chamomilla* and *Matricaria recutita*.	Flower and leaf. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Loroco	*Fernaldia* spp.	Flower and leaf.
	Oregano or sweet marjoram.	*Origanum* spp.	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Honduran department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Honduran department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Waterlily or lotus.	*Nelumbo nucifera*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Yam-bean or Jicama root.	*Pachyrhizus* spp	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI and Guam.'')
*	*	*	* * * *
Mexico			
*	*	*	* * * *
	Fig	*Ficus carica*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Mexico stating that the fruit originated in a fruit-fly-free area—see § 319.56–2(h). Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Mexico stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus P. minor,* and *Pseudococcus landoi* and; (2) all damaged fruit were removed from the shipment prior to export under the supervision of the national plant protection organization of Mexico. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
Nicaragua			
*	*	*	* * * *
	Fennel	*Foeniculum vulgare*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	German chamomile.	*Matricaria chamomilla* and *Matricaria recutita*.	Flower and leaf. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Loroco	*Fernaldia* spp	Leaf and stem.
*	*	*	* * * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Nicaraguan department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Nicaraguan department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	* * * *
	Waterlily or lotus.	*Nelumbo nucifera*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Yam-bean or Jicama root.	*Pachyrhizus* spp	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
Panama			

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	*
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by Panama's department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of Panama's department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
*	*	*	*
Spain			
*	*	*	*
	Tomato	*Lycopersicon esculentum*	Fruit, only if it is green upon arrival in the United States (pink or red fruit may only be imported from Almeria Province, Murcia Province, or the municipalities of Albuñol and Carchuna in Granada Province and only in accordance with § 319.56–2dd of this subpart).
*	*	*	*

* * * * *

■ 19. In § 319.56–2u, paragraph (b)(7) is revised and new paragraphs (b)(8) and (b)(9) and an OMB citation are added to read as follows:

§ 319.56–2u Conditions governing the entry of lettuce and peppers from Israel.

(b) * * *

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

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

■ 20. In § 319.56–2v, paragraph (a)(1) is revised to read as follows:

§ 319.56–2v Conditions governing the entry of citrus from Australia.

(a) * * *

(1) The Riverland district of South Australia, defined as the county of Hamley; the geographical subdivisions, called hundreds, of Bookpurnong, Cadell, Eba, Fisher, Forster, Gordon, Hay, Holder, Katarapko, Loveday, Markaranka, Morook, Murbko, Murtho, Nildottie, Paisley, Parcoola, Paringa, Pooginook, Pyap, Ridley, Skurray, Stuart, and Waikerie; and the Parish of Onley of the Shire of Mildura, Victoria;

* * * * *

■ 21. Section 319.56–2x is amended as follows:

■ a. In paragraph (a), the table is amended by adding, in alphabetical order, under China, an entry for longan; a new entry for Colombia; under Nicaragua, an entry for yard-long-bean; and under Spain, an entry for persimmon to read as set forth below.

■ b. By revising paragraph (b) to read as set forth below.

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

* * * * *

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	*
China			
*	*	*	*
	Longan	*Dimocarpus longan*	Fruit.
Colombia	Cape gooseberry	*Physalis peruviana*	Fruit.
	Yellow pitaya	*Selenicereus megalanthus*	Fruit.
*	*	*	*
Nicaragua			
*	*	*	*
	Yard-long-bean	*Vigna unguiculata*	Pod.

Country/locality	Common name	Botanical name	Plant part(s)
* * * * * * *			
Spain			
* * * * * * *			
	Persimmon	*Diospyros khaki*	Fruit.
* * * * * * *			

(b) If treatment has not been completed before the fruits and vegetables arrive in the United States, fruits and vegetables listed in the table in this section and requiring treatment for fruit flies may arrive in the United States only at a port listed in § 319.56–2d(b)(1) of this subpart.

§ 319.56–2y [Amended]

■ 22. In § 319.56–2y, footnote 1 is redesignated as footnote 7.

§ 319.56–2z [Amended]

■ 23. In § 319.56–2z, footnote 1 is redesignated as footnote 8.

§ 319.56–2bb [Amended]

■ 24. In § 319.56–2bb, the introductory paragraph is amended by removing the citation ''§ 319.56–4'' and adding the citation ''§ 319.56–3'' in its place.

■ 25. Section 319.56–2dd is amended as follows:

■ a. By redesignating footnotes 1, 2, and 3 as footnotes 9, 10, and 11, respectively.

■ b. In paragraphs (a)(1) and (a)(7), by adding the words ''Province, the Murcia Province, or the municipalities of Albuñol and Carchuna in the Granada'' immediately after the word ''Almeria''.

■ c. By revising paragraphs (a)(6), (b)(5), (c)(6), and (d)(2) and newly redesignated footnotes 10 and 11 to read as set forth below.

■ d. By adding a new paragraph (e) and revising the OMB citation at the end of the section to read as set forth below.

§ 319.56–2dd Administrative instructions: conditions governing the entry of tomatoes.

(a) * * *

(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 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

* * * * *

(b) * * * [10]

* * * * *

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

* * * * *

(c) * * * [11]

(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 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

* * * * *

(d) * * *

(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 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

* * * * *

(e) *Tomatoes from Australia.* Tomatoes (fruit) (*Lycopersicon esculentum*) may be imported into the United States from Australia only under the following conditions:

(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 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 securely covered with insect-proof mesh or

[10] *See* footnote 9 in paragraph (a) of this section.

[11] *See* footnote 9 in paragraph (a) of this section.

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 shipment 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 § 319.56–2dd(e) of 7 CFR.''

(Approved by the Office of Management and Budget under control numbers 0579–0131 and 0579–0210)

§ 319.56–2ff [Amended]

■ 26. In § 319.56–2ff, the introductory text is amended by removing the citation ''§ 319.56–4'' and adding the citation ''§ 319.56–3'' in its place.

■ 27. Section 319.56–2gg is amended as follows:

■ a. In paragraphs (a) and (h), by adding the words ''Alicante or'' before the words ''Almeria Province''.

■ b. By revising paragraph (e) and adding an OMB citation at the end of the section to read as set forth below.

§ 319.56–2gg Administrative instructions; conditions governing the entry of peppers from Spain.

* * * * *

(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;

* * * * *

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

§ 319.56–2jj [Amended]

■ 28. In § 319.56–2jj, footnote 1 is redesignated as footnote 12.

■ 29. A new § 319.56–2kk is added to read as follows:

§ 319.56–2kk Persimmons from the Republic of Korea.

Persimmons (fruit) (*Disopyros khaki*) may be imported into the United States from the Republic of Korea only under the following conditions:

(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 shipment 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.

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

■ 30. Sections 319.56–3 and 319.56–4 are revised to read as follows:

§ 319.56–3 Applications for permits for importation of fruits and vegetables; issuance of permits.

(a) *Permit required.* Except for fruits or vegetables that may be imported under the general permit provided in § 319.56–2(b), (c), and (d) or for fruits and vegetables imported under an oral permit in accordance with paragraph (d) of this section, 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 this subpart and any other requirements specified by APHIS in the specific written permit.

(b) *Applying for a specific written permit.* Applications must be submitted in writing or electronically and should be made in advance of the proposed shipment and provided to the Plant Protection and Quarantine program.[13] Applications must include the country or locality of origin of the fruits or vegetables, the port of first arrival, the name and address of the importer in the United States, and the identity and quantity of the fruit or vegetable.

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

(d) *Issuance of oral permits.* Oral permits may be issued for noncommercial shipments if the commodity is admissible with inspection only. Oral permits may be issued for commercial shipments of fruits and vegetables arriving in the United States without a specific written permit if all applicable entry requirements are met and proof of application for a specific written permit has been supplied to an inspector.

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

§ 319.56–4 Amendment, denial, or withdrawal of permits.

(a) The Administrator may amend, deny, or withdraw a permit at any time if he or she has determined that conditions exist that present an unacceptable risk of the fruit or vegetable introducing quarantine pests 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 permit.

(b) 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 shall be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. A permit withdrawal will remain in effect pending resolution of the appeal or the hearing.

■ 31. Section § 319.56–6 is amended as follows:

■ a. By redesignating footnote 1 as footnote 14.

■ b. By revising paragraphs (b) and (d) to read as follows:

§ 319.56–6 Inspection and other requirements at the port of first arrival.

* * * * *

(b) *Assembly for inspection.* Any person moving fresh fruits and vegetables into the United States must offer those agricultural products for entry at the U.S. port of first arrival. The owner or the agent must make full

[13] Application for permits to import fruit and vegetables under this subpart may be submitted to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 136, Riverdale, MD 20737–1236; on the Internet using the APHIS Import Authorization System, *https://Web01.aphis.usda.gov/IAS.nsf/;* or by fax (301) 734–5786.

disclosure of the type, quantity, and country of origin of all fruits and vegetables in the shipment, either orally for non-commercial shipments or on an invoice or similar document for commercial shipments, and present that document to an inspector prior to moving the fruits or vegetables from the port in accordance with paragraph (d) of this section. All fruits and vegetables must be accurately disclosed and made available to an inspector for examination. 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.

* * * * *

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

(1) Inspected the fruit or vegetable and released it;

(2) Ordered treatment at the port of first arrival and, after treatment, released it;

(3) Authorized movement to another location for treatment, further inspection, or destruction;

(4) Ordered the fruit or vegetable to be re-exported; or

(5) Waived the inspection.

* * * * *

Done in Washington, DC, this 18th day of June, 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–15908 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–34–P