

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

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

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[72 FR 39501, July 18, 2007, as amended at 73 FR 10972, Feb. 29, 2008; 75 FR 4252, Jan. 26, 2010]

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

(a) *Determination by the Administrator.* The Administrator has determined that the application of one or more of the designated phytosanitary measures cited in paragraph (b) of this section to certain imported fruits and vegetables mitigates the risk posed by those commodities, and that such fruits and vegetables may be imported into the United States subject to one or more of those measures, as provided in paragraphs (c) and (d) of this section. The name and origin of all fruits and vegetables authorized importation under this section, as well as the applicable requirements for their importation, may be found on the Internet at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/fv.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf). Commodities that require phytosanitary measures other than one or more of the designated phytosanitary measures cited in para-

graph (b) of this section may only be imported in accordance with applicable requirements in § 319.56-3 and commodity-specific requirements contained elsewhere in this subpart.

(b) *Designated phytosanitary measures.*

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

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

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

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

(5) The fruits or vegetables are imported as commercial consignments only.

(c) *Fruits and vegetables authorized importation under this section.* (1) *Previously approved fruits and vegetables.* Fruits and vegetables that were authorized importation under this subpart either directly by permit or by specific regulation as of August 17, 2007 and that were subject only to one or more of the designated phytosanitary measures cited in paragraph (b) of this section and the general requirements of § 319.56-3, may continue to be imported into the United States under the same requirements that applied before August 17, 2007, except as provided in paragraph (d) of this section.

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

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

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

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

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

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

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

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

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

declaration that the commodity has been inspected and found free of such pests in the country or region of origin.

(5) *Commercial consignments.* A quarantine pest is associated with the fruit or vegetable in the country or region of origin, but the risk posed by the pest can be reduced by commercial practices.

(ii) *Issuance of import permits.* The Administrator will announce his or her decision in a subsequent FEDERAL REGISTER notice. If appropriate, APHIS would begin issuing permits for importation of the fruit or vegetable subject to requirements specified in the notice because:

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

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

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

(d) *Amendment of import requirements.* If, after August 17, 2007, the Administrator determines that one or more of the designated phytosanitary measures is not sufficient to mitigate the risk posed by any of the fruits and vegetables that are authorized importation into the United States under this section, APHIS will prohibit or further restrict importation of the fruit or vegetable. APHIS may also publish a notice in the FEDERAL REGISTER advising the public of its finding. The notice will specify the amended import requirements, provide an effective date for the change, and will invite public comment on the subject.

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#### § 319.56-5 Pest-free areas.

As provided elsewhere in this subpart, certain fruits and vegetables may be imported into the United States provided that the fruits or vegetables originate from an area that is free of a specific pest or pests. In some cases, fruits or vegetables may only be imported if the area of export is free of all quarantine pests that attack the fruit